Combating Counterfeit Goods Entering Kosovo

Zana Batusha

November 2011

Submitted as a Capstone Project Proposal in partial fulfillment of a Master Of Science Degree in Professional Studies at the RIT Center for Multidisciplinary Studies
# Table of Contents:

Acknowledgments 4  
List of Acronyms 5  
Executive Summary 6  
CHAPTER 1 - Overview of Counterfeit Goods Globally 8  
CHAPTER 2 - Kosovo’s Economy 12  
2.1. Kosovo’s Trade 13  
CHAPTER 3 - Kosovo’s current situation on IPR 15  
3.1. Legal framework 16  
3.2. Institutional infrastructure 17  
CHAPTER 4 - Kosovo Customs’ mission and its role in protecting IPR 19  
4.1. Law on customs measures 20  
4.2. Application for customs action and Ex officio 21  
4.3. Fighting smuggling 23  
CHAPTER 5 - Kosovo’s challenges in combating counterfeit goods 24  
5.1. Special Commodities (SP) 27  
5.2. Pharmaceuticals 27  
5.3. Cigarettes and alcoholic drinks 30  
5.4. Personal care items 31  
5.5. Customs seizures of counterfeit goods 33  
5.6. Taxes, licenses and the institutional control imposed to SP 34  
CHAPTER 6 - Counterfeiting a global issue 35  
6.1. US 36  
6.2. Turkey 37  
6.3. France 38  
CHAPTER 7 –International organizations and their practices 38  
7.1. EU 38
List of figures:

Figure 1 Value of import, revenue collection and value of seizures in 2008, ’09 and ’10 6
Figure 1.1 Number of seizures of counterfeit goods in the world in 2010 9
Figure 1.2 Number of items of counterfeit goods seized in the world in 2010 10
Figure 1.3 Number of detection of counterfeited goods in the EU 10
Figure 1.4 The percentage of detected goods in the EU during 2010 11
Figure 1.5 Countries of origin according to articles detected by the EU during 2010 11
Figure 5.1 Comparison of Customs Blueprint exercise in 2009 and 2011 26
Figure 5.2 Value of seizures in Kosovo over the past 4 years 27
Figure 5.3 The percentage of seizures of personal care items 33

List of tables:

Table 2.1 Value of Import and Export through years in figures and % 14
Table 2.2 Top five importing countries to Kosovo 15
Table 4.1 Cases of the detected smuggling during 2007-2010 24
Table 4.2 Top smuggled items confiscated by Kosovo Customs during 2007-2010 24
Table 5.1 Examples of the effect of the detected counterfeit pharmaceuticals 29
Table 5.2 Licenses or approvals for importin in Kosovo 34
Table 8.1. Legislative framework 47
Table 8.2. Organizational structure 48
Table 8.3. IT and Enforcement 49
Table 8.4 Cooperation 50
Acknowledgments

I would like to express my gratitude to my mentor Prof. Dr. Brian Bowen, whose understanding and patience added considerably to my project.

Very special thanks goes out to Mr. Louis Marie Ellie, without whose motivation and encouragement I would not have considered this subject an important one to be researched. Mr. Ellie is expert in customs issues and was my main adviser providing me with direction, technical support, suggestions for materials evaluated in this study and became more of a mentor and friend. I doubt that I will ever be able to convey my appreciation fully, but I owe him my eternal gratitude.

I must also acknowledge my supervisor Mr. Naim Huruglica- Director General of Kosovo Customs, for his understandings and the moral support he gave me through my Master studies. Unreserved thanks goes to my colleagues for their moral support.

I would also like to thank my family for their support through my entire life in particular during my Master studies, without whose encouragement and moral support, I would not have finished this project.
Acronyms:

IPR – Intellectual Property Rights
WHO – World Health Organization
WCO – World Customs Organization
WTO – World Trade Organization
CAP – Counterfeiting and Piracy Group
CEN – Customs Enforcement Network
SECURE – Standards to be Employed by Customs for Uniform Rights Enforcement
SECI – Southeast European Law Enforcement Cooperation Initiative
WIPO – World Intellectual Property Organization
EU – European Union
EC – European Commission
CEFTA – Central European Free Trade Agreement
TRIPS - Agreement on Trade-Related Aspects of Intellectual Property Rights
MTI – Ministry of Trade and Industry
CBP – Customs and Border Protection
ICE – Immigration and Customs Enforcement
PMI – Philipp Morris International
RILO – Region Intelligence Liaison Office
Executive Summary

This capstone project assesses the impact of counterfeit goods imported into Kosovo. Over the past twelve years, Kosovo Customs has been fighting smuggling of goods, mainly for two reasons: protecting legitimate trade and collecting more revenue. Although it is known that low economic growth drives the need for more taxes in order for the state institutions to function, limited attention was given to the protection of citizens from counterfeited goods. In 2010 some progress was achieved regarding the enforcement of Intellectual Property Rights (IPR), but even this had limited impact concerning the protection of public health. However, the need to balance the collection of customs revenue, facilitating the trade and protecting the citizens from counterfeit goods remains crucial. Therefore this report assesses combating counterfeiting, not because of profitability or protection of an innovation, but mainly because of some counterfeit commodities threatens public health.

It is well recognized that revenues could be used for programmes to benefit the Kosovar society. However, customs with its critical role in controlling and administering the cross-border movement of goods in international trade, is perfectly positioned and has an important role in interdicting and disrupting the illicit trade in goods. The figure 1 shows the value of imports in Kosovo, revenue collected and value of seizures of smuggled goods over the past three years. The growth of import means additional measures are necessary to fight smuggling and counterfeit goods entering Kosovo.

Figure 1 Value of import, revenue collection and value of seizures of smuggled goods (2008, 2009, 2010)

Source: Kosovo Customs
It is estimated that 7-9% of counterfeit goods is traded worldwide. The progress made in Kosovo on enforcement of IPR during Nov’ 2010 and Nov 2011 shows that about 0.037% of counterfeit goods was seized comparing to the value of Kosovo imports which is over € 2.1 billion.

Table 1 The value of imports, seizures of counterfeit goods in Kosovo and the percentage Nov’ 2010-Nov ‘2011

<table>
<thead>
<tr>
<th>Value of import (€ Million)</th>
<th>Value of seizures of counterfeited goods (€ Million)</th>
<th>% of seizures of counterfeit goods</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2.139</strong></td>
<td><strong>0.8</strong></td>
<td><strong>0.037</strong></td>
</tr>
</tbody>
</table>

The European Commission (EC) through its annual progress reports identifies that the enforcement of IPR remains one of the biggest challenges for Kosovo Customs. Also the EU Customs Blueprint exercises identifies that the enforcement IPR need to be given a higher priority by Kosovo Customs. International cooperation is considered to be the key factor in fighting the import of counterfeit goods. Kosovo institutions have to take necessary measures to become a member of the World Customs Organization (WCO).

The capstone project involved national trade statistics to analyze the risk from the importation of counterfeit goods into Kosovo. It includes assessment of reports produced by international organizations to evaluate the situation internationally and questionnaires with the Western Balkans customs administrations to assess the situations on IPR.

Based on the findings of the project, a set of recommendations has been produced. This capstone project provides recommendations on how to enhance the facilities for detecting counterfeited goods. The following actions are needed:

- Becoming a member of the WCO;
- Establishing a Joint Task Group between Customs-Ministry of Health-Ministry of Trade- Food and Veterinary Agency;
- Customs should developing risk analysis modules nationally and regionally on counterfeit goods. By this tool Kosovo Customs may categorize and profile the suspected goods for infringing IPR, thus balancing the trade facilitation and detecting the counterfeit goods;
- Through conclusions of MoU’s with other customs administrations only on IPR matters, customs should strengthen international cooperation in tackling counterfeit goods.
CHAPTER 1

1.1. Overview of counterfeit goods and their consequences

This chapter discusses the counterfeiting as a worldwide issue. The main reason why counterfeiting is growing into a huge business is mainly to take advantage of the superior value of the imitated products. Counterfeiters used to be focused on expensive items such as designer clothing, handbags, watches, sunglasses or popular items they could copy easily and quickly such as computer software and music or video CDs. Today they have expanded into every product category such as: toys, perfume, cosmetics, pharmaceuticals, toothpastes, shampoo, batteries, motor oils, parts for vehicles and planes and almost whatever may bring these groups to the higher profits without spending anything besides on the simplest technology and their labor forces.

Today almost all countries have in place the legal infrastructure to protect the IPR. Because interest groups wanted to standardize, legalize and internationalize their policy objectives, they pushed hard and successfully incorporated Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement into the World Trade Organization (WTO). Today over 153 countries member of WTO, have adhered to the TRIPs Agreement. Based on TRIPs all members should endorse laws on IPR in harmonization with TRIPs and all members should have adequate procedures for enforcing it.

The WCO takes care for the tools needed to enforce these legislation promoted by WTO. The WCO publishes yearly reports regarding the IPR enforcement. According to the WCO, the numbers shown in the figure 1.1 are not accurate because of missing information from several member states. Because counterfeiting is mostly clandestine, there is no accurate worldwide statistics which may show the exact effect in the economic context, but it is estimated that over 9% of world trade is counterfeit goods¹.

¹¹ The economic impact of counterfeiting, OECD 2010
The figures below show that today no region in the world is immune to the counterfeiting problem as it is becoming more and more sophisticated and more organized activity. The industries worldwide are losing significant amount from counterfeiters. The data shown in figure 1.1 the region of North America have seized around 50% of total world seizures; the Western Europe becomes the second region in the world with 27%, while Eastern and Central Europe seized 3.8% of total world seizures.

**Figure 1.1. Number of items of counterfeit goods seized in 2010 (1,000 pieces)**

Source: RILO-WCO

On the other hand also European Commission each year publishes reports with statistics on the enforcement of IPR, information submitted from all member states.
Cigarettes are the category of products for which most customs interventions took place (34%), other tobacco products (8%), followed by office stationery (8.43%), labels, stickers, clothing and toys 6.52%.

In 2010, 85% of the total amount of articles infringing IPR came from China. This represents an important increase compared to 2009 (64%). Other countries were the main source of provenance for different product categories, notably Turkey for foodstuff, Thailand for non-alcoholic beverages, Hong Kong for memory cards and India for medicines.
Although there is a lack of accurate global data, it has been studied that the effects of counterfeit includes general socio-economic effects (on innovation and growth, criminal activities, employment, foreign direct investments and trade); 2) effects on right holders (on sales volume and prices, brand value and reputation, firm investments on research and development); 3) effects on government (tax revenues, expenditures and corruption); and 4) effects on consumers.

Having mentioned the wide effects of counterfeit, the effect on consumers is of utmost importance as society relies mostly on the activities taken by governmental bodies and they expect that the money and taxes they spend is for delivering to them adequate services and products, and that they get the safe and effective products they pay for and, instead, may be put at significant risk.

Up to date there is no innovation which may bring to fight completely the illegal activities. Many governments and international organizations have initiated several strategies and action plans, thus attempting to win the battle against counterfeiters. On the other hand it will remain one big challenge, as the counterfeiters usually keep a step ahead of the authorities.
CHAPTER 2 – Kosovo’s Economy and Trade

In order to discuss the presence of counterfeit goods in Kosovo, it is important to emphasize that Kosovo’s economy is still weak but trade continue to be for over twelve years the main activity. Kosovo is the single country in the region and even broader as the biggest importer therefore citizens are more exposed at risk from the importation of counterfeited goods. Since there is no official data on the presence of the counterfeit goods in the market, this chapter will describe where the major imports are coming from, what is most imported and what exported. Customs plays a vital role in regulating the internal market price, by imposing prices of the goods at the border with the methods as shown in this chapter. Through a risk analysis system it selects the consignments to be examined either based on the doubts of under-invoiced goods or smuggled goods. However, the main role that customs has been playing for years is collection of taxes. Protecting legitimate trade and protecting the citizens from harmful goods is one out of three customs objectives.

Over twelve years Kosovo remains the only country in the regions which has in place a “tax and spend policy”. After the end of the war, the first public institution established was the Customs Administration, with the main purpose of collecting revenue for the functionality of the governmental institutions. Customs main role was to collect import taxes (customs duties, VAT and excise duties), basically based on the annual projections set by the Government.

Between 2000 and 2010, Kosovo’s economic recovery was slow. Growth has averaged 4 percent since the end of the war and reached 4.8 percent in 2010. Mainly because of political instability, fiscal policy is the main anchor for macroeconomic stability and the most successful activity remains trade.

2.1. TRADE

For the past twelve years Kosovo has been laying the foundations of a market-oriented economy. According to the data of the Statistical Office of Kosovo the new business registered in 2010, for the eight sectors, the trade sector remained at the top of attractive businesses. Comparing with the number of total registered businesses, trading covers 53% out of all sector activities (agriculture, mineral and mining, processing industry, electricity, water and gas supply,
construction, **retail and wholesale trade**, hotels and restaurants, hunting). This figure reflects the concentration of the business community by producing only a few products, while importing literally everything what is consumable.

Kosovo's products have free market access to the European Union (EU), Central European Free Trade Agreement (CEFTA), US, Norway and Switzerland, so exports could become an important pillar of growth. However, ever since these Agreements came into place, the Kosovo’s trade balance changed only on a small scale. Kosovo even today extremely depends on imports. The trade balance in 2010 was 86% import and 14% export\(^2\).

Table 2.1. Value (€ Million) of trade through years and the trade balance in %

<table>
<thead>
<tr>
<th>Year</th>
<th>Export</th>
<th>Import</th>
<th>% of Trade Balance (Ex/Im)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>11</td>
<td>684</td>
<td>1.5</td>
</tr>
<tr>
<td>2002</td>
<td>27</td>
<td>855</td>
<td>3.2</td>
</tr>
<tr>
<td>2003</td>
<td>35</td>
<td>973</td>
<td>3.7</td>
</tr>
<tr>
<td>2004</td>
<td>57</td>
<td>1,063</td>
<td>5.3</td>
</tr>
<tr>
<td>2005</td>
<td>56</td>
<td>1,158</td>
<td>4.9</td>
</tr>
<tr>
<td>2006</td>
<td>111</td>
<td>1,306</td>
<td>8.5</td>
</tr>
<tr>
<td>2007</td>
<td>165</td>
<td>1,576</td>
<td>10.5</td>
</tr>
<tr>
<td>2008</td>
<td>198</td>
<td>1,928</td>
<td>10.3</td>
</tr>
<tr>
<td>2009</td>
<td>165</td>
<td>1,935</td>
<td>8.5</td>
</tr>
<tr>
<td>2010</td>
<td>294</td>
<td>2,139</td>
<td>13.75</td>
</tr>
</tbody>
</table>

*Source: Statistical office of Kosovo, 2011*

The main commodities in the **import** remains: Mineral Products, Prepared foodstuffs, beverage and tobacco, Machinery, appliances etc, Base metals and articles of base metals, Products of chemistry or allied industries, Transport means, and Vegetable products. This shows that even though there is evidence of import substitution still there is a very big share of imports in consumption goods. The main commodities in the Kosovo’s **export** are: Base metals and articles of base metals, Mineral products, prepared foodstuffs, beverages, vegetable products, machinery,

---

\(^2\) External Trade, 2010, Statistical Office of Kosovo
and appliances electrical etc, plastic, rubber and articles thereof, and hides, skins leather. The figures and the discussions may conclude that Kosovo imports exactly everything what is daily consumed, while it exports mostly unfabricant products.

According to the WCO and EU published reports, most of the counterfeit goods come from China and Turkey. Kosovo’s top exporting countries are: Macedonia - is ranked in number 1, as the top importing country in Kosovo wherein over 60% of that amount covers fuel/petroleum. Germany is ranked just after Macedonia, wherein over 70% of the amount covers passenger vehicles. Serbian most imported products into Kosovo remains daily consumable goods (sugar, flour, wheat, sunflower oil, beverages etc.). Turkey and China remains the 4th and 5th Kosovo’s trade partner based on the value of goods. However, it is suspected that around 30% of goods coming from Turkey are under invoiced or under-valuated, while amount of goods coming from China are believed to be 60% under invoiced.

Table 2.2 Top five importing countries to Kosovo and value (€ Million) of imported goods through years

<table>
<thead>
<tr>
<th>Country</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Macedonia</td>
<td>235</td>
<td>342</td>
<td>288</td>
<td>305</td>
</tr>
<tr>
<td>Germany</td>
<td>154</td>
<td>196</td>
<td>237</td>
<td>274</td>
</tr>
<tr>
<td>Serbia</td>
<td>219</td>
<td>208</td>
<td>207</td>
<td>209</td>
</tr>
<tr>
<td>Turkey</td>
<td>100</td>
<td>126</td>
<td>137</td>
<td>145</td>
</tr>
<tr>
<td>China</td>
<td>104</td>
<td>120</td>
<td>128</td>
<td>134</td>
</tr>
</tbody>
</table>

Source: Kosovo Customs

3 Kosovo economic briefing, World Bank 2009
CHAPTER 3 - KOSOVO’S CURRENT SITUATION ON IPR

Kosovo has well developed legal and institutional infrastructures. This chapter describes all the applicable laws in the country.

3.1. Legal framework
With the aim of approximating its own legislation with international and European standards, Kosovo institutions have undertaken concrete steps in reforming the Intellectual Property legislation in line with requirements of the time. Today, Kosovo has in place a legislative base, which requires further development and enhancement. The applicable laws that regulate the field of IPR in Kosovo are as follows:

- Law No. 2004/49 of 27 September 2004 on Patents, as promulgated by Regulation No.2004/56 of 21 December 2004, and amended by Law No. 02/L-100, as promulgated by Regulation No. 2007/10 of 6 February 2007;
- Law No. 02/L-45 of 21 November 2005 on Industrial Design, as promulgated by Regulation No. 2006/17 of 21 April 2006;
- Law No. 02-L-54 of 23 February 2006 on Trademarks, as promulgated by Regulation No. 2006/38 of 28 June 2006;
- Law No. 2004/45 on Copyright and Related Rights, as promulgated by Regulation No. 2006/46 of 24 August 2006;
- Law No.02/L-98 of 26 January 2007 on Protection of Plant Varieties as promulgated by Regulation No 2008/24 of 16 May 2008;
- Law No. 2009/03-L-170 on Customs Measures for Protection of Intellectual Property Rights as promulgated by President’s Decree DL-004-2010 of 8 January 2010.

3.3. By-laws/Administrative Instructions (AI)

- AI No. 2007/10 of 17.09.2007 on Patent Registration Procedures;
- AI No.2007/11 of 17.09.2007 on Representation in the Field of Industrial Property Rights, amended in 2008 (the amended AI is not available in English);
3.3. Institutional Infrastructure - IPR Administration Authorities and their role in the IPR protection system

3.3.1. Copyright Office (CO)

The Law on Copyright and Related Rights of Kosovo sets forth the establishment of the Copyright Office within the Ministry of Culture, Youth and Sports. The Act establishing the Copyright Office has been drafted and is waiting for a formal approval by the Office of the Prime Minister. The Law provides the certification of collective management organizations as one of the main tasks of the Copyright Office.

3.3.2. Industrial Property Office (IPO)

The Industrial Property Office was established on 19 March 2007, as an office within the Ministry of Trade and Industry. It is responsible for the implementation of the laws on patents, trademarks and industrial designs. The main task of the IPO is to receive applications for registration of patents, trademarks and industrial designs, perform examinations and grant rights, as well as administer and publish granted rights. The Office became operational on 19 October 2007 and since then; it has received 20,000 applications mostly on trademarks. IPO plays a pivotal role in the IPR protection system, and is also responsible for public awareness on IPR.

3.3.3. Other Institutions and Authorities Involved in Enforcement of IPR
Despite all the progress marked so far in the field of intellectual property, there is still a great need for further development and strengthening of administrative capacities with the aim of more efficient enforcement of intellectual property rights, as well as more clear division of competencies of responsible enforcement institutions in this field. Other important institutions and authorities involved in enforcement of IPR are the Ministry of Justice, Ministry of Internal Affairs, Ministry of Trade and Industry and Ministry of Finance.

3.3.4. Judicial System: Ministry of Justice, Kosovo Prosecutorial Council- Prosecutor’s Offices and Kosovo Judicial Council- Courts

Article 41 of the TRIPs Agreement under its general obligations requires from its members to ensure that the enforcement procedures permit effective actions against any act of infringement of intellectual property rights covered by the legal framework, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. The Ministry of Justice plays a crucial role in meeting this requirement by initiating, drafting and/or amending laws which provide for these remedies within Kosovo’s judicial system.

Another important requirement deriving from the TRIPs Agreement is that procedures concerning the enforcement of intellectual property rights should be fair and equitable. To this end, Kosovo Prosecutorial Council ensures that the prosecution system in Kosovo is independent, impartial and professional. Prosecutor’s Offices are authorized and obliged to prosecute committers of criminal offences and present indictment before courts on behalf of the state.

The IPR protection system will be of no value without a strong judicial system that addresses IP infringement claims through judicial remedies.

3.3.5. Ministry of Internal Affairs (MIA)/Kosovo Economic Police

Police officers collect information on IPR infringements, conduct investigations, take testimonies and inform prosecutor’s offices with respect to criminal offences. No IPR specialized Unit exists for the moment.
3.3.6. Ministry of Trade and Industry (MTI)/Office of the Market Inspectorate

The Office of the Market Inspectorate was established by virtue of the Market Inspection Law (Law No. 02/L-1 of 23 March 2005). The Law determines the inspective supervisory functions and operations and authorizations for market inspectors who implement inspecting supervisions. Market inspection authorities have the competence and resources to regularly control commercial, industrial and storage premises, workplaces and other premises where products are put into service; to organize random and on the spot checks and to require information. The market inspectorate can play a substantive role in the prevention of IPR infringements.
CHAPTER 4 - Kosovo Customs mission and its role in protecting IPR

As the capstone project focuses on the enforcement part, this chapter discusses in more details the Kosovo Customs activities as the main enforcement agency in fighting illegal activities such as smuggling. It discusses also the Law on customs measures and the customs competencies to fight counterfeit goods.

Kosovo Customs operates in accordance to the Customs and Excise Code, which defines its role and responsibilities. Kosovo Customs has a broad Mission Statement “to protect the state, the economy and the citizens”. Kosovo Customs exists to fully and effectively serve the state and citizens of Kosovo by ensuring timely and efficient collection of customs and other duties and by preventing illegal goods from entering the country. Kosovo Customs has the following objectives.

- The collection of revenue: collecting Customs Duties, VAT and Excise Duties;
- The protection of the economy; controlling imports and exports and protecting legitimate trade from under-valuation and counterfeit goods;
- The protection of society: fighting drug trafficking and the import of other prohibitions and restrictions thus protecting citizens and the environment;
- The facilitation of legitimate trade in order to assist the economy of the Kosovo.

Customs officers are at the front line ensuring the compliance of the legislation and the above mentioned objectives. Based on the Customs Code, Kosovo Customs has investigative powers to ensure the enforcement of all above mentioned objectives. Customs officers are also at the front line to tackle counterfeited goods. However, when it comes to fighting of counterfeit goods, the competencies derives from the law on Customs Measures for Protection of Intellectual Property. Customs is entitled to act on import-export, re-import, transit, custom storage procedures, internal proceedings, custom supervision, and permanent import place in the free customs zone. The Kosovo Law on customs measures is in compliance with TRIPs Agreement and EC regulation. Based on it Kosovo Customs is entitled to act as on:

__________________________
4.1. **the basis of submitted application for customs action**

The right holder, after has been register in the Ministry of Trade and Industry, may submit an application in writing for protection of the intellectual rights to the Customs. The application shall be submitted in a prescribed form and it shall contain all the data required for easy recognition of the goods in question by the customs. On the basis of the submitted application, Customs shall notify the applicant in writing about the acceptance or rejection thereof within 30 days from the date of receipt of the application. A period for taking action shall also be designated in the decision for acceptance of the application, which cannot be longer than 1 year.

4.2. **and Ex officio**

While customs in implementing the measures of customs surveillance or control of goods, i.e. implementing the customs procedures, and before the submittal any request/application by the right holders or their representative, determines that there are justified reasons for doubt that the goods at hand violate IPR, the customs office shall suspend the release of the goods or shall detain them. Customs shall notify the right holder in writing if he/she does not submit a request for action within 3 days, pursuant to Article 6 of the Law, and it shall approve release of goods or cessation to the detainment of the goods, under the condition that all customs formalities have been completed and if this does not violate the prohibition and restriction regulations.

On the other hand the applicant must also submit a proof that he is the right holder. Once the application is received, customs will have 30 days in disposal to decide how they are going to proceed with such a request. The applicant will be charged a fee to cover the costs incurred by the process of such application. If the application for action is granted, the Customs will specify the period during which the action is to be taken. If the Customs actions show that the goods infringe intellectual property right, the right holder must within 10 working days to notify customs whether a court procedure for determining intellectual property infringement has been initiated against the alleged infringer. If such the court procedure is initiated, the period of suspension of the release of goods is extended until the court’s decision.

Destruction of suspended goods shall also be possible without a court decision when the owner of the goods does not respond to the notification by the customs authority on temporary
detention of goods or if so agreed upon between the owner of the goods and the right holder (a shortened procedure). The proceedings shall be initiated ex officio by customs authority when the latter establishes that the goods are evidently counterfeit or pirated. The goods shall be detained for three working days. When, during this period, the right holder lodges a request for an action, the proceedings shall be continued as described above\(^5\).

The TRIPs Agreement provides flexibility especially on interpretation. Because many argues the interpretation of it especially in relation to public health, a special Ministerial Declaration at the WTO Ministerial Conference in Doha in 2001 clarified ambiguities between the need for governments to apply the principles of public health and the terms of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In particular, concerns had been growing that patent rules might restrict access to affordable medicines for populations in developing countries in their efforts to control diseases of public health importance, including HIV, tuberculosis and malaria. The Declaration responds to the concerns of developing countries about the obstacles they faced when seeking to implement measures to promote access to affordable medicines in the interest of public health in general, without limitation to certain diseases.

On the other hand even though the Law on customs measures does not have flexibility to treat differently the goods that may pose threat to public health, there are other national legislation in place through which is protected the public health such as: a) Law on pharmaceutical products and medical devices\(^6\) which defines pharmaceuticals products and medical devices for use in human, conditions for their production and placing on the market and into services assuring conditions for their quality, safety and efficacy and b) Law on consumer protection\(^7\) which regulates the fundamental right of consumers upon purchasing goods and services, as well as on other forms of receiving goods and services in the market, such as:

\(^5\) Law no. 2009/03-L-170

\(^6\) Law no 2003/26

\(^7\) Law no 2004/17
a) The right to protect economic interests of consumers;
b) The right to health, asset, and life protection
c) The right to legal protection of consumers
d) The right to information and education of consumers

4.3. Fighting Smuggling

Informal economy in Kosovo remains a big challenge for its institutions. Based on a survey done by the experts of the contracting authority AER, the informal economy was 26.67% to 34.75% of the GDP for the period 2004-2006. In absolute values it varies between € 605 and € 793 Million annually. The informal grey economy is worth annually over €500 Million and the informal black economy from €79 up to €107 Million.

However, since the human beings are prone to seek for more benefit, they attempt to avoid paying taxes by smuggling goods. Besides that these people/groups avoid taxes, they enter their goods into the free market without institutional control.

As mentioned above the main motivation that people tempt to violate the law is for their benefit, in this case for financial benefit, in response to avoid customs payment/tax evasion and in some cases even to avoid institutional control or to bring in prohibited goods. Much smuggling occurs when several goods are heavily taxed or illegal by traded. Smuggling of counterfeited and highly taxable goods is one of the most profitable illegal activities and as such it might be one of the preferred activities within the realm of the black economy. These activities affect the competitiveness of the economy and are delivered to the consumer with no institutional control.

Besides the Customs Code that gives all the powers to the Kosovo Customs to fight smuggling and trafficking of all prohibited goods, Kosovo Customs has other tools and resources such as bilateral Agreements, IT and detection tools. The numbers in the table 4.1 shows the detection of smuggling activities in Kosovo.

8 Survey on extent and prevention of illegal economy and money laundering in Kosovo, B & S Europe in consortium with FIIAPP, funded by European Agency for Reconstruction (EAR)
Table 4.1 Cases of detected smuggling during 2007-2010

<table>
<thead>
<tr>
<th>Year</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases</td>
<td>530</td>
<td>708</td>
<td>641</td>
<td>828</td>
</tr>
</tbody>
</table>

Source: Kosovo Customs

The numbers in the above mentioned table show the cases detected from Kosovo Customs, goods attempting to be released in the country for free circulation. In all cases are included all kinds of commodities, while the top confiscated goods which aimed to be smuggled are shown in the table 4.2.

Table 4.2 Top smuggled items confiscated by Kosovo Customs during 2007-2010

<table>
<thead>
<tr>
<th>Year</th>
<th>Smuggled Items</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007:</td>
<td>Cigarettes, Alcoholic drinks, Pharmaceuticals, Textile, Fuel, Coffee</td>
</tr>
<tr>
<td>2008:</td>
<td>Pharmaceutical, Cigarettes (no banderols), Mobile phones, Alcoholic drinks, Coffee, Textile, Fuel</td>
</tr>
<tr>
<td>2009:</td>
<td>Alcoholic drinks, Textile, Electrical equipment, Pharmaceuticals, Mobile phones, Cigarettes, Coffee, Fuel, Building material</td>
</tr>
<tr>
<td>2010:</td>
<td>Pharmaceutical, Cigarettes (no banderols), Mobile phones, Alcoholic drinks, Non-Alcoholic drinks, Engine Oil, Textile, Fuel</td>
</tr>
</tbody>
</table>

Source: Kosovo Customs

Smuggling of excisable goods was always known to be more attractive because it is more profitable and less risky trading with such commodities: cigarettes, alcoholic drinks, fuel and pharmaceuticals, comparing with trafficking weapons or drugs. However, only pharmaceuticals are exempted from customs duties, therefore it has to be other reason besides tax evasion and licenses.

According to the Customs information only a small percentage of cigarettes and alcoholic drinks were verified to be counterfeited therefore they were destroyed while pharmaceuticals, mobile phones and textile remained unverified but suspected to be counterfeited.
CHAPTER 5- Kosovo’s challenges in combating counterfeit goods

It has been argued for years that Kosovo is not developing the Intellectual Property Rights or there is limited progress enforcing IPR or fighting counterfeit. The European Commission through its progress reports over the past four years is assessing that counterfeiting issues remain a serious concern in Kosovo. Currently Kosovo’s institutions miss the overwhelming evidence on counterfeited goods in the market and its harm caused to the public health. While many countries are becoming notorious for producing and exporting large quantities of fakes, Kosovo is not known as a counterfeit producer.

The European Commission has launched two projects to assess and analyze the achievements towards standards set by the EU Customs Blueprint. The first project was launched during mid 2009 and the second project in the beginning of 2011. The figure 5.1 shows the 22 total areas and their achievement percentage in two different assessments. Comparing to the evaluation process done in 2009, the latest one in 2011 shows that the areas such as: 1. Legislation, 5. Internal Audit, 7. Training, 8. Trade facilitation, 9. Public Relations (PR), 10. Customs Cooperation and 11 Revenue collections, have achieved relatively good progress towards the EU standards. The rest of the areas remain under or where they were in 2009. The results shows that out of 22 areas which covers Customs Blueprint, only 4 of them are lower than 100%. One of these 4 low achievements is Enforcement of IPR area wherein the scores show the achievement of 25% out of 100%.

---


10 US STATE DEPARTMENT; 2010 Investment Climate Statement, BUREAU OF ECONOMIC, ENERGY AND BUSINESS AFFAIRS, May 2010

11 The customs blueprints are practical guidelines laying down clear criteria based on EU best practice, against which a customs administration is able to measure its own operational capacity. They can be used to analyze gaps between the existing situation in individual countries and the blueprint standards and thus provide a basis for plans to undertake customs reforms.

12 European Commission Blueprint Exercise Report 2009
Enforcement of IPR remains weak mainly because of a lack of: coordination and cooperation among national and international agencies, adequate trainings for customs officials encourage right holders, especially the pharmaceuticals, cigarette, alcoholic drinks, electrical industries to apply for customs measures; encourage right holders to cooperate more closely with customs; exchange of information and practices with business.

Having in mind that the absolute volume of trade passing through border crossing points, and the fact that counterfeiters constantly change tactics to avoid detection, it frustrates efforts by stretched customs officers and other law enforcement agencies.

Despite the fact that more needs to be done in fighting the counterfeited goods, a little progress was achieved since November 2010, wherein 48 cases were detected for infringement of IPR; 43 based on the submitted application and 5 cases based on ex officio. The reason why seizures of smuggled goods have declined from 2009 up to date is because the new Customs and Excise Code have entered into force in December 2008, and it foresaw higher punitive measures to the offenders of customs legislation such as tax avoidance and smuggling.
5.1. Special commodities

Many counterfeit goods are bought with full or partly knowledge of their counterfeit nature: i.e. sunglasses, CDs, textile, footwear, while some of the counterfeit products that have impact on the health of citizens have been recognized to be difficult and in some cases even impossible to identify their authenticity. Some of the commodities believed to cause harm to public health and selected in this project are: pharmaceuticals, cigarettes, alcoholic drinks and personal care items. For this purpose the chapter discusses the following special commodities which generate more profit to organized groups while on the other hand the citizens are exposed to higher health risk. In order to better control the movement into the market, Kosovo has imposed to three (pharmaceuticals, cigarettes and alcoholic drinks) out of four special commodities fiscal stamps or banderols.

5.2. Pharmaceuticals

According to the World Health Organization (WHO) a pharmaceutical product is counterfeit when there is a false representation in relation to its identity (e.g., name, composition, strength, etc.) or source (e.g., manufacturer, country of manufacturing/origin, marketing authorization holder, etc.) or its background (e.g., filings and documentation related to its distribution channels). Counterfeiting is not limited to brand-name prescription drugs.
Counterfeiters also create fake versions of generic and over-the-counter (OTC) drugs, as well as medical products like glucose test strips and pregnancy tests.

Counterfeit pharmaceuticals are dangerous by their very nature – they are not produced under safe manufacturing conditions and they are not inspected by the regulatory authorities. Therefore, it is impossible for consumers to know what ingredients these products actually contain.

The quality of pharmaceuticals has been a concern of the World Health Organization (WHO) since its inception. This includes the quality of starting materials, including active substances and excipients, for the production of medicinal products. In 1995 and 1996 more than 80 children died in Haïti following ingestion of a cough-and-cold syrup containing glycerol contaminated with diethylene glycol. During the last 60 years worldwide more than 500 patients have died due to such intoxications\textsuperscript{13}. This fact has induced WHO to convene a consultation on the production of starting materials of good quality, the maintenance of that quality throughout the distribution chain, and the confirmation of the quality by the users of starting materials. The objective was to formulate recommendations for the parties concerned. The World Health Organization estimates that over 10% of medicines sold worldwide are believed to be counterfeit, ranging from around one percent of sales in developed countries to more than 30 percent in developing countries, depending on the geographical area.

Counterfeiters sold more than 600 different types of branded, generic and over-the-counter drugs in 2007 (more than 14 percent from 2006), including expensive lifestyle drugs, inexpensive pain relievers, and essential medicines such as cancer medications, vaccines, antimalarials, cardiovascular drugs, antibiotics, and HIV therapies. Additionally, counterfeiters are using more sophisticated technology and improved packaging to make their fake goods harder to detect. In 2007, PSI recorded total of 1759 incidents of counterfeit,

\textsuperscript{13} World Health Organization, Starting Materials For Pharmaceutical Products: Control And Safe Trade, 1998
stolen or illegally diverted drugs in 112 countries. Counterfeit products are frequently unsafe or ineffective, and can be potentially life-threatening. To distributors and users, counterfeit products may be visually indistinguishable from the authentic version.

The drug supply has been increasingly challenged by the weakness of distribution channels to illegal counterfeiting and the presence of counterfeit products in a growing number of markets. Reports of adverse reactions to counterfeit drugs or increased levels of counterfeiting could materially affect patient confidence in the authentic product, and could harm the business of companies. Additionally, it is possible that adverse events caused by unsafe counterfeit products will mistakenly be attributed to the authentic product. Counterfeiting is not limited to brand-name prescription drugs. Counterfeitors also create fake versions of generic and over-the-counter drugs, as well as medical products like glucose test strips and pregnancy tests. There are some examples showed in the table below on the effects of counterfeit pharmaceuticals.

Table 5.1. – Examples of the effect of the detected counterfeit pharmaceuticals

<table>
<thead>
<tr>
<th>Year of detection</th>
<th>Medicine</th>
<th>Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>Anti-diabetic traditional medicine (used to lower blood sugar)</td>
<td>Contained six times the normal dose of glibenclamide (two people died, nine people hospitalized)</td>
</tr>
<tr>
<td>2009</td>
<td>Metakelfin (antimalarial)</td>
<td>Discovered in 40 pharmacies: lacked sufficient active ingredient</td>
</tr>
<tr>
<td>2008</td>
<td>Viagra &amp; Cialis (for erectile dysfunction)</td>
<td>Smuggled into Thailand from an unknown source in an unknown country</td>
</tr>
<tr>
<td>2007</td>
<td>Xenical (for fighting obesity)</td>
<td>Contained no active ingredient and sold via Internet sites operated outside the USA</td>
</tr>
<tr>
<td>2007</td>
<td>Zyprexa (for treating bipolar disorder and schizophrenia)</td>
<td>Detected in the legal supply chain: lacked sufficient active ingredient</td>
</tr>
<tr>
<td>2006</td>
<td>Lipitor (for lowering cholesterol)</td>
<td>Detected in the legal supply chain: lacked sufficient active ingredient</td>
</tr>
</tbody>
</table>

Source: WHO

The United States Food and Drug Administration estimates that counterfeits make up more than 10% of the global medicines market. Many developing countries of Africa, parts of Asia, and parts of Latin America have areas where more than 30% of the medicines on sale can

---

14 Pharmaceutical Security Institute
be counterfeit. European statistics show in particular a strong increase of drug counterfeit seizures at the European customs, with a total of 2.7 million of drugs seized in 2006, representing a growth of 384% compared to 2005.

No country is free of drug counterfeiting. Most developed countries with effective regulatory systems and market control (e.g. USA, EU, Australia, Canada, Japan, New Zealand, etc.) currently have a low proportion of counterfeit drugs, less than one percent of market value. However, trends point to a shift and there has been an increase in the prevalence of counterfeit medicines even in developed countries.

Recently published WHO analysis shows that counterfeiting is greater in those regions where regulatory and legal oversight is weaker. The problem is further exacerbated by a number of other factors: scarcity and/or erratic supply of basic medicines, uncontrolled distribution chains, large price differentials between genuine and counterfeit medicines, lack of effective intellectual property right protection, lack of regard for quality assurance and corruption in the health-care system.

5.3. **CIGARETTES AND ALCOHOLIC DRINKS**

Counterfeit cigarettes and alcohol are often more dangerous than it is believed. Counterfeit cigarettes regularly contain much higher levels of nicotine than genuine brands, and produce more harmful carbon monoxide. They could also incorporate a seriously unhealthy mix of cancer-causing chemicals including arsenic, cadmium, benzene and formaldehyde – far greater than genuine cigarettes. Just like pharmaceutical also counterfeit cigarettes harms the consumers, it is one of the biggest and one of the most profitable industry after pharmaceutical industry. It is well known that smoking tobacco products causes harm to health, but counterfeit cigarettes have been reported to deliver up to ten times more harming. It has been discussed that 6-8% of tobacco consumed worldwide each year is counterfeit. Counterfeit cigarettes were found to contain 160% more tar, 133% more CO, 80% more nicotine and 300% more arsenic, while it is common that counterfeit full flavour and lights variants of the same “brand” are the same cigarette.
Recently Philip Morris International Inc (PMI) published the results of a current study, which demonstrated that the illegal trade in smuggling and counterfeit tobacco products in the European Union (EU) in 2010 achieved its highest level since studies launched in 2006.

The study realized by KPMG LLP estimates that annual use of illegal tobacco products increased by 3.1 billion units in 2010 versus 2009 to an annual average total of 64.2 billion units, equating to about 10% of total tobacco consumption in the EU.

Counterfeit alcoholic drinks can also be bad for consumers. Counterfeit alcoholic drinks can contain high levels of methanol, a chemical that can cause liver damage, breathing difficulties, coma and even death. In 2005 around 25 people in Istanbul died after consuming counterfeit raki containing lethal levels of methyl alcohol. The authorities revealed that counterfeiters had stolen 500,000 genuine “Yeni Raki” brand labels that included the tax hologram and placed the labels on the counterfeit bottles, making it almost impossible to tell the genuine and counterfeit raki apart. Also in 2002 the Aegean resort of Kusadasi, counterfeit alcohol was cited as the possible cause of death of a British tourist after the autopsy revealed toxic methanol in the bloodstream.

Even though the cost of production of counterfeit cigarettes and alcoholic drinks is lower than for the real thing, not always the sales price is cheaper. If the flood of counterfeit cigarettes and alcoholic drinks does not stop, consumers will not know what is real and what is not, resulting in substantial consumption of counterfeit cigarettes and alcoholic drinks. Many dealers may sell a large amount of counterfeit resulting in a sales decline by regular manufacturers.

### 5.4 PERSONAL CARE PRODUCTS

Another very important product that may lead to the public health is personal care items. Legitimate producers invest huge amount to ensure that their products comply with health and safety standards.

---

15 International Chamber of Commerce, 1st August 2002, Article “Did counterfeit Malibu cocktail kill a tourist in Turkey?”
Time was when counterfeit personal care products were commonly crude fake perfumes pedaled in markets and workplaces during Christmas and other festive periods to bargain hunters who knew they were buying rubbish. Counterfeit packaging and products of varied cosmetics, creams, soaps and scents are now often so hard to detect that only manufacturers can really spot a fake. Add to that the growing grey market of personal care products designed for one country’s regulatory regime that end up in another, outright smuggling, the apeing of popular brands and other scams and it is a sector that is increasingly under pressure from organized crime.

Personal care products and toiletries such as perfumes, soap, shampoo and cosmetics, are counterfeited at a staggering rate and produced with no regard for the safety of the consumer. If you choose to buy counterfeit personal care products you risk endangering your health with an item that has been manufactured in unsanitary conditions and using unknown ingredients.

Perfume is one of the most commonly counterfeited products, mainly because it usually retails for a high price and it is relatively easy to manufacture an item that looks like perfume. However, numerous analyses of counterfeit goods purporting to be designer perfumes have discovered hidden horrors in the content.

The fake shampoos are made by harmful substances which could lead to hair loss, burns and rashes. While in toothpaste tubes were found antifreeze chemicals. Potential adverse effects of ingesting products that contain unacceptable amounts of aerobic bacteria include fever, and gastrointestinal symptoms such as vomiting, diarrhea and abdominal pain. Infants and children are more sensitive to these effects and severe vomiting and diarrhea could lead to potentially life-threatening dehydration. While toothpaste is not intended to be swallowed, it is often swallowed by young children.

These counterfeit products were also found to contain a type of bacteria from the Enterobacteriaceae family, which is of particular concern in vulnerable populations such as patients hospitalized for severe underlying diseases or with compromised immune systems. In

16 Colgate-Palmolive Co. (CL.N) on Reuters Jun 14, 2007, Colgate warns of fake toothpaste in U.S.
addition to gastrointestinal illnesses, infections can occur in the lungs and urinary tract, and can cause blood poisoning.

5.5. Seizures of counterfeit goods

Having recognized the small amount of seizures of counterfeit goods, around 98% of the seized commodities were textiles and footwear, while less than 2% are personal care items (*Special commodities*-pharmaceuticals, cigarettes, alcoholic drinks and personnel care items). The total amount of seized counterfeit goods was around €800,000, and €11,000 belongs to personal care items.

![Figure 5.3 – The percentage of seizures of counterfeit goods and of personal care items during Nov 2010- Nov 2011](image)

*Source: Kosovo Customs*

Insignificant amount of counterfeited goods were seized during the last twelve months. While it is estimated that 7-9% of global trade is counterfeit goods, during the period January-November 2011 Kosovo has seized some 0.037% out of total value of import during the same period. The main reason of this small amount of seizures is because right holders have not lodged their applications for customs protections. Even based on ex officio mandate, Customs may suspend the release of goods, but immediately shall notify the right holder and if he/she does not submit the application within 3 days, the goods shall be released. However, if Kosovo Customs has other resources: access to global information, detection tools, more developed customs officials, cooperation with other national and international agencies, the situation will improve.
5.6. Taxes imposed, licenses required and the institutional control to special commodities imported into Kosovo

Most of the pharmaceuticals imported into Kosovo are released from import taxes. Customs duties (if the goods are not originated in CEFTA countries) VAT, and excise duty are applicable to cigarettes and alcoholic drinks. To all personal care items the customs duties (if the goods are not originated in CEFTA countries) and VAT are applicable.

Besides the taxes, there are several licenses or approval needed for importing several goods. In the table 5.2 are shown the licenses:

Table 5.2. Licenses or approvals for importing in Kosovo

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Veterinary certificate</td>
</tr>
<tr>
<td>2</td>
<td>Phytosanitary certificate</td>
</tr>
<tr>
<td>3</td>
<td>Sanitary certificate</td>
</tr>
<tr>
<td>4</td>
<td>License from Kosovo Medicines Agency (KMA)</td>
</tr>
<tr>
<td>5</td>
<td>Licenses for Fuel/Petroleum Products</td>
</tr>
<tr>
<td>6</td>
<td>Import authorization for precursors (KMA)</td>
</tr>
<tr>
<td>7</td>
<td>Import license for narcotic drugs L3p (KMA)</td>
</tr>
<tr>
<td>8</td>
<td>Import license for narcotic drugs L3n (KMA)</td>
</tr>
</tbody>
</table>

Source: Kosovo Customs

Licenses are required for pharmaceuticals (issued by the Kosovo Medicines Agency (KMA), mentioning the exact description of the pharmaceutical product), for cigarettes and alcoholic drinks authorizations (issued by Kosovo Customs), and for personal care items no special license/authorization is required.

Besides the licenses and the approval or authorizations, in order to better control the market the pharmaceuticals, cigarettes and alcoholic drinks are obliged on affixing the fiscal stamps or banderoles which are imported, exported, produces and circulate in Kosovo. The pharmaceutical products and alcoholic drinks wholesalers apply for banderoles for the amount of products that will be imported. The wholesalers are obliged (at any time, before the importation, during importation or before release to free circulation) to mark each product with banderoles, thus confirming that certain product is licensed to be released for free circulation. Ministry of health issues licenses and equips with banderoles the importers of pharmaceuticals, through which they
tend to control which products have been imported legally. As for the import of alcoholic drinks, Kosovo Customs issues authorization and equips with banderoles the importers of alcoholic drinks. In both cases as banderoles are managed by the companies itself, it raises the suspicious that these products may be counterfeited as they are not institutionally managed. This is not the case with cigarettes, wherein the banderoles are not handled to the importer/wholesaler of cigarettes but to the producer itself. The importers of cigarettes apply for banderoles in Kosovo Customs. Afterwards Customs orders the banderol producer to send them to the cigarette producer, thus avoiding importers to manage with them.

Currently there are no right holders of pharmaceuticals products that have lodged their applications for customs measures in Kosovo Customs. Although patent protection systems for pharmaceutical products are available in most developing countries, multinational companies have not patented their products in all of them. This may be because companies may not think it worth the expense to obtain and maintain patent protection in countries where the market is small and the risk of infringement low. The prevalence of patents is often higher in countries where a substantial market and technological capacity exists. None the less, even if patents do not exist for particular products and countries, the patent system may still have an effect on access to medicines. The existence of patents in potential supplier countries may allow the patentee to prevent supplies being exported to another country. This is why companies may patent selectively in countries that are potential suppliers.  

\[17\] WHO Drug Information Vol 19, No. 3, 2005
CHAPTER 6 – Counterfeiting a Global Issue

Counterfeiting was recognized to be a big issue worldwide. As discussed in the Chapter 1, the figures 1.1 and 1.2 show the number of seizures of counterfeited goods by regions. In this chapter is selected one country from each of three major regions. Every country is considering counterfeit goods as a priority, therefore they have developed appropriate enforcement tools.

6.1. UNITED STATES

Stopping the flow of counterfeit goods is a priority for the U.S. government. The US Customs and Border Protection (CBP) maintains an aggressive IPR enforcement program, which devotes substantial resources to target, intercept, detain, seize and forfeit shipments of IPR-violative goods. Their enforcement is accomplished through the cooperative efforts of trained enforcement officers, other government agencies, other customs administrations and the trade community.

Counterfeiting and piracy cost the United States billions of dollars in lost revenue. U.S. Immigrations and Customs Enforcement (ICE) combat these crimes through assets and resources including the National Intellectual Property Rights Coordination Center (IPR Coordination Center), the ICE Cyber Crimes Center, and attaché offices overseas. In response to this, CBP imposes civil fine on any person who directed or assisted with importation of the unlawful goods.

As a result of proper enforcement of IPR in fiscal year 2009, 14,841 seizures of counterfeit and pirated goods with a total domestic value of $260.7 million were intercepted at U.S. ports of entry. Recent U.S. findings are showing similar results to other international research that confirms that China is the single largest source of counterfeit goods. In order to better fight the counterfeiting, U.S. Customs and Border Protection partners with industries, government agencies and international organizations to enhance the enforcement of IPR. CBP collaborates with international organizations and foreign governments to enhance IPR border enforcement.

18 U.S. Customs and Border Protection at http:/www.cbp.gov
efforts globally. CBP actively participates in the IPR working groups of several international organizations including the World Customs Organization, the G8, and APEC.

6.2. TURKEY

Counterfeiting is widespread in Turkey. Many counterfeit products are imported from the Far East and Turkey’s problems are significant enough to cause foreign investors to hesitate about entering the Turkish market. Therefore it is significant enough to be a contributing factor in keeping Turkey out of the EU. Turkey is faced with numerous conditions for joining the EU, including significantly reducing counterfeit trade within a limited timeframe. According to EC report published in 19 May 2008 Turkey is ranked as a second source of counterfeit with 4.92% after China with over 60%. However, Turkey is working closely with the EU on reviewing its counterfeiting legislation. There is a great focus on training and educative measures to further enhance the abilities of Turkish Customs officials involved in uncovering and assessing potential counterfeit issues.

Turkey is currently an undeniable counterfeiting source and this flourishing industry is impeding the progress of the country within the global forum and threatening the health and welfare of its citizens and visitors. There is awareness in Turkey amongst government officials and professionals alike that significant action needs to be taken against the counterfeiters. Turkey has a distinct problem with counterfeit drugs as well as with other goods such as clothing, DVDs, software, electronics, makeup and perfume, food and beverages, alcoholic drinks etc.

Having recognized the importance of counterfeiting and its impact to the society and economy, Turkey has established its legal and institutional infrastructure and has further increased the cooperation between other law enforcement agencies and international mechanisms such as WIPO, WCO and SECI Center.
6.3. FRANCE

As indicated in this paper almost no country is immune on counterfeiting, it is just a matter which country has strong enforcement of laws on IPR. France is one of those countries which has a very strong interest in protecting brand names and backs it up with appropriate laws.

IPR violations (trade- or service marks, copyrights, patents, industrial designs, etc) attract, under French general Criminal Law, a sentence of two years’ imprisonment and a fine of one million francs. Those penalties are doubled in the case of a repeated offense or where the violator is or has been related to the injured IPR holder.

As far as imports or exports of counterfeit trademark goods are concerned, French offenses under Customs Law are:

- up to three years’ imprisonment;
- confiscation of the counterfeit goods, as well as of the involved conveyances (vehicle, vessel or aircraf);
- a fine at least equal to the value of the goods, but not exceeding twice that value\(^{19}\).

French authorities cooperate mainly with Right Holders Associates, governmental agencies, other customs administrations, WCO, WTO and WIPO in order to exchange information on infringement of intellectual property rights.

\(^{19}\) Campagnie Nationale des Conseils en Propriete Industrielle [www.cncpi.fr](http://www.cncpi.fr)
CHAPTER 7– International Organizations and Their Practices

Some individual countries still remain weak in enforcement of IPR mainly because of political will, some of them because of lack of sharing experiences and information. When it comes to the bigger families- international organizations, countries are prone to fight for the winning price of fighting illegal activities. As Kosovo is prospering to enter the EU by achieving the criteria set by the EU bodies, the need to discuss the practices used in this economic and political union has been recognized. Besides the EU, this chapter discusses also the WCO as the only inter-governmental organization dealing purely with customs issues and what are the main tools used in this mechanism. Membership in the WCO remains Kosovo Customs’ highest priority. Both the EU and the WCO tend to identify trends and highlight particular issues, thus supporting policy and decision-makers, as well as officials in their daily work in the field of fighting counterfeit goods.

7.1. EU

The 27 members of EU are working together in finding the best ways to fight counterfeit in the single market. It was recognized that the increasing diversity of products seized and new trends, such as the importation of small consignments resulting from Internet sales, indicated that further measures were required and that there was no room for complacency. The need to respond to this growing problem was underlined as the trade in counterfeit goods represented a real threat to each citizen and society as a whole. The Commission considered that the efforts undertaken by the customs authorities to protect the economic interests and the health and safety of citizens must continue. In this regard the EC has brought a Strategy followed by an Action plan. This plan covers the main areas such as legislation, operational performance, industry cooperation, international cooperation, and communication.

The new plan should take into account relevant developments in the customs area, such as the modernized Community Customs Code, as well as external factors, such as the increase in sales over the Internet. In particular, the new EU Action Plan focuses on:

- improving where necessary, existing IPR legislation;
- improving cooperation with right holders;
- strengthening operational cooperation between customs in the EU and with third countries
- developing further international cooperation on IPR enforcement and
- improving publicity and awareness

The new plan also takes into account new trends and forms employed in the distribution of counterfeit goods dangerous to society and consider certain new phenomena, such as Internet sales, globalization of world trade, and growing organized crime. Customs of each member are entitled to intercept counterfeit on either IP rights holder’s recordation or on their own initiative (exercising their ex officio authority).

The statistics published on 22 July 2010 by the European Commission show that customs registered over 43,500 cases of detentions of goods suspected of infringing an IPR at the EU's external border. The results show that cooperation between customs, industry and the EU’s trading partners is critically important for ensuring the highest level of protection for industry and consumers.

7.2. WCO

The World Customs Organization (WCO) is the only intergovernmental organization exclusively focused on Customs matters. With its worldwide membership (176 members), the WCO is now recognized as the voice of the global Customs community. It is particularly noted for its work in areas covering the development of global standards, the simplification and harmonization of Customs procedures, trade supply chain security, the facilitation of international trade, the enhancement of Customs enforcement and compliance activities, anti-counterfeiting and piracy initiatives, public-private partnerships, integrity promotion, and sustainable global Customs capacity building programmes. Intellectual Property Rights is one of the WCO’s priorities. The role of WCO on IPR is threshold, and the most importantly it seeks to politically elevate the importance of addressing IPR. The WCO provides customs administrations with a set of

21 Report on EU Customs Enforcement of IPR, Results at the European Border 2008
intellectual property rights best practices to promote respect for IPR at borders by building customs capacity and strengthening cooperation between Customs and its international partners as well as rights holders.

Members of the WCO recognized that Customs administrations had a major role to play in IPR protection, and every effort should be made in that regard. Practically, the WCO needed to offer a tangible response giving practical effect to Customs’ position as leader in the field of anti-counterfeiting activities. Therefore it was proposed to create a set of standards which would deal with enforcement of intellectual property rights by its Members.

The WCO has promulgated model customs legislation designed to assist members in the implementation of the TRIPS provisions. The principal objective of IPR laws are to ensure an equivalent level of protection for intellectual property, there are also other objectives, such as:

**promoting innovation and business competitiveness.** If counterfeiting and piracy are not punished effectively, they can lead to a loss of confidence in the internal market. Such a situation would discourage creators and inventors, and endanger innovation and creativity in the Community;

**safeguarding employment.** In social terms, the damage suffered by businesses as a result of counterfeiting and piracy is reflected ultimately in the number of jobs they offer;

**preventing tax losses and destabilization of the markets.** The tax losses caused by counterfeiting and piracy are significant. This phenomenon is a genuine threat to the economic equilibrium since it can also lead to a destabilization of the more fragile markets that it attacks (such as the market in textile products). In the multimedia products industry, counterfeiting and piracy via the Internet are steadily increasing and have already resulted in very considerable losses;

**ensuring consumer protection.** Counterfeiting and piracy are generally accompanied by deliberate cheating of consumers as to the quality they are entitled to expect from a product bearing, for instance, a famous brand name. This is because counterfeit and pirated products are produced without the checks made by the competent authorities and do not comply with minimum quality standards. When they buy counterfeit or pirated products, consumers do not in principle benefit from a guarantee, after-sales service or effective remedy in the event of damage. These activities may also pose a real threat to the health of the consumer (counterfeit medicines) or to his/her safety (counterfeit toys or parts for cars or aircraft);
ensuring the maintenance of public order. Counterfeiting and piracy infringe labor legislation (clandestine labor), tax legislation (loss of government revenue), health legislation and legislation on product safety.

The model is designed to provide Customs Administrations with a guide to best practice. Applications for Customs Assistance:

• The duration of Customs surveillance over suspected infringements
• The provision of information, including evidence of rights ownership and the grounds for suspicion
• Indemnity and security
• Suspension of clearance and time period of suspension
• Notification to the rights holder
• Examination of the goods by the rights holder and the provision of information
• Compensation in the case of wrongful detention of goods
• Ex-Officio Action; Customs working on their own initiative, without application
• Powers of suspension of clearance and disposal of counterfeit goods

To address issues of counterfeiting and piracy, the WCO has established the Intellectual Property Rights Strategic Group as a joint venture between the WCO and a number of leading trading corporations in various sectors. Under the auspices of the IPR Strategic Group, the WCO has undertaken a number of initiatives to combat counterfeiting and piracy:

• Established the European Anti-Counterfeiting Network database known as REACT. This password-protected database is intended to assist front-line customs officers in the identification of counterfeit and pirated products.
• Established a Counterfeiting and Piracy Group (CAP). CAP provides a platform for its members to exchange best practices and discuss their views and experiences on IPR related issues.
• Established Action Plan and Guidelines. This implementation tool which is designed to assist WCO Members in implementing the provisions of the WTO, TRIPS Agreement predates the implementation of an Action Plan that consists of actions to be undertaken
in the areas of technique and methods used in combating counterfeiting and piracy; cooperation with rights holders; international cooperation among customs administrations, and between customs and their partner international organizations; training programmes.

- Approved SECURE (provisional Standards to be Employed by Customs for Uniform Rights Enforcement) standards. The SECURE standards are to coordinate a global effort to suppress all kind of intellectual property rights infringements. SECURE Working Group instructs Member States to make use of other WCO tools for the suppression of counterfeiting and piracy, including the WCO Model IPR Legislation, which contains provisions for, among other things, examination of goods by rights holders, compensation in the case of wrongful detention of goods, the duration of Customs surveillance over suspected infringements, and the provision of information, including evidence of right ownership and the grounds for suspicion.

- Developed Customs Enforcement Network (CEN). The CEN enables Customs officers around the world to exchange information on Customs offences and share intelligence in a timely, reliable and secure manner with direct access available 24 hours a day. More than 250,000 records had been stored in the CEN database during 2010\textsuperscript{22}. The CEN may be used by Customs in several ways:

- Track Patterns of Movement;
- Benefit from Others’ Experience;
- Initiate Global Joint Operations;
- Real-Time Information Sharing

The CEN system electronically links all Customs administrations through the WCO’s network of global Regional Intelligence Liaison Offices (RILO). These RILO’s contribute to the CEN by gathering national information and reporting the data into the system. They in turn benefit by being able to use the common database to conduct regional or interregional analyses.

\textsuperscript{22} ECAP II European Commission/European Patent Office
Besides the listed tools established by WCO, in the fight against counterfeiting and piracy, Member Customs administration will make use of and improve existing WCO tools such as the:

- WCO Model IPR Legislation
- WCO Risk Management Guidelines for more effective controls
- IPR Diagnostic Survey
- IPR e-learning module
- Proposals aimed at strengthening co-operation with the private sector,
- Working methods tailored to suit the specific nature of anti-counterfeiting activities.
CHAPTER 8 – COUNTERFEITING AN ISSUE IN BALKANS

8.1. Macedonia, Montenegro, Serbia, Albania, Bosnia and Herzegovina

The recognition of the importance of intellectual property in the Balkans region has imposed the need of the government authorities to adopt legislation and operational structures accompanied with the IT tools. Taking into consideration also the need for foreign direct investments, all countries as listed above considers that one of the tools attracting foreign investments is to enforce the protection of intellectual property rights in their territory.

The European Commission has launched a programme Customs 2013 which gives the national customs administrations of the EU members as well as to candidate and potential candidate countries, the opportunity to cooperate in areas of common and high interest and it provides a legal and financial base for:

- Reinforcing security and safety within the Community and at the external border;
- Strengthening the fight against fraud and protecting the financial and economic interests of the Community and Member States;
- Increasing the competitiveness of European business by speeding up customs procedures partially through the creation of a European paperless electronic customs environment.

Based on this programme in 2010 and Venice Initiative, led by Italian Customs Agency a questionnaire was conducted in the Western Balkans, with the aim to evaluate if every country has in place the fundamental needs for enforcement of IPR; legislation, operational structure, IT tools and cooperation. These criteria’s are set also to the EU Action Plan.

As far the legislation on IPR is concerned, the majority of the regional countries seems to have already aligned the legislative framework to the international best practices.

On the contrary, referring to the other areas covered by the questionnaire used for this exercise, it must be noted that an effective system of protection of IPR, which includes the enforcement, the relationships with the business community, the development of appropriate tools, etc. is quite far for being in place in most of the countries.
Although the whole region recognizes that their legislation is in harmonization with EU standards and TRIPs Agreement, there is a slight difference between them in several indicators. With the partial exception of Macedonia and Serbia where the above mentioned indicators are at a sufficient level, the cooperation with the right-holders (measured for instance by the application for actions) and the number of cases recorded by the customs is not satisfactory.

However the real effectiveness of the IPR protection system might roughly be measured by the following indicators:

- Cooperation with business
- sharing information with national and regional agencies
- exchanging experience with WCO members.
### Legislative Framework

<table>
<thead>
<tr>
<th>KOSOVO</th>
<th>ALBANIA</th>
<th>BiH</th>
<th>SERBIA</th>
<th>MONTENEGRO</th>
<th>MACEDONIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do you have IPR enforcement legislation similar to EU?</td>
<td>YES (2010)</td>
<td>YES</td>
<td>YES (2011)</td>
<td>YES (2010)</td>
<td>YES</td>
</tr>
<tr>
<td>Do you have internal guidelines/directives on IPR?</td>
<td>YES (2010)</td>
<td>YES</td>
<td>Draft</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>How does your National legislation consider and sanction IPR violations?</td>
<td>administrative and criminal offence</td>
<td>administrative and criminal offence</td>
<td>administrative and criminal offence</td>
<td>criminal offence</td>
<td>administrative and criminal offence</td>
</tr>
<tr>
<td>IPR violation is considered administrative or criminal offence; in both cases which sanctions with?</td>
<td>Fines and imprisonment</td>
<td>N/A</td>
<td>Fines and other measures</td>
<td>- Seizure and destruction of goods (admin. offence) - Fine and imprisonment (criminal offence)</td>
<td>Seizures and Fines</td>
</tr>
<tr>
<td>Question</td>
<td>Kosovo</td>
<td>Albania</td>
<td>BiH</td>
<td>Serbia</td>
<td>Montenegro</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>-----------------</td>
<td>-----------------</td>
<td>-----------------</td>
<td>-----------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Do you have a separate Department/Unit dealing with IPR?</td>
<td>YES, IPR Sector</td>
<td>YES, IPR Sector</td>
<td>NO (but a proposal is still pending)</td>
<td>YES, IPR Department</td>
<td>YES</td>
</tr>
<tr>
<td>Do you have a single Contact Point (if yes, specify)?</td>
<td>YES</td>
<td>YES</td>
<td>YES (the Head of Intelligence Department)</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>Do you have field people (units) dealing specific with IPR or customs fraud?</td>
<td>Not yet</td>
<td>YES</td>
<td>YES (customs frauds)</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>Do you have an action IPR plan (if yes, specify)?</td>
<td>Not yet (under preparation)</td>
<td>N0</td>
<td>NOT YET (but expected)</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>What is your public awareness policy (specify)?</td>
<td>Preparation of brochures and planning of campaign</td>
<td>Part of the Action Plan</td>
<td>Statements published through public information systems or posted on the customs web-site</td>
<td>- Info published at Customs website</td>
<td>- Info published at Customs website</td>
</tr>
<tr>
<td>Do you have a training policy on IPR?</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>NO (participation in seminars and workshops)</td>
</tr>
</tbody>
</table>
### Figure 8.3 IT and Enforcement

<table>
<thead>
<tr>
<th></th>
<th>KOSOVO</th>
<th>ALBANIA</th>
<th>BiH</th>
<th>SERBIA</th>
<th>MONTENEGRO</th>
<th>MACEDONIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did you develop electronic IPR tools? Do you have an IPR database to process IPR applications and cases?</td>
<td>YES</td>
<td>NO</td>
<td>NO (ongoing contacts with European Patent Office)</td>
<td>YES, a database for processing cases and applications for action</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Risk assessment on IPR?</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Does Customs have the right to take actions ex-officio?</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Does the Customs administration has legal power to enforce IPR for goods under customs supervision (for example goods in Transit)?</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>Import, export and transit</td>
<td>NO (import, export and transit)</td>
<td>YES</td>
</tr>
<tr>
<td>Do you have a standard form for Application for action? Is it published?</td>
<td>YES</td>
<td>YES</td>
<td>NOT YET (expected with implementing provisions)</td>
<td>A draft form of Application for Action</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>Is there a fee to be paid by right-holder?</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
</tr>
</tbody>
</table>
**Figure 8.4 Cooperation**

<table>
<thead>
<tr>
<th>Question</th>
<th>Kosovo</th>
<th>Albania</th>
<th>BiH</th>
<th>Serbia</th>
<th>Montenegro</th>
<th>Macedonia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did you sign MOU's with right holders? With who?</td>
<td>NO</td>
<td>YES (companies)</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>How is information from right holder provided? (Electronically?)</td>
<td>Via e-mail or on written form</td>
<td>On written form</td>
<td>Via e-mail or on written form</td>
<td>CD Rom</td>
<td>On written form</td>
<td>YES</td>
</tr>
<tr>
<td>Do you have any regional/ international cooperation on IPR?</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES but only with international organizations</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Do you have access to WCO activities and its tools?</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
</tbody>
</table>
CHAPTER 9- FINAL DISCUSSION AND RECOMMENDATIONS

Counterfeiting continues to be a worldwide issue. Kosovo remains the only country in the region that depends heavily on imports. The trade balance in 2010 reached 86% import and 14% export. As Kosovo imports all daily consumed goods, it is more exposed to illegal activities such as the under-valuation of goods, smuggling and bringing in counterfeited goods. As people often do not realize that part of the reason these goods are cheaper than the genuine ones is because they are quickly and poorly made and of course most of the time they are dangerous to our lives, especially pharmaceuticals, cigarettes, alcoholic drinks and personal care items as they can injure consumers or not deliver the expected results of the real products.

The Kosovo government has established legal and institutional structures to fight illegal activities to protecting the citizens, legitimate trade and the economy. The EC reports assess the situation of the enforcement of IPR. According to the reports, issued by them, enforcement remains crucial. Although there is some progress in relation to the enforcement of IPR since the law entered into force, unfortunately the performance of customs is measured based on the collection of import taxes. As a consequence Customs will use its resources to achieve its prior mission, collecting revenue.

Efforts by the Kosovo government to protect Intellectual Property (IP) and to stop counterfeiting have largely focused on bringing the legislation into place and creating effective operational structures. However, in the face of escalating global growth in counterfeiting, this capstone project focused on the enforcement of Intellectual Property Rights (IPR). The government has developed the legislation but aggressive attempts are now required for its implementation to fight against counterfeit goods entering into the country.

As the legislation on IPR does not have flexibility on goods that threaten the public health, Customs even based on ex officio is not entitled to stop or destroy the goods if the right holders will not lodge the application within the time limit of 3 to 10 days. However, based on the other national legislation that are dedicated for public health, Customs may jointly with Ministry of
Health and Ministry of Industry and Trade find modalities in stopping the special commodities entering Kosovo.

Findings indicated that the customs administrations of the Western Balkans have developed risk management and based on regional and international collaboration they are fighting counterfeit goods entering, transiting or exporting through their territories. Findings indicate that a key to long-term success lies in well-developed human resources and cooperation with other national and international agencies in order to be more effective in sharing, analyzing, developing and testing risk profiles and the adoption of a more strategic approach to the problem.

9.2. Top priorities

International cooperation is one of the key elements in fighting counterfeit goods entering Kosovo. The key recommendation is to become a member of the WCO. Kosovo Customs has already requested involvement in WCO activities. Membership of this mechanism remains crucial for Kosovo Customs. As based on terms of the convention and internal procedures of WCO, a detailed legal study of the international status of Kosovo will be conducted. The dynamic international developments, which are followed precisely by WCO members, Kosovo’s respective institutions have to take all necessary diplomatic measures for lobbying with those countries that have recognized the independence of Kosovo.

The WCO has developed various tools to assist its member countries in the establishment of profiles and the management of intelligence collection. The WCO Customs Enforcement Network (CEN) database can provide useful intelligence for the establishment of risk profiles. These profiles then drive inspection selectivity programmes, through which data declared will be analyzed on the basis of the identified risk parameters and consignments, and depending on the selected risk level, goods and persons are routed through different channels of Customs control. The main tools used by WCO members were described in the chapter 7.2.
9.2. General recommendations

The following general recommendations will improve to the fight against counterfeited goods.

1. Establish a Joint Task Force between Customs-Ministry of Health-Ministry of Trade and Industry-Food And Veterinary Agency. This task force should develop a joint action plan only for the commodities that may pose threat to public health as a separated one from general IPR strategy and its Action plan. Each institution shall appoint a contact person, who shall communicate the activities of the competent institution. The Task Force will identify also the national legal gaps for protecting the citizens from harmful goods.

2. Customs should increase the number of staff in the IPR Sector. IPR specialist-s should be set up in direct communication with the right holders specialized with those of the special commodities, with customs officers at the borders and with the representatives of the Ministry of Health and Ministry of Trade. This will help officers to have updated daily information in regard to possible counterfeit goods.

3. Encourage right holders to deliver joint training to customs officers, Ministry of Health (Pharmaceutical Inspectorate) and Ministry of Trade and Industry (Office of the Market Inspectorate), with the aim of their benefit on one hand, and on the other hand to serve to citizens’ health.

4. Customs should consider a risk management approach as one of the best practices on detecting the counterfeit goods. A common characteristic of customs work is the high volume of consignments and the impossibility of checking all of them. Customs therefore face the challenge of facilitating the movement of legitimate trade while applying controls to detect counterfeit goods. Customs finds itself increasingly under pressure from national government and international organizations to facilitate the clearance of legitimate passengers and cargo while also responding to increase in transactional crime and terrorism. These competing interests mean that it is necessary to find a balance between facilitation and control. Review and revise the Risk Indicators Handbook on a regular basis to maintain its effectiveness.
5. Customs should establish a Risk Analysis Module within the general customs data processing system, with the only purpose of identifying the possible counterfeit consignments. While analysis of previous detection or seizures can aid and assist the development of the risk profiling process, it cannot readily identify changes to the availability of IPR goods in the domestic market. The availability of information about what type and where IPR goods are available for sale can help customs identify and subsequently target new profiles, risks or trends at borders.

6. The value of establishing and maintaining close contact and cooperation with other government agencies is immeasurable. Any national agency or even citizens that receive any information on the possible infringement of IPR should communicate immediately that information to Customs, in order for customs to bring intelligence in that case. Customs already has in place the line wherein citizens give information on corruption or smuggling. Through media advertisement citizens can be encourage to declare also infringement of IPR.

7. The need to cooperate with Customs Administration outside the region is crucial; therefore Customs should initiate Memorandum of Understanding on IPR issues. By having in place the Memorandum’s Customs will exchange information on physical and judicial persons which are linked with counterfeit activities. With Memorandum signed, each party ensures the protection of personal data exchanged only for the purpose of customs matters.

8. Initiating the establishment of IPR teams with Western Balkans. These teams should undertake joint customs analysis and create a Regional IPR Network through which each administration will contribute in exchanging information on their detection. Such information will serve to other administration to assess the risk based on the parameters detected by that administration.

9. Deploying a health communications strategy: Health communications to empower, inform and educate people so that consumers are aware of counterfeit goods and what to do if injured as a result of counterfeit goods are a critical component of an overall
strategy as well as training health care workers to recognize and or question for health affects of counterfeits and how to alert any surveillance system in place.

10. Operational training to help customs officials to check and recognize suspected products (methodology: what to look for and check on special commodities/batch number, dates of manufacturing and expiring, security labels);
References:

1. UNCTAD- ICTDS Project on IPRs and sustainable development

2. International Anti-Counterfeiting Coalition, White Paper the negative consequences of international intellectual property theft, January 2005

3. World Customs Organization Annual Report 2009


6. Joe Kafchinski, Professor Shelley ITRN 701-009 May 11, 2009 GLOBAL COUNTERFEIT TRADE


11. European Commission Progress Report 2010


15. World Bank, Kosovo - Unlocking growth potential: strategies, policies, actions: a country economic memorandum, 29 April 2010

16. WHO Drug Information Vol 19, No. 3, 2005

18. Campagnie Nationale des Conseils en Propriete Industrielle. *Available at: www.cncpi.fr*


22. Survey on extent and prevention of illegal economy and money laundering in Kosovo, B & S Europe in consortium with FIIAPP, funded by European Agency for Reconstruction (EAR)


24. World Customs Organization- Customs and IPR report 2010

25. “Counterfeit medicines as global threat”, by Maria Dolores Cabezas- Department of Pharmaceutical technology, University of Granada, Spain

26. ECAP II European Commission/European Patent Office. *Available at:*

   [http://www.asean.org/20534-Chapter6](http://www.asean.org/20534-Chapter6)

27. Kosovo Customs and Excise Code

28. Law 2009/03-L-170 on Customs Measures for Protection of Intellectual Property Rights