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Trade in Counterfeit Goods

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One of the most contentious issues in contemporary trade politics is the sheer volume of the manufacture, distribution and sale of counterfeit goods. The very nature of the counterfeit trade means that aggregates are never accurate and estimates vary tremendously depending on sources. However, the global annual trade in counterfeits is estimated at an unbelievable $400bn to $600bn, or according to the International Chamber of Commerce the figure could be anywhere between five and ten percent of total world trade. Among primary targets are elite consumer products such as branded clothing and accessories, music, video compact discs, fertilizers, pharmaceuticals, air craft parts, food products and software applications. Amongst offending countries China in particular and southern Asia in general have been tabled as the worst violators of anti-counterfeiting legislation. On the other hand the United States has been seen, not only as the single largest market for foreign counterfeits, but also its firms appear to be the primary targets for many counterfeiters. At first glance it is a very despicable trade, and rightly so if one considers the far-reaching, negative and potentially dangerous implications of piracy. However, research also suggests that there is a very real political economy of trade in counterfeits and that the moral/ethical dilemma sometimes exits in very grey territory.

The criminalisation of the act of piracy finds its origin in the liberal framework which institutionalises respect for, and protection of private property, and a very powerful document which details this liberal precept is the American Constitution. Essentially, counterfeiting is equivalent to property theft, and its most modern and ubiquitous expressions are in the field of intellectual property. The debate therefore hinges, *inter alia*, over moral questions of right and wrong, and those of reward and justice. Typically, firms/brand entrepreneurs expend huge amounts of money to develop and market particular products/brands and it is not unreasonable to expect returns on investment. This is the basis of the economic incentive logic, that investors will continue to invest in a jurisdiction provided that their private property is respected and protected. The corollary to this is, arguably, all of society will benefit in terms of increasing investment, jobs, taxation for public management, and potential technological advancement. The alternative has been cited as a disincentive to invest because investors lose market share to counterfeit producers who amass huge profits without the associated costs and risks; counterfeiting diminishes customer loyalty to particular brands; and investors spend millions of dollars annually in litigation lawsuits against perpetrators. Accordingly therefore, international framework agreements have been devised to provide international protection, primarily of intellectual property, similar to the national legislative instruments that aim to protect private property. Among these are the Berne, Paris and Geneva Conventions, as well as the WTO's Trade Related Aspects of Intellectual Property Rights (TRIPS).

Yet the problem of piracy and its explosive growth in recent years can be attributed primarily to a similar momentum in the demand for pirated products, what is usually referred to as non-deceptive piracy. An increasingly consumerist global society, made possible by the extant technological revolution and the heightened visibility of brand marketing, has enabled a pernicious dynamic whereby demand initiates supply. It is not in my immediate self interest to pay a considerably higher price for a Louis Vuitton handbag if the counterfeit offers similar qualities, and especially so if I am operating within economic constraints. As such, measures to combat counterfeiting as arguably one of the worst kinds of economic crimes cannot focus exclusively on supply-side mechanisms as seems to be the directive of most, if not all, multilateral agreements. Another facilitator of the piracy phenomenon, also fuelled by the technological revolution, is the global diffusion of technologies for mass production. Products such as CDs, DVDs are easily replicable, even by many who are not necessarily technology experts. Copying devices are also readily available to all who can afford. What is sometimes more disturbing is the absolute lack of differentiation of the counterfeit/genuine divide and the heightened possibility of consumer deception. It is not uncommon to pay branded prices for pirated products especially since some of those products sometimes find themselves in the normal distribution channels. This is particularly alarming when unscrupulous individuals pirate products that determine life and death. For instance there have been reports that Pfizer's Viagra for erectile dysfunction has been one of the latest economic opportunities for counterfeiters. Even Lipitor, a cholesterol reducing drug, has been targeted and in May of 2003 almost 20 million doses of fake Lipitor were pulled out of pharmacies.[1] Fake oral contraceptives which have been blamed for causing internal bleeding have also been reported in the past. The dangers to consumers can therefore be particularly catastrophic.

But probably one of the most important reasons for the upsurge in counterfeiting activity, and which needs urgent attention if the problem is to be abated, is the persistence and exacerbation of the poverty dynamic. It should come as no surprise that the worst-offending countries are primarily developing ones where poverty, inequality and disease are the order of the day. An extremely important variable of the counterfeit formula is a continuous supply of cheap, efficient labour. Much of this labour supply is the surplus that the formal economy simply cannot absorb. It is primarily as a result of the failures of the formal economy in many countries that the underground or black economy flourishes. Herein lies the political economy rationale for social menaces such as child labour, prostitution and drug trafficking.

Similarly, while remaining ever more vigilant of the risks associated with the unauthorised replication of pharmaceuticals, there are instances which legitimise generic reproduction of patented drugs. Because patents are a monopoly privilege, and because monopolies invariably lead to higher prices, there is an obvious mismatch between highly priced, value-added pharmaceuticals and the purchasing power of the abjectly poor, disease-ridden areas, primarily in the developing world. Cognizant of the fact that patents on essential medicines have the very real impact of excluding the poor and vulnerable from treatment, and recognising that generic drug companies have sprung up to fill the treatment void in a few developing countries (a process which has initiated the battle between Big Pharma vs. the trade in generics), the TRIPS agreement makes mention of a compulsory licensing provision which can be waived in cases of public health emergencies. The controversies surrounding this Article and the subsequent Doha Declaration on TRIPS and Public Health are beyond the remit of this paper, however, the ensuing moral debate centres on the extent to which right holders should be protected at the expense of life itself.

The preceding commentary has illustrated that the issue of counterfeiting is not a clear-cut phenomenon. It has been shown that the problem of piracy can have disastrous impacts on the global society. Recent reports have even identified the production of fakes with the funding activities of terrorist groups. Yet, one also has to take account of the fact that in many countries, the failure of the formal sector has engendered a spate of illicit activity that extends the imagination of many.

[1] **http://www.busrep.co.za/index.php?fArticleId=2104547**

References:

- Drahos, Peter with John Braithwaite, *Information Feudalism: Who Owns the Knowledge Economy?* London: Earthscan Publications Ltd. 2002.
- Harvey, Michael and Ilkka Ronkainen, *International Counterfeiters: Marketing Success without the Costs and the Risks*, in Colombia Journal of World Business, Fall (1985), pp. 37-45.
- Nia, Arghavan and Judith Zaichkowsky, *Do Counterfeits Devalue the Ownership of Luxury Brands?*, in Journal of Product and Brand Management, Vol. 9, No. 7 (2000), pp. 485-497.
- Nill, Alexander and Clifford Schultz, *The Scourge of Global Counterfeiting*, Business Horizons, Vol. 39, No. 6, (1996) Nov/Dec, pp. 37-42.
- Porteous, Samuel, *"Counterfeiting Menace": China's Trade Advantage Undermined by Small Change Adds Up to Big Losses*, World Trade, Vol. 14, No. 11 (2001), pp. 28-9.
- Prendergast, Gerard, Leung Chuen and Ian Phau, *Understanding Consumer Demand for Non-deceptive Brands*, Marketing Intelligence and Planning, Vol. 20, No. 7 (2002), pp. 405-416.
- Singleton, Ross, *Knowledge and Technology: the Basis for Wealth and Power*, in David Balaam and David Veseth, eds., Introduction to International Political Economy. New Jersey: Prentice Hall, 2001, 2nd Edition, pp. 208-227.

Links:

- Coalition for Intellectual Property Rights
- Electronic Business
- International Chamber of Commerce
- International Herald Tribune
- UK's National Criminal Intelligence Unit
- US Food & Drug Administration
- World Trade Organisation