

Counterfeit and smuggling in Lebanon

Sources, impact and suggested solutions

December 2003

ABOUT THIS REPORT

This economic impact report examines the sources and impact of counterfeiting and smuggling of fast moving consumer goods in Lebanon and suggests solutions to reduce the extent of the problem. The report has been commissioned by the "Brand Protection Group", an association (pending registration) of manufacturers and distributors of fast moving consumer goods in Lebanon.

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FOREWORD

At the request of the "Brand Protection Group", an informal association of brand owners and distributors of fast moving consumer goods in Lebanon, PricewaterhouseCoopers has prepared this economic impact study on the sources and impact of counterfeiting and smuggling activities related to a number of leading consumer brands in Lebanon that includes suggested solutions for reducing the extent of the problem.

Our work has involved gathering information from a number of sources including members of the Brand Protection Group and their legal advisors, independent providers of retail data and publicly available information. We have also met with relevant Lebanese Government officials in order to understand how the issue is perceived and dealt with by the Government.

The problem of counterfeiting and smuggling in Lebanon is significant and has few winners. Although the problem is by its nature difficult to estimate accurately, the impact is clear:

- Consumers face risks to their health.
- The treasury loses much needed customs, income tax and VAT revenues.
- Employees working for smugglers and counterfeiters often work in difficult conditions.
- Manufacturers and distributors lose revenues and are therefore inclined to reduce their investments, advertising, employment and other expenditures in Lebanon.
- The image of Lebanon is damaged and inward investment is reduced.
- These activities often go hand in hand with, and facilitate corruption.

Suggested solutions to the problem are many and draw on similar experience in other countries. Based on our findings, successful solutions are those collaborative undertakings that involve all stakeholders particularly consumers, the Government and the members of the Brand Protection Group.

PricewaterhouseCoopers
Beirut, Lebanon
December 2003

MEMBERS OF THE BRAND PROTECTION GROUP

The "Brand Protection Group" is an association (pending registration) of manufacturers and distributors (and their advisers) of fast moving consumer products in Lebanon including cigarettes, shampoos, detergents, oral hygiene products, certain food items, cosmetics, insecticides, batteries and condoms.

BRAND OWNERS AND DISTRIBUTORS

| | |
|--|--|
| BRITISH AMERICAN TOBACCO LEVANT/YEMEN | OBEGI CONSUMER PRODUCTS SAL |
| COLUMBUS SAL (PART OF THE FATTAL GROUP) | PHILIP MORRIS INTERNATIONAL |
| FOOD & DRUG CORPORATION SAL | PROCTER & GAMBLE LEVANT |
| ETS. GEORGES ABOU ADAL & CIE SAL | RECKITT BENCKISER ARABIA FZE |
| INDEVCO INDUSTRIAL DEVELOPMENT COMPANY | SOCIÉTÉ POUR L'EXPORTATION DES PRODUITS NESTLÉ SA |
| JOHNSON & JOHNSON | TRANSMED SAL |
| L'OREAL LIBAN SAL | UNILEVER LEVANT SARL |
| MATCO MARKETING & TRADING COMPANY SAL | ZEENI'S TRADING AGENCY/ZETRA INDUSTRIES |

ADVISORS AND OTHER MEMBERS OF THE BPG

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EXECUTIVE SUMMARY

Counterfeit and smuggled products in Lebanon damage consumer health and well-being and cost the Government between US\$75 million and US\$100 million in lost revenue annually.

Addressing the problem will require a significant enforcement effort by the government but also the input of other stakeholders including consumers and brand owners.

This economic impact report examines the sources and impact of counterfeiting and smuggling of fast moving consumer goods in Lebanon and suggests solutions for reducing the extent of the problem. The report has been commissioned by the "Brand Protection Group", an informal association of leading manufacturers and distributors of fast moving consumer goods in Lebanon. It is estimated that the brands owned or distributed by the members of the BPG represent over half of the fast moving consumer goods market in Lebanon.

Source and extent of counterfeit and smuggling

Globally, counterfeiting accounts for approximately 5 to 7 percent of global trade, generating losses in the hundreds of billions of dollars. The presence of counterfeits locally is not surprising given Lebanon's free and open markets and resource-constrained governmental institutions. In the fast moving consumer goods sector:

- Virtually every type of product is exposed to counterfeiting, including shampoos, baby toiletries, adult skincare, beauty products, oral hygiene products, dishwashing liquids, laundry and cleaning detergents, most major brands of cigarettes and batteries. Leading brands are most affected, but locally produced or easily copied brands are also affected.
- Counterfeits from the Far East are often indistinguishable from genuine products. Local or regional counterfeits are less sophisticated and easier to identify. Counterfeits originate from a variety of sources within the region and elsewhere. One dangerous form of counterfeiting involves refilling discarded containers with unknown contents for resale.
- Medium to small-sized groceries (including "One Dollar" stores) are the principal channels of distribution affected. The fast moving consumer goods retailing sector in Lebanon remains fragmented and underdeveloped, facilitating market access by unscrupulous wholesalers.
- Although certain areas are repeatedly mentioned as having a prevalence of products of suspect authenticity, counterfeits are available throughout Lebanon. In certain areas retailers refuse to carry genuine products in order to remain competitive.
- Smuggling is believed to be taking place across rough terrain in unpopulated areas, but also through land passage points which are not sufficiently equipped to monitor shipments. Border towns and cities have a much higher incidence of smuggled goods.

- Parallel imports are legal but better monitoring and controls of this activity are needed in order to protect consumers from products of unknown origin or quality and non-compliance with local standards.

Economic and socio-economic impact of counterfeit and smuggling

The problem of counterfeiting and smuggling in Lebanon is significant and has few winners. Although the problem is by its nature difficult to estimate accurately, the impact is clear:

- Consumers face risks to their health.
- The treasury loses much needed customs, income tax and VAT revenues with annual losses to the treasury from counterfeit and smuggling of fast moving consumer goods estimated at between US\$ 75 million and 100 million.
- Employees working for smugglers and counterfeiters often work in difficult conditions.
- Manufacturers and distributors lose revenues and are therefore inclined to reduce their investments, advertising, employment and other expenditures in Lebanon.
- The image of Lebanon is damaged and inward investment is reduced.
- Counterfeit and smuggling activities often go hand in hand with and facilitate corruption.

Analysis of action being taken by the Government

Lebanon has signed a number of free trade agreements which will require laws and enforcement to be updated and improved, respectively. A number of measures have already been undertaken by the Government in respect of intellectual property rights, but more action is required, particularly to improve enforcement through training and additional resources.

Suggested solutions

Solutions centre around enhancing the legal framework by complying with TRIPS and the Model Customs Law in both letter and spirit, improving enforcement of laws in general, raising public awareness of the problem and fostering greater collaboration between all stakeholders including consumers, the Lebanese Government and brand owners.

Conclusion

The failure to confront the problem will lead to detrimental effects on the Lebanese economy, consumer health and Lebanon's international reputation. Experiences in other countries suggest that significant, meaningful and effective steps can be taken to combat counterfeit and smuggling in Lebanon. Success will depend on the collaboration of all stakeholders. The international community and investors expect Lebanon to achieve minimum standards on IPR protection.

1 INTRODUCTION

This report is limited to fast moving consumer goods in Lebanon.

The purpose of this report is to present our findings on behalf of the Brand Protection Group (the "BPG") in respect of the damaging effects of illicit trading activities to highlight the significance of the problem to the Government, facilitate closer collaboration between members of the BPG and the Government and suggest practical solutions to address the problem. The report is limited to fast moving consumer products in Lebanon.

The report begins by examining the extent and sources of counterfeit and smuggling activities in the Lebanese marketplace based on the experiences of the members of the BPG and follows with a discussion of the variety of economic and socio-economic consequences of these activities. Then, an analysis of the action taken by the Lebanese Government to deal with these problems leads to some suggested solutions for addressing the causes of these damaging trading activities. Information used in the report is derived from the shared experiences of the BPG members in Lebanon, publicly available information, analysis by PricewaterhouseCoopers and meetings with officials of the Lebanese Government.

Statistics on illegal activities will always be subject to estimates based on sampling and subjective evidence and the figures cited in this report are the product of extrapolation. This relative uncertainty, however, should not be interpreted to mean that the problem is not serious or that it does not warrant a concerted effort to be made by all stakeholders.

Counterfeiting accounts for 5 to 7 percent of global trade – Lebanon is no different.

Global context

The International Chamber of Commerce estimates that counterfeiting accounts for approximately 5 to 7 percent of global trade (other estimates put the problem at twice this level) and generates losses in the hundreds of billions of dollars. Of course, this is an average across countries and industries and therefore the extent of counterfeiting will be much higher for specific countries, industries and products. Defined broadly, counterfeiting is the fraudulent copying of trademarks, packaging and labelling with the intent to deceive the consumer. In this context "look-alikes", which differ only slightly from genuine products in appearance, are also a form of fraudulent imitation and in most cases can be viewed as counterfeits. Smuggling (transporting goods across territories illegally or not through official channels) is more difficult to estimate, but is clearly larger in percentage terms than counterfeiting as it includes both counterfeit and genuine products.

Counterfeiting and smuggling are profitable business models because the parties involved avoid costly spending on research and development costs as well as marketing and advertising campaigns. Counterfeiters simply copy a popular product and make excessive profits even as they sell it at a discount. Smugglers enjoy quick profits arising from their evasion of customs duties, VAT and other taxes.

Both leverage on the innovation, research and marketing efforts of the trademark owners and official distributors to realise profits without incurring the real and legitimate costs associated with generating those profits. These business models, when combined with new and emerging technologies, free global trade and the rising value of brands, increase the potential rewards for counterfeiters and smugglers and explain the growth of these activities.

Virtually every type of product is exposed to counterfeiting.

Counterfeiters will copy any product where profits can be made, and therefore they target widely sold, trendy, highly demanded or commoditised products. Virtually every type of product, from shampoos to foodstuffs is therefore exposed to counterfeiting. Advertising and marketing activities by the brand owners which generate interest or consumer demand also encourage counterfeiting and smuggling activities.

Counterfeiting threatens public health, reduces investment and results in lost government revenues.

In addition to the losses incurred by brand owners through the theft of their intellectual property rights, other negative consequences of counterfeiting include threats to consumer health, lost tax and national revenues and lower investments by brand owners (resulting in fewer job opportunities and lower expenditures, for example). Smuggling has a similar effect, with lost revenues and jobs and negative consumer health consequences where the smuggled goods are counterfeits or otherwise of inferior quality.

There are four broad types of products involved in damaging trading activities: counterfeits, smuggled products, look-alikes and parallel imports.

Terminology used in this report

There are four broad types of products involved in damaging trading activities: counterfeits, smuggled products, look-alikes and parallel imports. The definitions of these types of products to be used for the purposes of this report are set out below and are based on the Trade-related Aspects of Intellectual Property Rights ("TRIPS") Agreement

Counterfeit products are any goods (including the package), bearing without authorisation a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation. The concept includes the copying of packaging, labelling or any other significant feature of the goods. In other words, counterfeits relate to contraband activities that centre on the illegal production and sale of forged, copied or imitated consumer products without the perpetrator having the right to do it, and with the purpose of deceiving or defrauding consumers.

Smuggled goods are products (many of which are counterfeits) that have been fraudulently imported (or exported) into (or out of) a country, secretly or by fraud, or, in the case of lawful products, products that have been imported without the importer having declared (or under declared) the merchandise as required under local laws and regulations.

Look-alikes are products (both legal and illegal) that are intended to closely resemble the overall appearance of a branded product through copied visual features such as label-shape, pack-shape, lettering, colouring or graphic style with the intent of misleading the consumer into believing that the look-alike has the same quality, the same source of innovation and the same reputation as the original brand.

Parallel imports (also called "grey-market" imports) are goods produced genuinely under protection of a trademark, patent or copyright, placed into circulation in one market, and then legitimately imported into a second market without the consent of the right holder in the receiving territory. Parallel imports are facilitated by two principles that limit the rights of an intellectual property right ("IPR") owner. The first is the principle of territoriality, which means that IPR protection is valid only for specific countries. The second is the principle of exhaustion, which means the right owner has very limited rights to prevent further distribution of a product that is put on the market with his consent.

2 EXTENT AND SOURCES OF COUNTERFEIT AND SMUGGLING IN LEBANON

Nearly all categories of fast moving consumer goods are affected by at least one form of damaging trading activity.

As shown in the table below, a wide variety of products in the fast moving consumer goods sector in Lebanon are affected by damaging trading activities. The categories are not mutually exclusive – for example, smuggling includes counterfeit as well as genuine products, and it is a question of legal interpretation as to when look-alikes cross the line and become counterfeits. Although parallel imports are in most cases legal imports by third parties, we highlight the issue as an area of concern, particularly since the origin or quality may be unknown or inferior. Each of the damaging trading activities is discussed in further detail below in this section.

| Product category | Type of damaging trading activity | | | |
|-----------------------------|-----------------------------------|-----------|-------------|------------------|
| | Counterfeit | Smuggling | Look-alikes | Parallel imports |
| Shampoos | ● | ● | ● | ● |
| Baby toiletries | ● | ● | | |
| Adult skincare | ● | ● | | |
| Beauty products | ● | | | |
| Feminine hygiene | | ● | | ● |
| Soap | ● | | | |
| Deodorants | ● | | | ● |
| Laundry detergents | ● | | | |
| Cleaning detergents | ● | | ● | ● |
| Dishwashing liquids | ● | ● | ● | |
| Consumer insecticides | ● | ● | | ● |
| Toothpaste and toothbrushes | ● | | ● | ● |
| Coffee and tea | ● | ● | ● | ● |
| Food snacks | | ● | ● | ● |
| Milk powder | | ● | | |
| Batteries | ● | | | |
| Condoms | | ● | ● | |
| Cigarettes | ● | ● | ● | |

Source: Members of the BPG

2.1 Counterfeits

Almost all product categories covered by this report are affected by counterfeiting and include shampoos, baby toiletries, adult skincare, beauty products, toothpastes, food products, dishwashing liquids, laundry detergents, cleaning detergents, most major brands of cigarettes, consumer insecticides and batteries.

Counterfeits from the Far East are often indistinguishable from genuine products.

Identifying counterfeit products

The ease with which counterfeit products can be identified depends on the quality of the counterfeit and the degree of care taken by the counterfeiter to defraud the consumer. The methods used to identify a counterfeit can be as simple as visual identification or as complex as chemical testing in a laboratory. For instance, in many cases counterfeit shampoos and detergents can be identified visually whereas some types of counterfeit cigarettes require laboratory testing for verification. Counterfeits originating from the Far East are often indistinguishable from the genuine products – sophisticated counterfeiters there not only produce identically packaged products, they sometimes also produce complementary products where none are available from manufacturer (for example deodorants of a particular brand of shampoo where none exists).

Local or regional counterfeits are less sophisticated and easier to identify.

Local or regional counterfeits are often less sophisticated and easier to identify. Counterfeit shampoos, laundry detergents and dishwashing detergent, for example, can be identified through visual analysis of certain product characteristics. Counterfeit shampoos can be spotted through visual inspection of batch numbers, ink-jetted production dates, bottle material and colour, labelling (including language used and name of manufacturer), bottle cap, fragrance, colour, viscosity and pricing. Counterfeit laundry detergents can be identified with reference to sealing on the bottom of the package, batch number, consistency and contents of the powder, fragrance and price. Certain counterfeit dishwashing detergents are easily detected due to their poor quality, distinctive odour and poor appearance. Counterfeit cigarettes, by contrast, often need to be sent for laboratory analysis to confirm their authenticity.

Counterfeits originate from a variety of sources within the region and elsewhere.

Sources and types of counterfeit products

Although some counterfeit goods such as beauty products and laundry detergents are manufactured locally, the bulk of counterfeit products originate from within the region (Turkey, the Levant, Egypt or the Gulf countries) or from Asian sources (including China and Malaysia).

As mentioned above, locally manufactured counterfeits are generally of poor quality and easier to detect than counterfeit manufactured elsewhere in the world. Counterfeit laundry detergents, for example, are produced locally in micro-factories using locally supplied raw materials and packaging. These products sometimes contain salt and limestone in crude (but nevertheless deceptive) imitations of the genuine package with inferior quality artwork, handles and even consumer promotions such as free bars of soap.

One dangerous form of counterfeiting involves refilling discarded containers.

One particularly dangerous form of counterfeiting involves the refilling and reselling of discarded packages or bottles of a variety of products, including deodorants, shampoos and laundry detergents. The contents are in certain cases unrelated to the original product and may be hazardous to the health of consumers.

The sources of discarded packages are believed to be solid waste sorting and treatment locations or rubbish bins in areas with concentrations of the desired packages (such as tourist locations or densely populated residential areas). Specialised solid waste scavengers also sift through garbage in search of discarded containers for sale to counterfeiters. Several instances of gathering expired items, altering the expiry date and reselling the items have also been cited.

In general, wholesalers and medium to small-sized groceries (including "One Dollar" stores) are the principal channels of distribution affected.

Types and location of points of sale

In general, wholesalers and medium to small-sized groceries (including "One Dollar" stores) are the principle channels of distribution used. Unscrupulous wholesalers are prepared to move any product for a margin, genuine or counterfeit. Some instances of counterfeit products being sold on a "door-to-door" basis have also been reported. Vendors in open-air markets in certain regions also sell counterfeits which tend to be readily identifiable as non-genuine through their appearance or unreasonably low selling price (sometimes a fraction of the price of an original).

The fast moving consumer goods sector in Lebanon remains fragmented and underdeveloped.

In most cases, "key accounts" of BPG members – the largest hypermarkets and supermarket chains – tend to have far fewer counterfeits as they are directly supplied on rented shelf space, closely monitored and incentivised to meet volume targets. However, this does not prevent key accounts from purchasing parallel imports or well-known brands which are not supplied by the local distributor for one reason or another, and which may include counterfeits (petroleum jelly, for example).

Although certain areas are repeatedly mentioned as having a prevalence of products of suspect authenticity, counterfeit products are available throughout Lebanon.

The fast moving consumer goods sector in Lebanon remains fragmented and underdeveloped. It is estimated that the key accounts represent approximately 30 to 35 percent of the market, with the remainder consisting of a large number of medium size and smaller outlets, estimates of which vary from 17,000 to 34,000. Distributors will often only cover a small proportion (5 to 10 percent of the total), leaving wholesalers (estimated at 200 to 400) to supply the rest of the trade. The vast majority of the trade does not purchase directly from the brand owners or their principal distributors and may therefore have more difficulty in detecting counterfeit products. It can be argued, however, that counterfeits are readily identifiable by merchants through price differentials, lack of documentation or other unusual characteristics of the transaction and the evidence suggests that most merchants are well aware of the counterfeits on their shelves.

Counterfeit products are available throughout Lebanon, but certain areas are repeatedly mentioned as having a prevalence of counterfeits: the Bekaa Valley, Tripoli and Akkar in the North, the South and the southern and eastern suburbs of Beirut. Furthermore, there are areas where the authority of law enforcement officials is weaker and where both production and sale of counterfeits occurs (the refugee camps, for example).

Extent

The extent of counterfeiting varies widely according to brand, and estimates are by their nature difficult to accurately arrive at, particularly as counterfeits tend to be supplied in batches. For instance, the incidence of counterfeiting may be very high when a particular shipment arrives and then decline when the availability is exhausted. Estimates are based on a number of variables, including comparing brand sales to estimates of market size and market share provided by third parties (counterfeits are the gap), or by commissioning a retail audit on a sample of stores and extrapolating results to the remaining population.

Leading brands are most affected, but locally produced or easily copied brands are also affected.

It is often the leading brands in each category which are counterfeited, although counterfeiting is also affected by other factors including the ease with which artwork can be copied and local availability of raw materials. Below are estimates of the range of counterfeit products in affected categories.

| Product category | Estimated counterfeit % in market |
|-----------------------------|-----------------------------------|
| Shampoos | Up to 25% in certain brands |
| Baby toiletries | 5-10% |
| Adult skincare | 5-10% |
| Beauty products | 5-10% |
| Soap | 5-10% |
| Deodorants | 5-10% |
| Laundry detergents | 10-15% |
| Cleaning detergents | 10-15% |
| Dishwashing liquids | 5-10% |
| Consumer insecticides | 5-10% |
| Toothpaste and toothbrushes | 5-10% |
| Coffee and teas | 5-10% |
| Batteries | Up to 50% in certain brands |
| Cigarettes | 15-25% |

Source: BPG

Entry points into Lebanon

| | |
|-----------------------------------|---------------------------------------|
| International airports | Beirut International Airport |
| Commercial harbours | Beirut, Tripoli, Sidon, Tyre, Jounieh |
| Coastline | 225km |
| Border crossing points with Syria | Masna'a, Abboudiyeh, Qaa' |
| Length of border | 454km |

2.2 Smuggling

Lebanon has five commercial harbours (Beirut, Tripoli, Jounieh, Sidon, and Tyre), one international airport and three land border-crossing checkpoints with Syria at Masnaa', Abboudiyeh, and Qaa'. Customs duties and VAT provide about 50 percent of total government revenues. The nature of the Lebanese market as open, fragmented and highly competitive makes it more susceptible to damaging trading activities.

Smuggling occurs through a wide variety of means. Small-scale smuggling occurs in passenger vehicles and mini-vans legally crossing the border at official crossing points as well as via rough terrain using four-wheel drive vehicles on established smuggling routes in remote areas.

At 225km, Lebanon's coastline provides ample opportunities for smugglers to operate, and the rugged mountainous terrain makes controlling the 425km of borders a challenge.

Land passage points are not sufficiently equipped to monitor shipments.

In November 2003, the Government announced that up to 50 known illegal border crossing points will be closed. It is not clear to what extent this decision will be implemented, but this announcement confirms that Lebanon's borders are porous and that considerable effort and resource is required on the part that the Government to control smuggled goods.

However, it appears that the largest scale smuggling may be occurring by moving goods through established points of entry using false declarations of the value, quantity or description of the goods being transported.

Smuggling is very profitable for products with high customs duties or products which are restricted to a single importer.

According to the Association of Lebanese Industrialists, land passage points are not equipped with appropriate facilities (such as hangars, unloading equipment or databases) to allow customs officials to properly inspect incoming vehicles for goods supported by false documentation with respect to description, quantity or price. It is believed that illegal imports may be entering the country at a declared value as low as 10 per cent of their original value.

Product categories affected

Smuggling affects most product categories (see table below) with food products like coffee, milk powder and cigarettes mentioned as especially affected. Smuggling is very profitable for products with high customs duties or products which are restricted to a single importer. For example, only the Government's Regie Libanaise des Tabacs et des Tombacs is permitted to import cigarettes which are heavily taxed and therefore highly profitable to smuggle. In many cases counterfeits must also be smuggled to avoid detection.

Product categories affected by smuggling

Shampoos
 Baby toiletries
 Adult skincare
 Feminine hygiene
 Dishwashing liquids
 Consumer insecticides
 Coffee
 Food snacks
 Milk powder
 Condoms
 Cigarettes

Source: Members of the BPG

Sources and types of smuggled products

The types of smuggling can range from the evasion of relevant taxes and duties upon importation to the import, repackaging and distributing of expired products. Significant sources of smuggling include neighbouring Levant countries, Turkey, Pakistan, Sri Lanka and Egypt.

Numerous examples of false invoices for amounts lower than the real cost of goods being presented to customs authorities by importers seeking to benefit from the cost advantage achieved through the payment of lower customs duties have been cited. Fraudulent certificates of origin indicating that the product qualified for duty discounts under the Arab Free Trade Zone Agreement have also been mentioned. Other types of smuggling involve the importer declaring and paying duty on cheaper items in an incoming shipment while not declaring the smuggled products within the shipment.

Border towns and cities have a much higher incidence of smuggled goods.

Types and locations of points of sale

The infiltration of smuggled products is not associated with any one geographical area in the country, although border towns and cities have a prevalence of less expensive products transported across the border from Syria to take advantage of price differentials. Furthermore, smuggled products do not just affect wholesalers and medium to small-sized groceries (as in the case of counterfeits) but have been found in large quantities in key accounts.

Smuggled cigarettes, for instance, are available throughout Lebanon and are either genuine product not imported through the Regie, or smuggled counterfeits which are difficult to distinguish from real products. Other smuggled products include counterfeit shampoos believed to be manufactured in neighbouring countries and consumer insecticides imported through unofficial channels.

Consumers may benefit from smuggled products which are genuine, but the source and quality of such products cannot be guaranteed, and brand owners and their official distributors may be held responsible for products over which they have no control.

The Regie recorded a 25% drop in sales following the introduction of higher taxes on cigarettes.

Extent

In cigarettes, the Regie recorded a 25% drop in sales (from approximately 12 to 8 billion cigarettes per year) following the introduction of higher taxes. This represents an increase in the market share of smuggling which must be added to the initial market share of smuggled goods prior to the increase in taxes. Smuggling of other products is also significant, and the gap can be seen by comparing market size and share information with product sales and reaches 5 to 15 percent for certain brands.

2.3 Look-alikes

It is a question of legal interpretation as to when look-alikes cross the line and become counterfeits.

Look-alikes (imitations with varying degrees of similarity) affect a number of brands, and it is a question of legal interpretation as to when the look-alikes cross the line and become counterfeits. Local experience suggests that look-alikes which differ from the original in respect of three letters, for instance, will not be considered counterfeits. This is not to say that the issue does not merit comment.

The effect of look-alikes ranges from the relatively innocuous where slightly inferior products compete with originals by providing consumers with lower prices to more extreme cases where look-alikes are effectively counterfeits of poor quality.

Mass-market consumer brands which are closely associated with certain products are most susceptible to look-alikes, although a variety of look-alikes have been identified including but not limited to shampoos, toothpastes, food snacks, condoms and cigarettes. Although certain look-alike products are manufactured locally or regionally, most are imported from China and other locations including Eastern Europe and Africa.

Product categories affected by look-alikes

Shampoos
Cleaning detergents
Dishwashing liquids
Toothpaste and toothbrushes
Coffee and teas
Food snacks
Condoms
Cigarettes

Source: BPG

Types and location of points of sale

As is the case with counterfeits, look-alikes are generally found at medium to small-sized groceries, and depending on the extent of the similarity of the look-alike with the original, can be sold in key accounts or any location throughout the country. Key accounts confidently sell look-alikes if they are believed to be different enough, although brand owners and distributors will often identify new look-alikes quickly and bring this to the attention of key account management.

Consumers play an important role in the continuing import of look-alikes. Unsophisticated consumers are prepared to purchase look-alikes at reduced prices either knowingly or unknowingly, while others are able to easily spot and avoid look-alikes due to their attachment to the brand or their impression of the inferior quality of the look-alike.

2.4 Parallel imports

Parallel imports are legal but better monitoring and controls of this activity are needed.

The import of fast moving consumer goods is generally not restricted to exclusive distributors, and therefore "parallel" imports by third parties are legal. This report does not argue that parallel imports should be restricted. It does assert that parallel imports present additional challenges for the authorities as the origin and quality of these products may be more difficult to ascertain and they may not comply with local standards.

There is therefore a consumer protection aspect to parallel imports which should be considered in the same context as counterfeit and smuggling: ensuring that one-off shipments by third parties (wholesalers or other traders) meet the same stringent quality standards which are applied by authorised distributors and brand owners who have a long term commitment to the brand and have invested in a particular marketing strategy for Lebanon.

Parallel imports affect all product types, and come from a number of countries in the region as well as from various distant locations including North America. Parallel imports are undertaken whenever price differentials exist between the Lebanese market and other markets which allow importers to sell at a profit even after incurring transportation costs. Lower income markets including certain markets in the region and in Africa are therefore likely sources for parallel imports.

Reasons cited by members of the BPG for relatively higher prices in Lebanon (compared to Jordan and Syria, for example) include lower economies of scale and market fragmentation and the higher costs (e.g. salaries and rents) of doing business in Lebanon.

Those brands which are sold at significantly different prices in various markets are most susceptible to parallel imports. Product types affected include shampoos, feminine hygiene, deodorants, cleaning detergents, consumer insecticides, coffee and food snacks. The size of the parallel market is estimated at 5 to 10 percent of the fast moving consumer goods market, but is much higher for those brands which are not currently being promoted or sold in the local market by the distributor or the brand owner.

Certain brand owners have cited several concerns associated with parallel imports, including:

- The source, quality and continuity of products imported by third parties cannot be ensured.
- Consumers are confused by the presence of different packages and labelling for the same brand.
- The presence of brands imported by third parties dilutes brand strategies and the effectiveness of advertising.

- Retailers (including key accounts) utilise shelf space for parallel imports which would otherwise have been used for supported brands.

2.5 Conclusions on the extent and sources of damaging trading activities

Some general remarks based on the shared experiences of BPG members concerning the extent and sources of damaging trading activities in Lebanon are set out below.

- Counterfeit products and smuggled products pose the most serious threat. Look-alikes and parallel imports are also damaging, but to a lesser extent.
- Counterfeit products are generally imported, however locally produced counterfeit products of inferior quality are also in circulation. Some counterfeit products cannot be discerned from the original except through laboratory tests while others are crude imitations which can be easily spotted.
- The evidence from legal cases suggests that most counterfeiters in Lebanon are low-income individuals. Counterfeiters who are apprehended are often released and there appears to be a belief that counterfeiting is not a serious crime.
- Smuggled products are attractive due to cost advantages that the illegal importer can attain through the evasion of customs duties, VAT and other taxes and overhead expenses associated with the marketing of the brand in Lebanon. Smuggling occurs on a smaller scale across the borders and from the sea through established smuggling routes and on a much larger scale through official points of entry in the form of fraudulent declarations.
- Look-alikes are produced in neighbouring countries and the Far East and pose a smaller risk because consumers can more easily detect them. They are distributed primarily through lower-end retailers and sell at much lower prices than the original products.
- Parallel imports are legal but need to be better monitored as the source and quality of the products is more difficult to establish. Furthermore, importers cannot be readily identified when problems arise with parallel imports and consumers and authorities have no choice but to resort to the primary distributor or brand owner.
- The damaging trade activities discussed above are more prevalent in border areas and lower income areas such as the southern suburbs of Beirut and the refugee camps.

- Medium and smaller size retailers trade the majority of counterfeit, smuggled and look-alike products, while parallel imports are available across all trade categories.
- Unscrupulous wholesalers are prepared to distribute any products to achieve a margin, regardless of the authenticity or quality of the products.

3 ECONOMIC AND SOCIO-ECONOMIC IMPACT OF COUNTERFEIT AND SMUGGLING IN LEBANON

The impact includes detrimental effect on consumer health, lower investments, fewer job opportunities, losses in national tax revenues, damage to Lebanon's image abroad and increased corruption.

Counterfeits, smuggled products and look-alikes are no longer restricted to luxury items, they have infiltrated into all types of product categories including common household products. The European Commission alleges that half of the recent increase in counterfeit products is thought to consist of copies of common household goods such as foodstuffs, drinks, cosmetics, and toiletries manufactured by multinational companies. This proliferation makes it increasingly unlikely that the average consumer in Lebanon has not been exposed in some degree to counterfeit, smuggled or look-alike products. Probably the most alarming issue surrounding the propagation of these types of products is that there is virtually no control over their quality and reliability, leaving consumers oblivious to and uninformed of their possible consequences.

Indeed, the economic and socio-economic impact of counterfeit and smuggling on Lebanon is worrying as illicit trading activities result in detrimental effects on consumer health, violations of consumer rights, reduced incentives to invest in Lebanon and fewer job opportunities, losses in national tax revenues and increased governmental expenditure, damage to Lebanon's image abroad, increased corruption and additional costs and losses to the brand owners and their distributors. The economic and socio-economic impact of damaging trading activities is discussed in more detail below.

It is clear that counterfeit goods are not only an economic and intellectual property problem, but also a public health problem.

Consumer and public health

The lower price of counterfeit and look-alike goods (and inferior quality smuggled goods and parallel imports) often attracts consumers who are unaware of the health risks associated with these goods. The health risks associated with counterfeit goods are as diverse as the product lines to which they relate.

Some consumers may believe they are receiving benefits from counterfeits through lower prices. In reality, the actual value of the product is normally much lower than what they have paid resulting in consumers paying higher prices for inferior (in formulation, concentration of active ingredients, usage indications, and effectiveness) or dangerous products. Of course, products affecting the health of consumer also represent an additional strain on the public health system and the National Social Security Fund (NSSF). Below are some selected examples of how counterfeit products in Lebanon adversely affect consumer health and well-being:

- Counterfeit cosmetics, including adult skincare and beauty products, may contain the residue of industrial solvents and carcinogens that may cause allergic reactions. This practice may seem harmless but in fact, the wrong mix of chemicals in perfumes could be disastrous causing all kinds of allergic reactions. Fake perfume seized from the British market, for example, was found to contain urine which is often used as a stabiliser.
- The poor quality fabric used in many counterfeit clothing brands may cause skin rashes and other allergic reactions.
- In addition to being contaminated with packing material such as sand and plastic, counterfeit cigarettes may have more tar, nicotine, and carbon monoxide and are therefore even more hazardous to consumer health.
- Counterfeit laundry detergents were found to contain ordinary soap flakes, salt and limestone which can cause allergic skin reactions. A number of cases of damage to consumer appliances have also been cited and found to be caused by counterfeit product.
- Counterfeit food products have dangerous health consequences ranging from the mild (poor taste) to the severe (poisoning or death) not to mention the injuries that may result just from opening faulty cans and bottles.
- Counterfeit toothpaste may be ineffective in fighting plaque, stain teeth, or cause gum diseases.
- Counterfeit shampoos can cause excessive hair loss, allergic reactions on the scalp, skin or eyes and can even weaken the immune system.
- Counterfeit deodorants, in addition to being ineffective, may cause allergic reactions or rashes due to suspect aerosols and ingredients.
- Counterfeit insecticides are ineffective, emit a foul smell and may be toxic in certain cases.

The damage to consumer health and well being caused by counterfeit and smuggling should not be underestimated. It is clear that counterfeit goods are not only an economic and intellectual property problem, but also a public health problem.

Multinationals studying the possibility of entering the Lebanese market have seriously considered the impact of illicit trading activities.

Violation of consumer rights

Counterfeit, smuggled and look-alike products represent a clear violation of consumer rights by delivering inferior quality to customers, subjecting them to unnecessary health risks of which they are unaware and depriving them of the rights and benefits associated with a brand name. Branded products offer consumers the benefits of value, choice, convenience, relevance, reassurance, satisfaction, and after-sale service.

Reduced incentive to invest in Lebanon

Counterfeit and smuggling (and perhaps parallel imports) decrease the incentives of multinational companies and their official distributors to invest in Lebanon. Multinationals studying the possibility of entering the Lebanese market have seriously considered the impact of illicit trading activities on their investment decision.

In general, increased levels of counterfeit and smuggled products discourage the development of new products since companies anticipate that their new launches will face stiff competition from counterfeiting and smuggling upon introduction.

As a result, companies may be reluctant to spend on research and development, manpower, manufacturing and distribution and advertising. It is also important to note that reduced incentives to invest detrimentally affect Lebanese labour. Positions created by multinationals and their distributors tend to be permanent, higher paying (with associated benefits) and registered with the NSSF. In contrast, jobs provided by counterfeiters and smugglers tend to be low paid, provide few benefits and are generally characterised by poor working conditions.

Losses in national tax revenues and increased governmental expenditure

Since counterfeit and smuggling are illegal trading activities, the activities and profits associated with them generally do not flow through the Government's official channels. Illegal operators of underground production and distribution facilities avoid paying customs duties, value-added tax and other related duties and charges. Furthermore, the lost revenues of legitimate manufacturers and distributors result in lower profits and consequently lower taxes paid to the Lebanese Government. Lost government revenues include the following:

- Customs revenue on illegally imported goods (counterfeits and smuggled items). Customs duties on fast moving consumer goods are generally in the range of 5 to 15 percent (of the landed cost).
- Value-added tax of 10% on the final selling price of a number of products in the FMCG category.

- Taxes on cigarettes generate significant income for the Government, representing nearly 45% of the retail price of cigarettes and accounting for approximately US\$185 million of government revenue in 2002. Counterfeit and smuggled products not imported by the Tobacco Regie are therefore a source of significant lost revenues to the Government.
- Income and related tax revenues (15% profits tax and a further 10% on profit distributions) associated with lost sales revenue of brand owners and official distributors – counterfeiters and smugglers do not operate through registered companies.
- Social security contributions and personal income taxes for registered employees as counterfeiters and smugglers typically do not register their employees with the National Social Security Fund nor do they withhold personal income taxes for submission to the Ministry of Finance.

Losses to the treasury from counterfeit and smuggling in the fast moving consumer goods sector are estimated to be between US\$75 and 100 million.

The Lebanese Government can ill afford this loss of much needed income at a time when the national accounts are near the breaking point with a debt to GDP ratio that is amongst the highest in the world. Annual losses to the treasury (in the form of customs duties, VAT and other taxes) from counterfeit and smuggling in the fast moving consumer goods sector are estimated to be between 75 and 100 million US dollars. This is lost revenue that could be spent on reducing the deficit, improving national health services, education, infrastructure and other badly needed public services.

Counterfeit and smuggling will also eventually lead to increased governmental expenditure. As the extent of counterfeit and smuggling increases unchecked with time, the Government will be forced to spend ever-increasing amounts of money on policing, other investigation and enforcement operations. Also, the country's judiciary will have to spend additional time and money on dealing with counterfeiters and smugglers.

Negative image of Lebanon abroad

Lebanon runs the risk of developing an international reputation of being associated with IPR violations.

Lebanon runs the risk of developing an international reputation of being associated with IPR violations and needs to improve the enforcement of existing laws relating to IPR significantly. Lebanon is in the process of applying for full membership in the WTO and still needs to undertake a number of steps as part of the admission process. Combating the trade in counterfeit goods seriously will demonstrate Lebanon's commitment to abide by global standards on international trade.

The presence of counterfeits can result in bilateral or multilateral trade disputes which negatively impact the image of Lebanon abroad. In 1999, as a result of the Lebanese Government's alleged registration of generic copies of patented pharmaceutical drugs, the United States Government placed Lebanon on the "2000 Watch List", a list of countries considered offenders to intellectual property. Lebanon was elevated to the "Priority Watch List in 2001". The International Intellectual Property Alliance (IIPA) stated in its 2003 Special 301 Report that Lebanon should remain on the Priority Watch List since piracy still dominates the market.

The IIPA also filed a petition to revoke Lebanon's Generalized System of Preferences (GSP) advantages stating "Lebanon should not continue to expect such favourable treatment, since it fails to meet the discretionary criteria in this US law". The GSP program is the Generalized System of Preferences with respect to US customs benefits. To qualify for these benefits, the US must be satisfied that Lebanon meets certain criteria including whether it provides "adequate and effective protection of intellectual property rights".

The Lebanese Government faces significant international pressure to clamp down on IPR violations if it wants to foster an image as a safe place for international investment.

Illegal activities often go hand in hand with counterfeiting and smuggling activities.

Corruption

Counterfeit and smuggling activities have often been associated with corruption and crime as they attract both organised crime and petty criminals who derive profits from the trade and use the proceeds of the crime to finance other crimes. Crime rings in several countries have found counterfeiting and smuggling to be as lucrative as drug trafficking but much less risky.

Sale of counterfeit goods has also been used worldwide to launder money. In Lebanon, the Government has dedicated significant resources towards combating money laundering to regain the confidence of international financial institutions. The association between illicit trading activities and money laundering may pose a threat to the success already achieved by the Lebanese Government in the money laundering arena.

BPG members and others lose millions of dollars annually to counterfeit and smuggling activities in Lebanon.

Costs to the rights holders

BPG members and others lose millions of dollars annually to counterfeit and smuggling activities in Lebanon. Such losses take a variety of forms, including direct losses in sales as their products compete directly with those of counterfeiters. Some points identified by BPG members as requiring particular emphasis include:

In certain areas retailers refuse to carry genuine products for fear of being uncompetitive in that particular neighbourhood.

- In some markets, counterfeit products are so prevalent that distributors of genuine products face significant barriers to entry to these markets. For instance, in certain areas retailers refuse to carry genuine products for fear of being uncompetitive in that particular neighbourhood.
- Consumers who are deceived into buying counterfeit products often tend to blame the manufacturer of the genuine product when the counterfeit fails. This results in damage to the brand's image and a loss of customer goodwill for the brand owner or official distributor.
- Brand owners and their distributors spend increasing amounts on the fight to protect and enforce their intellectual property rights. These extra costs manifest themselves in expensive investigation and litigation associated with the prosecution of counterfeiters and smugglers, development of anti-counterfeiting technologies and governmental lobbying.

This adverse impact of counterfeiting and smuggling ultimately increases costs to manufacturers and distributors which are passed on the consumer. It not only deprives the owners of their legitimate rights, but also deprives consumers of the innovation, variety and lower prices which would otherwise be available.

There are few winners from counterfeiting and smuggling.

Conclusion

There are few winners from counterfeiting and smuggling. Consumers, governments and brand owners are all losers and stand to gain from the reduction of these activities. Consumers are vulnerable to purchasing products that can cause serious damage to their health. Lebanon's treasury is deprived of much needed revenue and its international image is tarnished. Finally, brand owners lose revenue and suffer from damages to the reputation of their brands. It is therefore in the interest of all stakeholders to discuss ways of combating the problem.

4 ANALYSIS OF ACTION TAKEN BY THE LEBANESE GOVERNMENT

The current system of laws in place in Lebanon to combat counterfeit and smuggling activities is generally perceived to be weak, particularly with respect to the effectiveness of enforcement.

Lebanon has signed a number of free trade agreements which will require laws and enforcement to be updated and improved.

Introduction

The current system of laws in place in Lebanon to combat counterfeit and smuggling activities is generally perceived to be weak in terms of both the adequacy of the legislation in place and the effectiveness of its enforcement. Lebanon already has copyright and patent laws in place and is a signatory to several international conventions regarding protection of intellectual property including the Paris Convention, the Madrid Agreement for the Repression of False or Deceptive Indications on Goods and the Nice Agreement for the Classification of Goods and Services. However, it can be argued that the Lebanese Government does not adequately or effectively protect intellectual property even though IPR protection exists under Lebanese law. In practice, cases are often hard to bring to trial and courts are reluctant to prosecute and impose criminal penalties for what are perceived to be "soft" crimes.

A prerequisite for Lebanon's entry to the WTO (the Government's stated objective is to join by the end of 2004) is compliance with the terms of the TRIPS agreement, which requires minimum standards for effective legislation and enforcement of IPR protections. Although Lebanon is taking positive steps in this direction, the principal weaknesses are perceived to be in the enforcement of the legislation.

Lebanon has also signed a number of other free trade agreements which will require laws and enforcement to be updated and improved. In June 2002, Lebanon signed the Euro-Mediterranean Partnership agreement which aims to establish a free trade area in the Mediterranean region by the year 2010. It has also signed the Arab League's Free Trade Agreement, the Arab Free Trade Zone Agreement as well as bilateral free trade agreements with several Arab countries (including Syria, Egypt, Kuwait and the UAE).

Current measures in place

Trademarks are regulated by Decree Number 2385 issued on 12 January 1924, amended by the law of 31 January 1946 concerning the protection of commercial, artistic and industrial property rights. This law is the basis of all Lebanese legislation covering trademarks, authors' rights and patents, as well as industrial designs and models.

Since 1946, this law has been amended several times. In 1983 and 1998 the law was amended to cover trademarks and copyrights, respectively, and in 2000 the law was amended to cover patents, semi-conductors and undisclosed information (trade secrets). IPR rights are also protected by the Lebanese Penal Code articles 701 to 706 and 710 to 721 which provide for criminal penalties for cases of infringement or fraudulent competition.

Lebanon has recently begun taking measures to improve its intellectual property protection regime. These steps include the development of consumer protection and trademark laws that are currently being drafted (with the input of some members of the BPG on the consumer protection law). A new law on trademarks, geographical indications and industrial designs is being prepared by the MoET.

Accession and effective participation on trade agreements represent opportunities for Lebanon but also challenge it to modernise legislation. However, modernising legislation alone will not be sufficient to curb the problems posed by damaging trading activities – legislation must be accompanied by effective enforcement.

Level of enforcement

The consensus among brand owners and distributors is that the current measures in place against illicit trading activities are characterised by a generally insufficient legal framework and by selective, ad hoc and inadequate enforcement activities. The following examples have been cited:

- "Well-connected" counterfeiters and smugglers who, when and if they are caught, suffer no or minimal consequences characterised by negligible fines. Jail sentences are rarely, if ever prescribed.
- Inadequate facilities and resources (including trained manpower, equipment and vehicles) at the key government departments responsible for monitoring imports (Customs) and the trade (the Consumer Protection Department). The Consumer Protection Department is perceived to have its hands full dealing with consumer protection issues in gasoline, drinking water and flour and requires additional resources and support if it is to expand its scope to include the fast moving consumer goods sector.
- A lack of sufficient knowledge within the relevant governmental agencies about the extent of, sources of and areas affected by counterfeit and smuggling and inadequate collaboration with brand owners.
- A general lack of enforcement of existing laws, many of which have provisions for stringent criminal penalties and fines which are rarely applied.
- Minimal ex-officio raiding activity on fast moving consumer goods, characterised by a lack of initiative or incentive to search for counterfeits by well trained inspectors.
- Excessive amounts of time needed to properly process legal cases involving counterfeit and smuggling.

Some measures have been taken by the Government but more is required.

- Lack of training for the judiciary on matters relating to counterfeiting and IPR violations.

While the Government has taken steps to improve the enforcement of intellectual property rights violations, a substantial amount of action is still required (from all stakeholders) to address the issue of counterfeit and smuggling. But for any action to be effective, both a recognition of the seriousness of the issue and the commitment to improve enforcement measures is required.

Draft laws on consumer protection and trademarks

An encouraging recent development of particular importance has been the increased cooperation between the Lebanese Government and members of the BPG in respect of the draft law on consumer protection. Draft laws on consumer protection and trademarks are being overseen by the Consumer Protection and IPR Departments of the Ministry of Economy and Trade (MoET), respectively. We understand the consumer protection law is in its final phases and will be sent to the Lebanese parliament for approval shortly.

A summary of the key changes agreed between the BPG and the MoET in respect of the new Consumer Protection Law is set out below:

- Unnecessary constraints on importers of genuine products have been removed. For example, expenses incurred during the random sampling of items to detect potential counterfeits will be borne by the Government if no counterfeit goods are detected, consumer complaints in respect of products imported by brand owners or their official distributors need to be resolved within 15 days, and the "Made in EU" tag will be accepted.
- Increased monitoring of parallel importers. Parallel imports by an importer appointed by the trademark owner will only be inspected when new products are launched, whereas other parallel imports will be regularly monitored.
- A stricter penalties regime with the following characteristics will be put in place:
 - Counterfeiters will be the most severely punished and receive the highest penalties, ranging from LL5 to 50 million in fines and up to 3 years imprisonment.
 - Importers of products that do not comply with relevant safety standards and specifications will be fined between LL75 and 100 million and may be imprisoned for up to six months.

- Importers of products that comply with safety specifications but do not comply with technical specifications will receive warnings for the first offence and be required to sign a declaration committing to import products meeting all specifications with close follow-up from the MoET.

The increased collaboration between the members of the BPG and the Lebanese Government resulting in the above amendments to the draft consumer protection law is a very encouraging development and such cooperation should be encouraged and expanded.

5 SUGGESTED SOLUTIONS

The solutions focus on enhancing the legal framework, improving enforcement, raising awareness and building closer relationships between the stakeholders.

Introduction

As intellectual property rights have increased in importance for both companies and countries, many governments have responded to domestic and international pressure by strengthening legal protection of brand owners. As discussed above, the Lebanese Government has indicated a willingness to do the same and has made some progress in this respect.

This section suggests some ways in which the problem of counterfeiting and smuggling can be addressed by all stakeholders. The solutions focus on enhancing the legal framework, improving enforcement, raising awareness and building a closer relationship between brand owners and their distributors, the Lebanese Government and consumers.

Enhancing the legal framework – complying with TRIPS and the Model Customs Law in letter and spirit

Enhancing the country's legal framework by modernising its laws where necessary to bring them closer in line with TRIPS is a must for the Lebanese Government if it wishes to effectively combat counterfeit and smuggling and improve its reputation within the global trading community. Lebanon should also seek to adopt all major aspects of the TRIPS agreement as well as the Model Customs Law as proposed by the World Customs Organisation IPR Strategic Group.

The TRIPS agreement is the World Trade Organisation's comprehensive multilateral agreement on intellectual property covering the areas of copyright and related rights, trademarks including service marks, geographical indications including appellations of origin, industrial designs, patents including the protection of new varieties of plants, the layout designs of integrated circuits and undisclosed information, including trade secrets and test data. The TRIPS agreement covers the following five broad areas:

- how basic principles of the trading system and other international intellectual property agreements should be applied;
- how to give adequate protection to intellectual property rights;
- how countries should enforce those rights adequately in their own territories;
- how to settle disputes on intellectual property between members of the WTO; and
- special transitional arrangements during the period when the new system is being introduced.

Although Lebanon is not a member of the WTO, we recommend that the Lebanese Government adopt a policy of full compliance with the letter and spirit of the TRIPS agreement. As discussed above, the Lebanese Government is in the process of passing new laws in compliance with TRIPS and significant additional effort is required on enforcement in order to comply with the spirit of TRIPS.

An intellectual property rights Model Customs Legislation has been developed by the World Customs Organisation (WCO) to assist countries in creating new customs legislation or amending their existing customs legislation. The model legislation is based on TRIPS and includes provisions on:

- applications for customs assistance;
- the duration of customs surveillance over suspected infringements;
- the provision of information, including evidence of right ownership and the grounds for suspicion;
- indemnity and security;
- suspension of clearance and time period of suspension;
- notification to the right holder;
- examination of the goods by the right 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; and
- powers of suspension of clearance and disposal of counterfeit goods.

Although Lebanon's customs legislation is in many respects compliant with the Model Customs Legislation, enforcement is generally perceived to be weak.

Improving enforcement

Any amendments to Lebanon's legal framework for combating the problem of counterfeit and smuggling must necessarily be accompanied by a swift, efficient and robust enforcement regime.

Amendments to Lebanon's legal framework for combating the problem of counterfeit and smuggling must be accompanied by a swift, efficient and robust enforcement regime.

Lebanon requires procedures that permit effective, expeditious and deterrent action against any act of infringement of intellectual property rights, without creating a barrier to legitimate trade. In addition, Lebanon will need to empower its judiciary to issue injunctions to prevent the importation of counterfeit goods into the country, to order the disposal or destruction of counterfeit goods and, perhaps most importantly, to make wilful trademark counterfeiting on a commercial scale criminal offences.

Lebanon should also pass laws or regulations that would establish border enforcement procedures to enable rights holders to obtain the cooperation of the customs authorities so as to prevent the importation and release of infringing goods into free circulation.

Some specific suggestions for improving enforcement based on feedback from stakeholders and reinforced by some examples of implementation in other countries are highlighted below:

- Make counterfeit and smuggling criminal, not civil, violations and enforce stricter penalties.
- Invest adequate resources in surprise inspections and laboratory tests and secure annual funding for continuous trade inspections (random sampling) of wholesalers and lower-end retail outlets.
- Encourage the general public to report counterfeits by instituting a system of rewards and launching a focused public awareness campaign in cooperation with the private sector.
- Publicise the names and locations of perpetrators, either on the MoET's web sites or physically on the premises of the retailers or wholesalers.
- Shorten the time required to action legal cases and remove procedural barriers to legitimate litigation. For example, in some countries the law requires administrative actions to be completed within four months.
- Establish closer relationships and collaboration between the Consumer Protection Department, the judiciary committee and customs authorities to facilitate greater cooperation and collaborative work against counterfeit and smuggling. In Lebanon, this could include a joint team representing the Ministry of Finance (including customs, VAT and the Tobacco Regie), Ministry of the Interior and the MoET. This would allow the Government to present a unified front against the problem from all the relevant ministries.

- Consider instituting a certification process whereby distribution outlets are certified as "free of counterfeit products". Certification is given when the shop is selling genuine products (at appropriate prices). Locations that are "counterfeit-free" should be given certain benefits derived from being accredited to an association. Certification could be for products of participating brand owners. The system has been successfully applied in Ukraine and Russia.
- Publicise the enforcement sanctions and criminal penalties for all types of counterfeit and smuggling to increase public awareness and deterrence.
- Facilitate the ability of BPG members and other trademark owners to initiate enforcement action against suspected goods by requesting that customs authorities intervene on suspected infringements.
- Train the judiciary (particularly judges) in the intricacies of the new laws in order to be better able to address potential violations.
- Facilitate the recovery of costs of investigation and destruction from the perpetrators where they are identifiable.
- Implement stricter border controls and improve the procedures applied by training staff, upgrading facilities and techniques.
- Increase inspections by customs authorities beyond the port of entry (i.e. "in market" inspections).
- Create a specialised "brand police" unit charged with inspecting wholesalers, high frequency stores, and lower end trade channels. BPG members or private sector participants may be willing to provide training services or resources for this unit.
- Implement continuous inspections of invoices supporting displayed products at retail outlets to ensure their legal compliance (most counterfeit and smuggled products are traded either without invoices or through the use of an illegal invoice).
- In the case of parallel imports of products covered by exclusive agencies, ensure that customs inspectors at the borders are aware of who the sole distributors of the products in Lebanon are so that they can halt the import of the products by third parties.
- In the case of discarded packaging being refilled by counterfeiters, the authorities should clamp down on solid waste scavengers and ensure that they are not reselling discarded packaging. Steps can be taken to destroy packaged products or otherwise render them unusable. Certain measures can also be taken by brand owners to prevent the re-use of packaging or containers.

The list of suggested solutions for improving enforcement above is not exhaustive, and should be considered as part of an overall programme to combat counterfeit and smuggling.

Raising public awareness about the problems associated with counterfeit and smuggling should not be underestimated as one of the most effective means of combating the problem.

Raising public awareness

Raising public awareness about the problems associated with counterfeit and smuggling should not be underestimated as one of the most effective means of combating the problem. It is the responsibility of both the Government and brand owners to raise public awareness. Widespread support from consumers for anti-counterfeit measures is required to make the difficult process of passing much-needed legislation easier and to turn the tide of public opinion against counterfeiters and smugglers. This is particularly true where the public believes counterfeiting is a victimless crime.

We understand that the MoET is planning to conduct a public awareness campaign in the near future. In doing so, the MoET should draw on the successful experiences of campaigns in other countries and on the experience and resources provided by international organisations and donors. We recommend that awareness campaigns be conducted by the Consumer Protection Office in collaboration with the brand owners to explain the hazards of counterfeit goods on public health and the correlation between the protection of intellectual property rights, foreign direct investment and community welfare. The media should be invited to participate in the campaign to educate the public about the basic concepts of the trademark and consumer protections laws. The overall focus of the public awareness campaign must be to convince the public that combating counterfeit and smuggling is in the best interests of the nation as a whole.

Exhibitions ("road shows") in areas where counterfeits are prevalent should also be considered as a means of raising public awareness of the issues. Such exhibitions could be run jointly by the Government and members of the BPG and may include free samples of original products, warnings to avoid counterfeits and numbers to contact anonymously when counterfeits are suspected.

Consumer attitudes towards the issue will also need to be changed. For instance, consumers are prepared to complain to consumer hotlines maintained by BPG members, but are reluctant to register complaints with the authorities or the merchant where the products were purchased. Increasing the willingness of consumers to complain and improving their confidence in the authorities is an important part of any solution.

The experience in other countries demonstrates that effective collaboration is required to achieve success.

Closer collaboration between the BPG and the Lebanese Government

The experience in other countries demonstrates time and again that achieving real IP protection and enforcement requires that a coalition of Government, brand owners, copyright owners, and consumers organize to fight for the mutual best interests of all parties.

Following a concerted anti-counterfeiting programme by brand owners and the government in Russia, for example, the instances of counterfeit shampoos and counterfeit detergents decreased from over 35% to under 5%.

Indeed, the effort to limit counterfeit trade in Russia is still underway and in May 2003, an exhibit entitled "Regions of Russia: Protection from Counterfeit" was launched as part of the joint effort of the Government and brand owners to increase public awareness of the impact of counterfeit goods on public health and the economy.

Similar success is possible in Lebanon. The consumer protection draft law provides for representation of consumer protection groups in government councils and judiciary committees. The BPG should consider registering as a consumer protection group to be able to have a representative on the national council for consumer protection and possibly the judiciary committee. The BPG will also need to work closely with consumer protection groups in order to provide a united front against the problem.

6 CONCLUSION

The Government of Lebanon should address the problem of illicit trading activities in Lebanon in order to reduce the damaging consequences of these activities which include a detrimental impact on its economy, consumer health and international reputation. The protection of intellectual property rights is an important trade issue for many of the current WTO members, and Lebanon should be prepared to discuss and implement the improvements it intends to bring to its domestic IPR laws and their robust enforcement. The international community and investors expect Lebanon to achieve minimum standards of IPR protection.

Experiences in other countries suggest that significant, meaningful and effective steps can be taken to combat counterfeit and smuggling. The progress achieved in a number of regions associated with IPR violations (Eastern Europe and the Far East, for example) provides evidence that determined and coordinated efforts by the government can achieve results. Lebanon can also achieve similar success.

Achieving success in the battle against damaging trading activity will require the mobilisation and collaboration of all stakeholders.

Achieving success in the battle against damaging trading activity will require the mobilisation and collaboration of all stakeholders, including the government, rights owners and consumers and a continuing commitment to see through changes which in the end are for everyone's benefit.

Glossary of terms and Abbreviations

| | |
|-------|---|
| BPG | Brand Protection Group |
| CIPR | Coalition for Intellectual Property Rights |
| FMCG | Fast moving consumer goods |
| GSP | Generalised System of Trade Preferences |
| GATT | The General Agreement on Tariffs and Trade |
| IIPA | International Intellectual Property Alliance |
| IPR | Intellectual Property Rights |
| MoET | Ministry of Economy and Trade |
| TRIPS | Trade-related aspects of Intellectual Property Rights |
| VAT | Value-added tax |
| WCO | World Customs Organisation |
| WIPO | World Intellectual Property Organisation |
| WTO | World Trade Organisation |

Your worlds



Our people