

## The Fight against Counterfeiting of Goods and Services, a Challenge of the Albanian Customs even during the Pandemic

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**Abstract:** *The globalization of exchanges, which is characterized by an unprecedented speed of goods circulation, constitutes an unfortunately favorable environment for the spread of counterfeit products worldwide. Counterfeiting represents a sum of more than hundreds of billions of euros, ranking second in criminal ranks, after drug trafficking. Initially, it is the responsibility of the customs, which have been completely modernized to undertake the uninterrupted, rapid and more complex development of international exchanges, but also to counter fraud and organized, multifaceted and aggressive criminal act [11].*

*Albania is well aware that a sustainable system of intellectual property, including the efficient implementation of intellectual property rights, is an essential element for further social progress, increasing the country's competitiveness, for better conditions for local employment, contributing to the creation of optimal conditions for foreign investment and is a cornerstone in the process of European integration.*

**Keywords:** *counterfeiting, protection of intellectual property rights, right holder, application for action, suspension of suspected goods, release for free circulation.*

### 1. Introduction

According to the last Report of the European Commission in October 2020, (Chapter 29: Customs Union), Albania is moderately prepared in the field of customs union. Limited progress has been made, particularly, in improving cash flow control at border crossings. According to this report, efforts to enforce intellectual property rights have improved [3].

Legislation on customs enforcement of intellectual property rights (IPR) is in line with the EU propositions. In 2019, the import of a total of

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23,273 goods that were suspected of violating intellectual property rights was suspended, as well as 4,149 goods destroyed after confirmation received from the property right holder.

Among the challenges for the future of Albanian customs we mention:

- Building a proper administrative infrastructure within the national institutions involved in ensuring the protection of Intellectual Property.
- Installing of the full version of INES + software, which will serve as a database and in processing requests for customs action in electronic format.
- Increasing cooperation at national and international level with other actors involved in the protection of Intellectual Property rights.
- GDR staff training and increased cooperation at national and international level with other actors involved in the protection of Intellectual Property rights.
- Undertaking of public awareness campaigns on the importance of IPR.

## **2. The fight against the counterfeiting of goods and products - a challenge nowadays**

From a local and artisanal phenomenon, initially affecting the luxury industries, counterfeiting has expanded over 30 years to become a global fraud phenomenon, affecting all sectors of the economy, all products and using all vectors that lead to it and especially the Internet.

Counterfeiting represents a sum of more than hundreds of billions of euros occupying the second place in the criminal ranks, after drug trafficking. Thus, it is not surprising that well-structured criminal organizations are increasingly implicated in this illicit and illegal activity, from which they derive increasingly significant benefits.

The globalization of exchanges, which is characterized by an unprecedented speed of circulation of goods, constitutes in this view an unfortunately favorable environment for the spread of counterfeit products worldwide, because it is one of the main and initial characteristics of counterfeiting being a cross-border fraud with its production and distribution provinces. Even Europe, with a potential of 500 million consumers, necessarily constitutes a privileged place to sell counterfeit products.

It would be a farce if we were to focus on this phenomenon of major fraud no matter how well organized, but it is better collectively, at European Union level that we should all give an answer at the right level in this regard.

This community-wide reaction is known as much as there are European companies, which are most affected by the phenomenon of copying, because they are distinguished in the world arena by a high quality offer, which is characterized by a high value added.

The intellectual property rights of European companies are undoubtedly a crucial competitive advantage, *i.e.* a major issue for the economies of European countries. In the face of copiers, Europe must thus provide its enterprises with a framework that protects their intellectual property rights. It must also accompany them in their demarches to respect these rights internationally. Even beyond the economic interest of enterprises, Europe also has the necessary obligation to protect all its citizens from the risks of counterfeiting and the new risks it poses. Counterfeit medicines, counterfeit foodstuffs, spare parts for duplicate machines, which do not have any of the qualities of origin models, are also a risk factor for the consumer. They must absolutely be protected against these risks.

***Initially, it is the responsibility of the customs, which have been not only completely modernized to undertake the uninterrupted, rapid and more complex development of international exchanges, but also to counter fraud and an organized, multi-faceted and aggressive criminal act.***

By 1999, European customs had seized 25 million counterfeit items. In 2010, at the borders of European Union countries, 180 million counterfeit items were confiscated in very different sectors from food items to the most sophisticated products. Nowadays, there is talk of a much larger number of counterfeit items confiscated by the competent authorities.

The fight against counterfeiting is today the face of Europe fighting for its economy, its security and its future [10].

### **3. Albanian Customs from the point of view of the latest Reports of the European Commission**

All Member States are part of the EU Customs Union and follow the same Customs rules and procedures. This requires approximation of legislation, appropriate enforcement and enforcement capacities, and access to computerized and shared customs systems.

According to the last Report of the European Commission in October 2020, (Chapter 29 Customs Union), Albania is moderately prepared in the field of customs union [3]. Limited progress has been made, particularly in

improving cash flow control at border crossings. According to this report, efforts to enforce intellectual property rights have improved.

During the next year, in particular, Albania should:

- adopt legal provisions and develop the New Computerized Transit System,
- move forward in terms of registration of authorized economic operators, and
- pursue the fight against smuggling, corruption and import of counterfeit products.

The General Directorate of Customs issues binding customs information and explanatory notes, while the relevant court makes public anonymous decisions on administrative appeals that go to the appellate level. The Customs Code contains rules on non-preferential origin. Albania applies the preferential rules of origin of the Regional Pan-European Convention.

According to this report, Albania has followed the instructions of the European Commission during the crisis period coming in the aftermath of the COVID-19 pandemic. The provisions of the customs code for valuation are in line with EU rules. The risk management system is automated and compares import, export and transit data against risk profiles.

Legislation on customs enforcement of intellectual property rights (IPR) is in line with the EU proposition. The customs control system for precursor chemicals, dangerous chemical products and controlled substances is harmonized with the UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, a 1988 convention.

In 2019, the import of a total of 23,273 goods that were suspected of violating intellectual property rights was suspended, as well as 4,149 goods destroyed after confirmation received from the property right holder.

In terms of administrative and operational capacity, the strategy of the General Directorate of Customs clearly states its mission and strategic objectives for the period 2017-2021, including the objective of improving information technology platforms and systems. Local customs clearance works in the meantime, but information technology systems are fully connected only to the General Directorate of Taxation and Road Transport, while the police and the prosecution must meet some other conditions before being given the order to direct access they need for this system. Although the number of employees in the customs administration has increased through the Law on Civil Service, in general the departure of staff from the customs administration remains at very high levels.

The impact of anti-corruption measures in particularly sensitive areas (customs, tax administration, education, health, public procurement, PPP

contracts, etc.) remains limited. Internal controls and inspection mechanisms within the public administration remain weak and ineffective.

#### **4. General Directorate of Customs in the Framework of the Strategy for the Protection of Intellectual Property**

Albania is well aware that a sustainable system of intellectual property, including the efficient implementation of intellectual property rights, is an essential element for further social progress, increasing the country's competitiveness for better conditions for local employment contributing to the creation of optimal conditions for foreign investment and is a cornerstone in the European integration process. Relevant administrative authorities have been established for the above purpose, while the legislative activity in recent years in the field of protection of intellectual property rights has been harmonized with international treaties and European legal standards.

##### ***Institutions dealing with Intellectual Property issues in Albania***

The main actors in this field are the institutions of following:

1. General Directorate of Patents and Trademarks (GDPT);
2. Albanian Copyright Office (ACO);
3. General Directorate of State Police (GDSP);
4. General Directorate of Customs (GDC) [1] [2].

The Albanian Customs Administration within the fiscal, economic and protection mission has the duty to protect the Intellectual Property rights in order to:

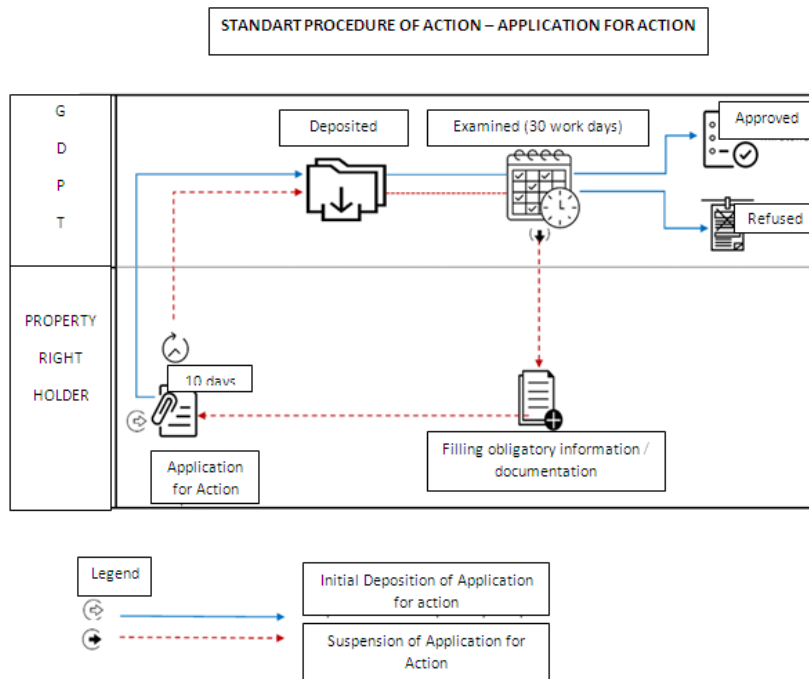
- Protect the environment of businesses that are holders and / or users of an Intellectual Property right from unfair competition;
- Protect the consumer and public health from counterfeit / pirated goods for the consequences they cause and the possible limitation of revenue losses in the state budget, which come as a result of goods that infringe on Intellectual Property right [8].

In order to enable a protection of Intellectual Property rights, as well as to achieve the same level of protection for the issue of Intellectual Property, as in the countries of the European Union, near the Customs System, since the establishment in 2010 of the Directorate for the Protection of Intellectual Property, which is an integral structure of the Operational - Investigation Department at the General Directorate of Customs. Its staff consists of 1 Director and 4 specialists.

The legal basis on which the customs system operates is:

- Trips Agreement, Articles 51-60
- Stabilization and Association Agreement, Articles 42 and 73
- Customs Code, Article 82/4 Implementing Provisions of the Customs Code (DCM 1090 dated 28.12.2015)[8]

The object of the work of DPIP is to implement the legislation on the Protection of Intellectual Property according to the laws and by-laws in force for the Albanian Customs territory; to coordinate the work between other Directorates of the General Directorate of Customs, third institutions and / or groups of interest in Intellectual Property issues; to professionally administer the applications for action submitted to DMPI, keeping in mind the observance of deadlines, procedural and handling of issues in a professional manner.



**Figure 1.** Standard Procedure of Action – Application for Action  
 Source: Directorate for the Protection of Intellectual Property (DMPI), application form for action

“Application for action” is the only protective instrument to protect intellectual property rights by the Albanian Customs Administration. This

application is submitted to the General Directorate of Customs, through the following documents:

- Specific forms for this purpose must be attached in triplicate (one for the applicant and two for the General Directorate of Customs).
- Documents proving that the applicant has the right to submit the application;
- When the applicant submits the application through a representative, the details of the person representing him / her and the proof that the person has the competence to act as a representative, in accordance with the legislation in force.

The standard procedure followed by the Customs Administration (Directorate for the Protection of Intellectual Property) for approving / rejecting an Application for action is presented in the figure 1 [8].

## **5. Objectives of the Directorate for the Protection of Intellectual Property in the General Directorate of Customs for 2020**

DPIP during 2020 in accordance with the defined tasks and objectives and in implementation of the legal provisions in force provided in the Customs Code of the Republic of Albania (its Implementing Provisions, the Stabilization and Association Agreement, International Conventions in force and other laws of interior matters), has the following aims:

- Protection of intellectual property rights (industrial property and copyright) for goods entering / or leaving Albanian territory, at the request of right holders or "ex officio";
- Consumer health protection;
- Facilitation of fair trade and business;
- The achievement of maximum performance, with the aim of meeting the conditions set by the Stabilization and Association Agreement, for the full achievement of the standards required by the European Union.

DPIP for 2020, has had the following objectives and has performed the following tasks:

### ***Objective no.1: Review of action applications submitted to the GDC.***

DPIP has administered 108 applications for action submitted by right holders and / or legal representatives for the protection of intellectual property rights, for which the following have been proposed:

*102 applications were approved and 6 applications were rejected for non-compliance with the minimum requirements of the legislation*

***Objectives no. 2: Update the legal framework (primary and secondary) in accordance with EU legislation and / or important sectoral strategic documents.***

As contributors to the Intellectual Property Strategy (2016-2020), approved in DCM no. 527, dated 20.07.2016 (Official Gazette No. 140, p. 11195), the Directorate for the Protection of Intellectual Property, has realized and reported the objectives set out in this strategy [4].

DPIP, in its capacity as rapporteur in relation to Chapters 7 and 29 of the Stabilization and Association Agreement, has prepared 6 contributions as well as a plan of measures for the short-term recommendations of the European Commission Report on Albania, for the Ministry of Finance and Economy [6].

Also, the representatives of DPIP, have contributed to the representation of GDC in the next Stabilization and Association Committee.

DPIP staff, in cooperation with TCTCA (Training Center for Tax and Customs Administration), has organized two online training sessions, on the process of protection of intellectual property rights, for the training of new employees in the customs system and also , explanatory / instructional materials (12 pages) for the training of new employees in the customs system have also been prepared [5].

DPIP, has participated in an online meeting with experts of WIPO (World Intellectual Property Organization), and has prepared the materials required by them, in order to cooperate in drafting the Strategy of Intellectual Property 2021-2026.

***Objective no.3: Increase cooperation at national and international level and increase the administrative capacity of the Albanian Customs Administration.***

Considering as very important the national and international cooperation for the increase of administrative capacities, DPIP has participated and / or organized the following activities:

International operation "Stop" organized by WCO (World Customs Organization) and RILO ECE (Regional Intelligence Liaison Office for Eastern and Central Europe), focusing on health product standards and prevention of their smuggling under protection against COVID-19 (22 May-22 June 2020). During this period, this Directorate reports that there have been



no cases and / or information on violations of health product standards and / or their smuggling.

Other activities due to the pandemic situation, according to DPMI, have been canceled for indefinite periods.

***Objective no.4: Suspension of goods suspected of infringing on intellectual property right based on an application for action by right holders or ex-officio.***

*Operational part:*

During 2020, the Customs Administration, as a law enforcement institution regarding the protection of intellectual property rights, suspended the release for free circulation of goods, as follows:

**Table 1.** Good suspended for free circulation according to ex-officio procedure

ARTICLES	Trademarks	Quantity (Pairs)
Sports shoes	Converse	282
	Supreme	230
	Nike	1360
	Gucci	225
	Adidas	250
	Balenciaga	94
	Valentino	165
	Alexander Mqueen	740
	Fila	300

ARTICLES	Trademarks	Quantity (pieces)
Bags / wallets /	Dolce & Gabanna	100
	Gucci	600
	Supreme	145
	Adidas	80
	Michael Kors	140
	Fendi	120
	Mont Blanc	100

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Waist belt	Versace	300
	barrel	708
	Hermes	104
	Philip Plein	104
Phone Cover	Gucci	380
	Supreme	260
	Adidas	200
	Samsung	340
	Iphone	320

Source: Annual analysis for 2020 of the Directorate for the Protection of Intellectual Property (DMPI)

*The above goods have been released for free circulation by the Customs Administration, for non-reaction by the right holders within the legal deadlines set out in DCM no. 651, dated 10.11.2017, of the Council of Ministers, “On the Implementing Provisions of Law no. 102/2014, the Customs Code of the Republic of Albania [7].*

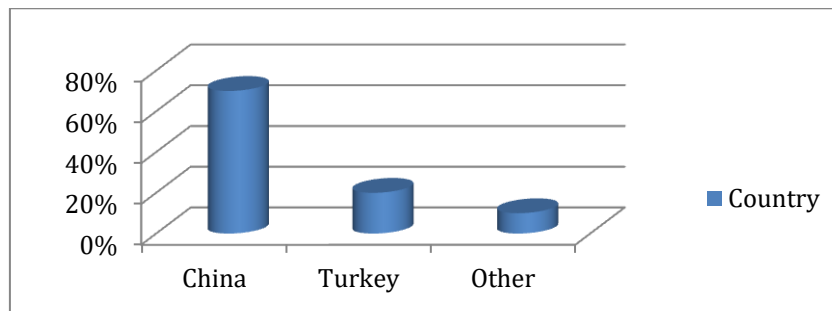
**Table 2.** Good released by the Customs Administration based on the application (s) for action approved by the GDC

ARTICLES	Trademarks	Quantity (pieces/ml)
Bags / wallets	Armani	200
Leather roll	LV	167ml
Sports shoes	LV	107
Bags / wallets	LV	247
Sports kits (children)	Adidas	115
	champion	5
BEER	Paulaner	7200l
Toilet paper	Regina	6200 kg

Source: Annual analysis for 2020 of the Directorate for the Protection of Intellectual Property (DMPI)

The above goods were released by the Customs Administration, for non-reaction by the right holders within the legal deadlines set out in DCM no. 651, dated 10.11.2017, of the Council of Ministers, “On the Implementing Provisions of Law no. 102/2014, the Customs Code of the Republic of Albania, 115 sports sets of the Adidas trademark, 5 sports sets of the Champion trademark and 167 ml leather rolls for bags which were challenged by the subject and were not taken to court by the holder of law. 7200 l of Paulaner brand beer and 6200 kg of Regina brand toilet paper are in court.

Meanwhile, according to this Directorate, they are waiting for destruction, after all the procedures are closed, 247 bags / wallets of LV brand, 107 sports shoes of LV brand, 200 bags / wallets of Armani brand, 600 sneakers of Champion brand as well as 34 Armani brand towels.



**Figure 2.** Graph of goods by the origin

Source: Annual analysis for 2020 of the Directorate for the Protection of Intellectual Property (DMPI)

During 2020, DMPI has proposed 10 risk profiles for entities suspected of infringing an intellectual property.

***Proposed recommendations and actions for the General Directorate of Customs (GDC) [4].***

The problems faced by the Customs Administration are very similar to those of the Police. Among some of the recommendations mention:

a) *Staff:* Increase the number of professionals in the customs administration staff and take measures to stabilize them.

b) *Training:* Active participation of customs employees in the training program organized by GDC. It is very important that the level of knowledge of customs officials involved in the implementation of IP rights continues to grow.

*c) Technical support:* Investments in technical support - a better computer background, use of new technologies (including laptops during inspections), participation in the creation of an electronic network between institutions guaranteeing the implementation of intellectual property rights, including the ACDO, Market Inspectorate, Police and GDC [9].

*d) International cooperation.*

*e) Customs warehouse (s):* Development of other customs warehouses, where blocked goods can be stored until the final decision of the court for their destruction, if it is not possible to store them in the warehouse of the offender.

*f) Legal framework:* Active participation in legislative changes, especially with regard to the Criminal Code and the Code of Criminal Procedure.

*g) Inter-institutional cooperation:* Better communication with other institutions involved in the implementation of IP rights - creating an accessible network by all institutions involved and including the necessary information (IP rights registers, copyright, tax information).

*h) Awareness:* Initiation of promotional actions (suggested earlier) in order to raise public awareness about counterfeit goods, piracy and sanctions imposed in this area. Close cooperation with the police and the Ministry of Justice is recommended.

#### ***Challenges for the future of the General Directorate of Customs***

- Construction of a proper administrative infrastructure within the national institutions involved in ensuring the protection of Intellectual Property through:
  - a. Strengthening the administrative capacity of the GDC and Customs Branches.
  - b. Updating the legal basis with bylaws such as instructions and manuals for customs officers. Approval of manuals and instructions.
  - c. Creating users in the database according to the specifics of each institution to obtain information which will serve to improve the quality of work.
- Installation of the full version of INES + software which will serve as a database and in processing requests for customs action in electronic format.
- Increase cooperation at national and international level with other actors involved in the protection of Intellectual Property rights.

- GDR staff training and increased cooperation at national and international level with other actors involved in the protection of Intellectual Property rights.
- Undertake public awareness campaigns on the importance of IPR.

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