

THE ROLE OF THE ALGERIAN CUSTOMS ADMINISTRATION IN COMBATING COUNTERFEITING

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Abstract:

Technological advancements, while convenient, have facilitated counterfeiting, posing threats to consumers and rights holders. Counterfeiting significantly impacts industrial property rights, harming the national economy and security. In Algeria, counterfeit goods that fail to meet standards cause financial losses and even fatal accidents. To combat this, countries, including Algeria, leverage customs administrations to address counterfeiting. The Algerian legislator has outlined the customs administration's role in tackling this issue, starting with a 1979 law, later amended, emphasizing its importance in protecting industrial property rights and mitigating the detrimental effects of counterfeit goods on the market and society.

key words: Customs; Counterfeiting; Intervention; Industrial Property; Protection.

Introduction:

One of the benchmarks for measuring the technological superiority of certain countries over others is their focus on individuals and the protection of their ideas and creations. This principle is enshrined in Article 74 of the Constitution of November 1, 2020 (Constitution of 1 November , 2020), which stipulates that the freedom of intellectual creativity, including its scientific and intellectual dimensions, is

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guaranteed, and that the law protects the rights arising from intellectual creativity. This principle is particularly significant given the current global technological competition, which often results in infringements on the intellectual rights of creators. According to the World Intellectual Property Organization (WIPO), intellectual property refers to "creative intellectual works, such as inventions, literary and artistic works, symbols, names, images, and industrial designs (WIPO, 2024)."

The issue of protecting intellectual property, along with the accompanying challenges of infringement and piracy, raises numerous international challenges. This has prompted various countries around the world to develop multiple means to combat such phenomena, particularly counterfeiting, which has become a serious scourge, especially in Algeria. Protective measures have been diversified at both the national and international levels, with the customs sector being one of the critical tools in combating this phenomenon and mitigating its impact on the national economy. Customs play a vital role in protecting the national economy and safeguarding consumers. Law 79-07 on Customs, as amended and supplemented, underscores this role, leading to the following research question:

**How does the Algerian Customs Administration contribute to
combating counterfeiting to protect intellectual property
products?**

To address this research question, the descriptive method was employed to provide a comprehensive overview of the customs administration's interventions in combating counterfeiting. Additionally, the analytical method was used to interpret and analyze the relevant legal texts, while the statistical method provided quantitative and qualitative data regarding the outcomes achieved by Algerian customs in relation to counterfeiting.

To achieve the study's objectives, the discussion will be divided into two main sections:

- Section One: Mechanisms of intervention by the Algerian Customs Administration to combat counterfeiting.

- Section Two: Measures taken by the Customs Administration upon detecting counterfeit products.

SECTION I: Mechanisms of Intervention by the Algerian Customs Administration to Combat Counterfeiting

The customs sector plays a fundamental role in protecting intellectual property rights and mitigating infringement (Article 3, 2017), especially as most counterfeit products originate from foreign countries and enter Algeria through various borders—land, sea, or air.

- Counterfeit goods placed under an economic customs regime or within a free zone fall under the jurisdiction of the Customs Administration, which is responsible for preventing their entry and circulation within the national territory (Bousguia, 2001, p. 96).
- Counterfeiting is defined as the fabrication of a mark identical to the original mark or the creation of a mark that closely resembles the authentic one to the extent that it misleads and attracts consumers, making them believe it is the original mark (Ezzeddine, 2017, p. 409).

Counterfeiting involves the fraudulent reproduction of an original item with the intent to deceive and mislead, attributing it to a false origin and causing confusion between the original and counterfeit items. It is essentially the total or partial replication of a work or product protected by intellectual property rights for the purpose of commercialization (Adel, 2015, p. 24).

Counterfeiting only constitutes a crime when it infringes upon rights protected by law, such as the rights of patent holders, trademarks, or industrial designs. The Algerian Customs Administration currently relies on Article 22, as amended in the Customs Code (Article 9, 2017), which prohibits the import and export of counterfeit goods that infringe upon intellectual property rights. It also bans the importation of goods bearing written statements or indications—on the products themselves, packaging, envelopes, labels, or other materials—suggesting that the goods originate from Algeria when they are, in fact, foreign. These goods are subject to confiscation upon importation, regardless of the customs regime under

which they are placed (It is worth noting that the text of Article 22, prior to its amendment, did not include the term "imitation" but rather referred to "counterfeiting." In light of the new amendment to the Customs Law, the legislator has rectified this oversight).

The intervention of the Customs Administration is carried out in two ways:

First Requirement: Intervention Upon Request by the Rights Holder

In this scenario, the intervention is initiated following a series of procedures summarized as follows:

Paragraph 1: Submission of an Intervention Request

The rights holder submits a written request to the General Directorate of Customs, requesting the Customs Administration to intervene and suspend the customs clearance process for goods suspected of infringing on their intellectual property rights (Article 4, 2002). This request enables the identification of such goods based on the information provided by the applicant. The written request also facilitates contact with qualified individuals to carry out formal examinations of the goods and ascertain their condition (Samir, 2015, p. 211).

The complainant is responsible for compensating the customs authorities and the individual subject to the complaint for any damages that may result from the unjustified suspension of the process (Article 2, 2002).

Paragraph 2: Rights Holder and Intervention Request Requirements

The rights holder can be:

- Any owner of a factory mark, trademark, patent, or other intellectual property rights, as well as any person legally

authorized to use these rights, such as a licensee or authorized representative.

- According to Article 4 of the 2002 Ministerial Decision of the Ministry of Finance, the request must include the following:
- A precise and detailed description of the goods to enable the Customs Administration to identify them.
- A document proving the applicant's ownership of the intellectual property rights concerning the goods in question.

Additionally, the rights holder must provide supplementary information to assist the Customs Administration in processing the request. These details include:

- The location of the goods or their intended destination.
- Identification of shipments and packages, along with the shipping and potential departure dates.
- The anticipated arrival or departure date of the goods.
- The means of transport used.
- The identity of the importer, supplier, or holder of the goods.

The request must be supported by documents that facilitate the Customs Administration in performing its duties. The following elements may also be included in the intervention request:

- The name and trade address of any foreign individual or entity involved in the production or distribution of the suspected goods.
- Information on the means of transport and the identity of the carriers.
- A detailed description of the goods, including a sample of the product or mark or copyright in the same form it appears on the goods.
- The name and trade address of any natural or legal person authorized to use the intellectual property rights.

Paragraph 3: Processing the Intervention Request

Upon submission of the file to the General Directorate of Customs, specifically the Directorate for Fraud Control, as stipulated in Article 4, Paragraph 4 of the aforementioned Ministerial Decision, the

relevant departments process the request and notify the applicant of their decision, either acceptance or rejection.

Article 5 of the Ministerial Decision states that the General Directorate of Customs will review the submitted request and immediately inform the applicant in writing of its decision. However, this article does not specify a timeframe for the review process.

If the Customs Directorate rejects the intervention request, it must provide a justification for its decision. Conversely, if the request is accepted, Article 7 of the same decision stipulates that the decision to accept the intervention request must be immediately sent to the customs offices potentially involved with the goods in question.

Paragraph 4: Provision of Guarantees

In accordance with Article 6 of the decision, the rights holder must deposit a guarantee to enable the Customs Administration to intervene and take the necessary measures. This guarantee aims to:

- Cover the potential liability of the Customs Administration toward the persons concerned in cases where the suspected goods are proven not to be counterfeit.
- Ensure payment of the costs incurred under this decision due to placing the goods under customs control.

As stipulated in Article 9 of the decision, goods placed under customs control may entail significant expenses for the Customs Administration, necessitating this guarantee.

Second Requirement: Automatic or Direct Intervention

During the inspection of goods, customs authorities may encounter indicators suggesting that the goods are counterfeit or infringe upon intellectual property rights. In such cases, they notify the rights holder and request the necessary documentation to prove ownership. When the clearance of suspicious goods is suspended, the authorities may seek the rights holder's assistance in providing relevant information and technical support to verify the counterfeiting of the goods. This

process includes inspecting the goods, analyzing materials, and destroying them if necessary. Additionally, they eliminate any absolutely prohibited goods and confiscate counterfeit items. Subsequently, customs authorities review the rights holder's request and communicate their decision. If the request is approved, they must specify the timeframe for taking the necessary measures. If the request is rejected, the rejection must be justified (Nadia, 2002-2003, p. 126). The Customs Administration may also engage an expert to inspect the suspected goods, thus enabling direct intervention (The rights holder, such as a trademark owner, may, if necessary and in accordance with Article 34 of Ordinance No. 03-06 dated July 19, 2003, concerning trademarks, request the appointment of an expert to confirm the authenticity of their trademark. Article 34 states: "The trademark owner may, by order of the presiding judge, seek the assistance of an expert, if necessary, to provide a detailed description of the goods allegedly bearing the trademark in a manner that causes harm, with or without seizure. The order is issued on the basis of a petition accompanied by proof of the trademark's registration."

When the seizure is confirmed, the judge may order the plaintiff to pay a security deposit".

SECTION II: Measures Taken by the Customs Administration Upon Detecting Counterfeit Goods

When the Customs Administration is notified of or independently discovers counterfeit goods, it undertakes the following measures:

First Requirement: Suspension or Seizure

Article 9 of the Ministerial Decision dated July 15, 2002, states: "When a customs office receiving an intervention decision, after consulting the applicant where necessary, identifies goods in a situation described under Article 1, matching the description in Article 2 of this decision, it suspends the clearance process or seizes these goods (Belhouari, 2008-2009, p. 120)."

The customs office immediately informs the department that reviewed the request, which in turn promptly notifies the applicant and the declarant.

If counterfeit goods are discovered during customs inspections, and their movement is flagged by customs offices, the clearance process is suspended, and the goods are seized. The rights holder is then notified of the situation in cases of automatic intervention.

According to Article 11 of the 2002 Ministerial Decision: "The affected rights holder, subject to an intervention request, must notify the competent judicial authority for a decision on the matter and immediately inform the relevant customs office of any precautionary measures taken."

Article 12 of the same decision states: "If the customs office responsible for inspecting the disputed goods is not notified of a judicial referral or precautionary measures within ten (10) open days from the suspension of clearance or seizure, clearance is granted, provided all customs procedures are completed, and the seizure is lifted."

This deadline can be extended by up to an additional ten (10) open days in exceptional cases. During the suspension or seizure period, the goods are placed under customs storage.

Second Requirement: Destruction of Goods and Other Measures

According to Article 14 of the aforementioned decision: "The Customs Administration takes the necessary measures, without prejudice to other legal remedies available to the intellectual property rights holder whose rights have been proven violated, to facilitate the following:"

(The continuation would elaborate on specific actions, as outlined in Article 14, regarding the destruction of goods and other relevant steps taken to address the infringement.)

- Destruction of counterfeit goods or their removal from commercial circulation in a manner that does not harm the rights holder.

- Taking all other measures against the goods aimed at effectively depriving the concerned individuals of any economic benefit from this operation (Samir, 2015, p. 221), provided that the Customs Administration does not permit:
 - The re-export of counterfeit goods in their current state.
 - The simple removal of illegally applied trademarks from counterfeit goods, except in special cases.
 - Placing the goods under another customs regime.
 - Counterfeit goods may be forfeited to the Public Treasury.

Article 22 bis 2, as amended by Law 17-04 of the Customs Code, provides for the destruction of goods as follows: "Without prejudice to the provisions of this law, goods of low value, as applied to minor fraud cases under Article 288 of this law, and confirmed to be counterfeit, shall be forfeited for destruction."

The Algerian legislator introduced Article 22 bis through Article 43 of the 2008 Finance Law, which states: "Suspected counterfeit goods are subject to suspension of clearance or seizure in the following cases:

- If declared for release for consumption.
- If declared for export.
- If discovered during inspection in accordance with the provisions."

Regarding the classification of intellectual property violations, Article 321 of Customs Law 98-10 stipulates that violations of Article 22 constitute third-degree offenses, leading to the confiscation of disputed goods and granting the Customs Administration powers to monitor the conformity of goods with international standards, whether local or imported.

Before its amendment, Article 318 of the Customs Code explicitly included violations of Article 22 related to the prohibition of importing all counterfeit goods associated with intellectual property rights or goods falsely suggesting Algerian origin. Such goods, regardless of the customs regime applied, were subject to confiscation and classified as third-degree offenses punishable by the confiscation of fraudulent goods.

However, following the amendment of Article 318 by Law 17-04 dated February 16, 2017, the explicit classification of intellectual property violations as third-degree offenses was removed.

According to Article 325 of the amended Customs Code, first-degree misdemeanors include acts of importation and exportation without declaration, detected during inspection and control, such as:

- Any violation of Paragraph 3 of Article 21 of this law... etc.
- Crimes identified during customs inspections of commercial postal parcels.

Prohibited crimes related to import and export include counterfeit, adulterated, or pirated goods as stipulated in Article 22 of the Customs Code, or commercial goods with falsified data or markings identified during inspections of parcels and postal envelopes, which infringe upon intellectual property rights.

It is evident that through the 2017 amendment to the Customs Code, the Algerian legislator has elevated the classification of customs offenses related to intellectual property protection from third-degree violations to first-degree misdemeanors.

Paragraph 1: Assessing the Level of Customs Interventions in the Fight Against Counterfeiting

One of the tasks of Customs is to protect intellectual property related to inventions, drawings, industrial models, manufacturing marks, and trademarks against counterfeiting, as well as to protect copyright and neighboring rights under the auspices of the World Intellectual Property Organization (WIPO) (Algerian Customs, 2024).

Table 01: Trademark Protection Requests and Alerts Issued

Year	Number of Requests for Interventions	Number of Counterfeit Alerts Established
2008	33	13
2009	33	16
2010	25	11
2011	50	32

2012	40	28
2013	50	16
2014	45	39
2015	45	35
2016	75	62
2017	50	45
2018	48	42
2019	26	22
2020	24	24
Total	511	372

Source: prepared by the researcher

Table 02: Detentions Made for Suspected Counterfeiting

Year	Number of Items Found to Be Counterfeit
2007	2,278,341
2008	1,594,152
2009	1,668,457
2010	379,774
2011	700,841
2012	781,653
2013	376,642
2014	586,750
2015	1,244,813
2016	802,695
2017	724,214
2018	455,516
2019	545,078
2020	385,714
Total	12,524,640

Source: prepared by the researcher

Table 03: Counterfeiting Detentions 2020: Breakdowns by Product

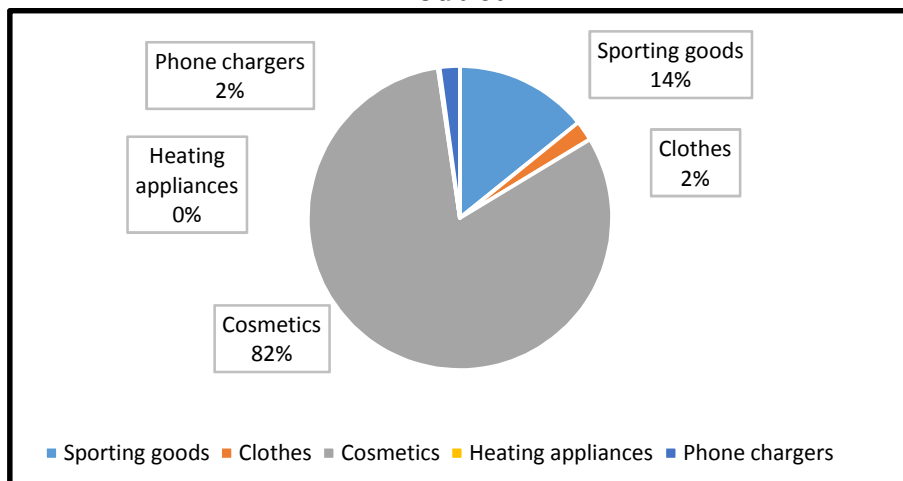
Product Nature	Quantity	Percentage
Sporting Goods	54,754	14.20%
Clothes	8,307	2.15%
Cosmetics	313,653	81.32%
Heating Appliances	750	0.19%

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Phone Chargers	8,250	2.14%
Total	385,714	100%

Source: prepared by the researcher

Figure 01: Counterfeiting Detentions 2020: Breakdowns by Product



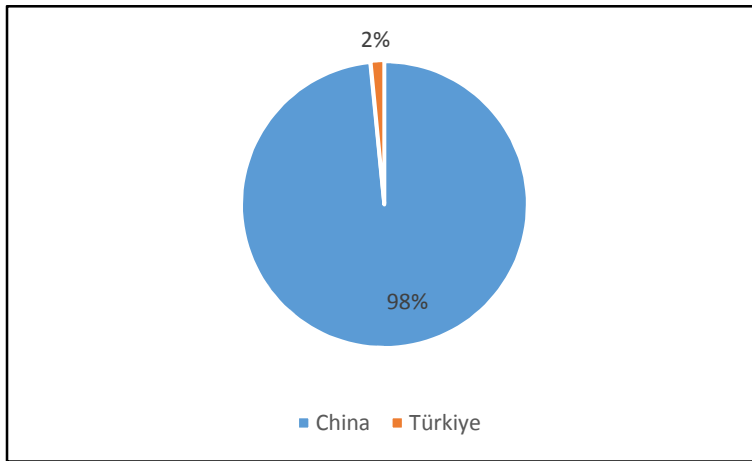
Source: prepared by the researcher

Table 04: Distribution by country

Country	Quantity	Percentage
China	379,663	98.43%
Türkiye	6,051	1.57%
Total	385,714	100%

Source: prepared by the researcher

Figure 02: Distribution by country



Source: prepared by the researcher

There was a slight decrease in the number of items detained in the 2020 financial year compared to previous years. This decrease is attributed to the reduction in commercial activities during this period, following the restrictive measures implemented as part of the COVID-19 pandemic response.

The closure of shops led to a significant reduction in demand, resulting in a decline in imports of various types of products, particularly those typically affected by counterfeiting.

Regarding the breakdown by product type, cosmetics and sporting goods predominate. It is worth noting, however, that although cosmetics account for more than 81% of the total number of items detained, this figure corresponds to a single detention carried out by the Annaba authorities, involving products originating from China.

As for the breakdown by country, as in previous years, a high proportion of products originate from China, which remains the primary source of items detained for counterfeiting.

Conclusion:

Customs officers are regarded as protectors of the national economy and are committed to combating any infringement on intellectual property rights, as such actions negatively impact local production, investment growth, and development. Counterfeiting has severe repercussions, both for national production and the public treasury.

Intellectual property rights represent a wealth of creativity, and like any form of wealth, they are subject to taxes and customs duties. Consequently, pirated goods not only harm the rights holder but also the state treasury. Therefore, combating this phenomenon protects both parties.

In addition to safeguarding the economy, customs control plays a vital role in protecting consumers from counterfeit and fraudulent goods, which can cause serious harm and potentially endanger public health.

This phenomenon, however, poses numerous challenges due to its continuous growth. This reality has compelled the Customs Administration to adopt an effective strategy to combat counterfeiting by utilizing material resources to detect counterfeit goods, training human resources, and enhancing international cooperation through various international agreements. These include the partnership agreement with the European Union, collaboration between Maghreb Union countries, and agreements with other foreign nations.

Despite the significant efforts made by the Algerian Customs Administration to address this issue, some shortcomings remain, likely due to rapid technological advancements and the fast-paced nature of the modern era.

Thus, we recommend the provision of advanced technological tools for detecting counterfeit materials. Additionally, customs services should be equipped with an international information system to protect intellectual property rights and embrace digitization as a fundamental tool in combating counterfeiting.

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