



Report on the scale of customs seizures
of goods suspected of infringing intellectual
property rights in Poland and
the European Union



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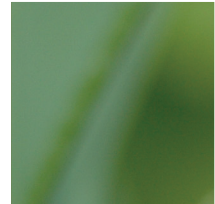
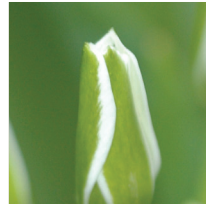
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Introduction

Statistics in recent years show a constant increase in customs seizures of counterfeit goods. Goods seized these days by the customs authorities are not only those that are usually associated with counterfeiting, such as cosmetics, clothing and CDs/DVDs, but they also include items such as medicinal products, foodstuffs and toys. Attempts to import counterfeit goods of this type can lead to serious risks to the life and health of consumers.

Effective action to prevent the import of counterfeit goods to the European Union market could lead to better protection of original products and increase consumer confidence in products purchased.

The brand of the goods, shown in the form of a trademark placed on the product, is currently one of the most important indicators of a product's value. Brands are treated as a type of certification by which the producer assures the consumer of product quality. A well known brand that is highly regarded by consumers has considerable value for the producer.

Due to the heavy outlay on brand creation, many entrepreneurs, in breach of the law, try to benefit from the reputation of branded products by copying and counterfeiting them. Not only the visible markings on products protected by copyright or rights under trademark registration are counterfeited but also technical (technological) solutions that are often protected by patent or that are registered as industrial designs.

Once goods have been launched on the market it is extremely difficult to restrict circulation. However, swift, decisive steps can be taken at the customs clearance stage to identify, report, and destroy many counterfeit goods.



DZP has extensive experience in monitoring and seizure of imported goods at the customs proceedings stage and in searching for importers, producers and shippers. It also has its own programme for negotiating with importers structured in such a way as to minimise the costs incurred by the client in destroying the counterfeit goods.

This aim of our report is to illustrate the scale of the phenomenon which is the production, distribution and transporting of counterfeit goods by giving a concise presentation of statistics. The data used were taken from inspections carried out in recent years by domestic, EU and international institutions.

The report was based mainly on the following:

- EC Report on EU Customs Enforcement of Intellectual Property Rights; Results at the European Border – 2009, available on the internet at: http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/statistics_2009.pdf;
- Customs seizure statistics from the Intellectual Property Rights Protection Section, Department of Customs Policy, Customs Office – Ministry of Finance – data hitherto unpublished;
- Customs Office Statistics Bulletins for 2007, 2008 and 2009, Ministry of Finance, April 2008, 2009 and 2010, available on the internet at: <http://www.mf.gov.pl/index.php?const=2&dzial=523&wysw=82&sub=sub20>,

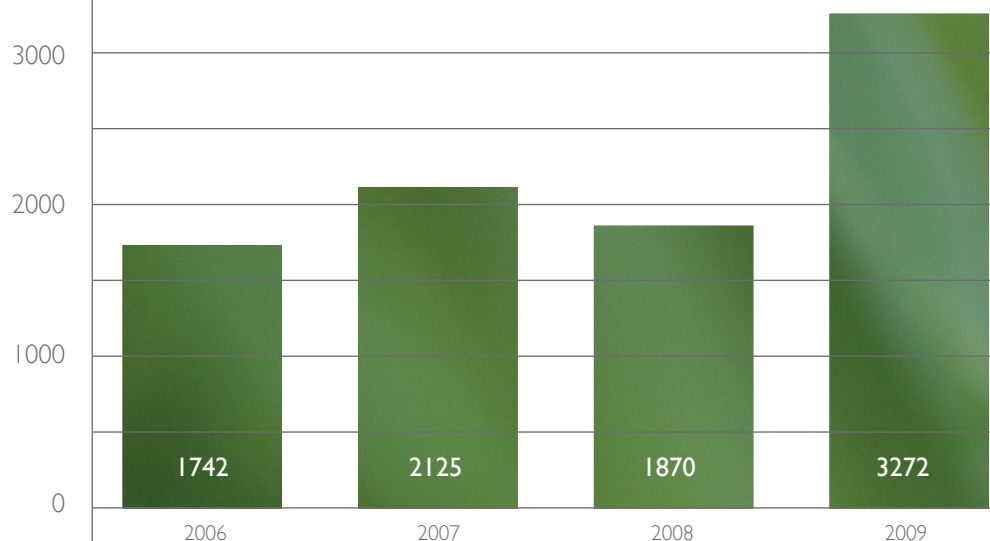


I. Customs seizure dynamics

I.1. Rise in the number of customs proceedings

In 2009, according to data issued by the Intellectual Property Rights Protection Section, Department of Customs Policy, Customs Office – Ministry of Finance, in **3,272 proceedings** related to infringement of intellectual property rights the Polish customs authorities seized **2,612,717 items** of a total value of approx. **€ 40,000,000¹**.

Number of proceedings initiated over detained goods suspected of infringing intellectual property rights in Poland in the years 2006-2009²



In 2009 there was a substantial rise over previous years in the number of proceedings over counterfeit and pirated goods, while according to Ministry of Finance data, in the years 2006-2009 a total of **35,037,823 articles** were detained.

European Commission statistics also show a strong upward trend in the number of proceedings initiated by the customs authorities of EU member states. In 2009, among the 27 member states Poland took **13th place** in terms of the number of registered customs proceedings relating to the protection of intellectual property rights³.

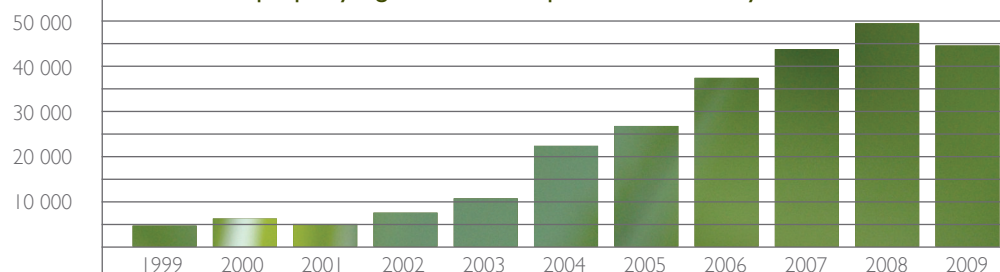
¹ Customs seizure statistics from the Intellectual Property Rights Protection Section, Department of Customs Policy, Customs Office – Ministry of Finance – data hitherto unpublished

² Ibidem

³ EC Report on EU Customs Enforcement of Intellectual Property Rights; Results at the European Border – 2009, p. 19



Number of proceedings initiated over detained goods suspected of infringing intellectual property rights in the European Union in the years 1999-2008⁴



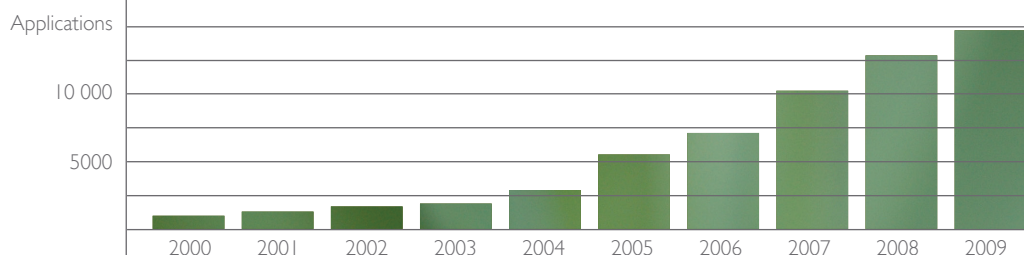
In 2009 there was a fall in the number of proceedings initiated in the EU over detained goods suspected of infringing intellectual property rights, the reason given being the global economic downturn and a 23% drop in imports to the EU from the prior year⁵.

1.2. Rise in number of applications filed for action to be taken by customs authorities

The losses of rights holders from counterfeit and pirated goods being brought onto the EU market are billions of euro. Practice shows that where there is a thriving market for counterfeit goods only constant monitoring of the flow of goods across the border and active participation in customs seizure proceedings leading to a block on the flow of counterfeit products can protect entrepreneurs from losing profits and consequently competitiveness on the market.

The rise in the number of customs seizures in face of the low number of proceedings initiated *ex officio* shows that rights holders need to monitor inflows of goods themselves. This is also supported by the constant increase in applications for customs seizures filed by private entities throughout the EU.

Number of applications filed for action to be taken by customs authorities in the EU in the years 2000-2009⁶



In 90% of all proceedings the grounds on which the customs authorities acted were applications filed by rights holders; only 10% of proceedings were initiated by the customs office *ex officio*⁷.

⁴ Ibidem, p. 9

⁵ Ibidem, p. 2

⁶ Ibidem, p. 7

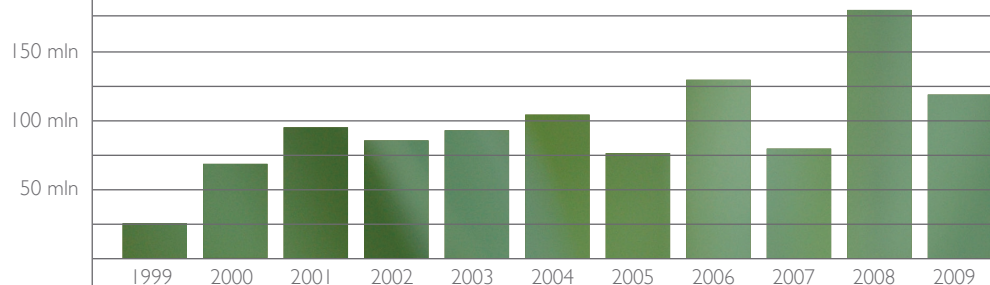
⁷ Ibidem, p. 9



1.3. Increase in quantity of detained goods

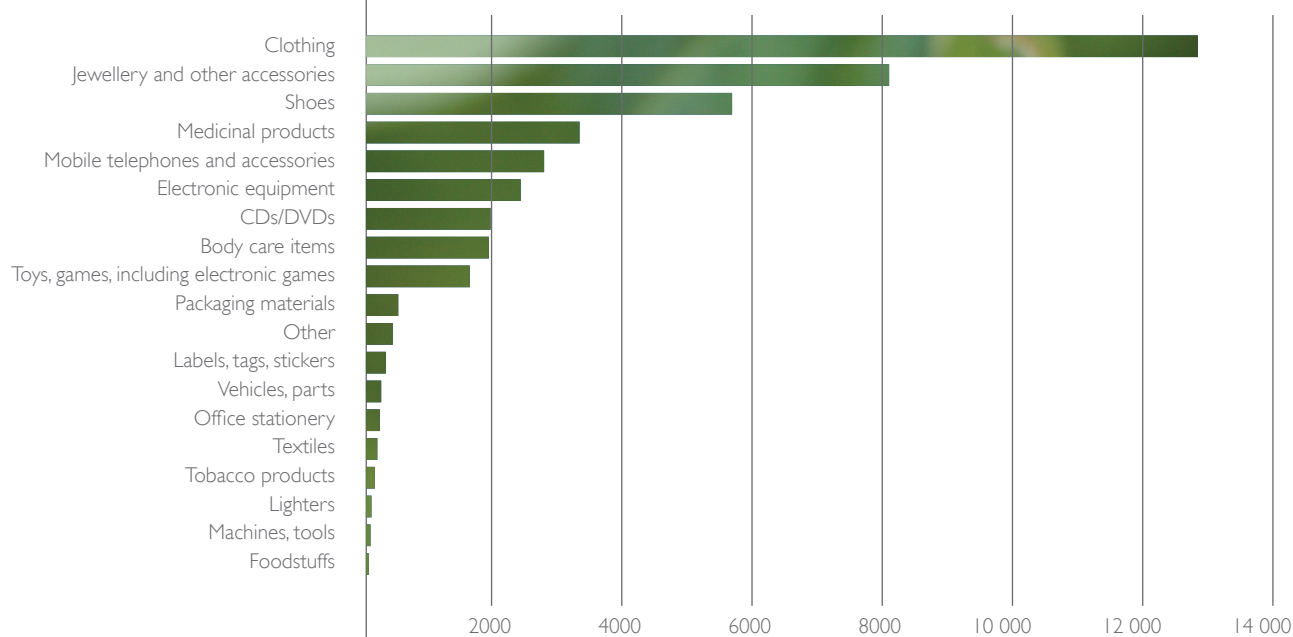
Over the past ten years, the rise in the number of customs proceedings has been accompanied by a rise in the quantity and thus the value of goods suspected of infringing intellectual property rights detained by customs. In the EU, in 2009 **117,959,298 articles** were detained on these grounds.

Number of articles detained in EU in the years 1999-2009⁸



2. Selected categories of goods suspected of infringing intellectual property rights

Number of proceedings initiated over detained goods suspected of infringing intellectual property rights in the EU in 2009 – broken down into type of goods⁹



⁸ Ibidem, p. 8

⁹ Ibidem



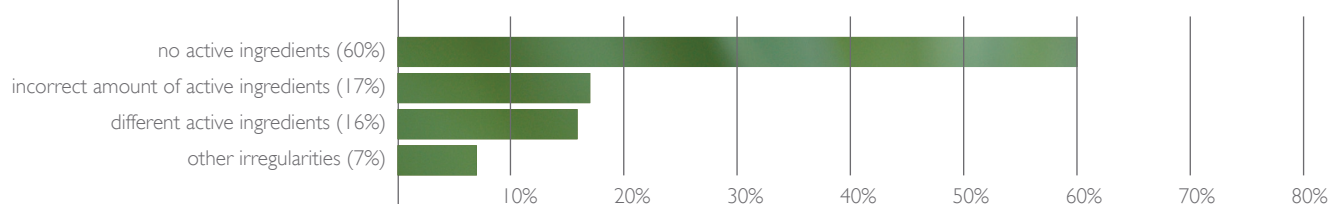
Categories of goods for which the highest number of proceedings have been initiated are currently clothing and accessories, jewellery and watches, electronic equipment, CDs/DVDs and pharmaceuticals.

Several of these categories are described in more detail below.

2.1. Pharmaceutical products

In recent years, there has been a significant increase in the dangerous phenomenon of counterfeiting medicines. In 2006 the World Health Organisation (WHO) operating within the United Nations system set up a special initiative called IMPACT (International Medical Products Anti-Counterfeiting Taskforce) which investigates infringements related to counterfeiting pharmaceutical products. WHO estimates that approx. 10% of medicines in the world come from illegal sources. Given the size of the global pharmaceuticals market the scale of this phenomenon is disturbing, particularly as the chemical composition of the vast majority of illegal medicines does not correspond to the composition of their legal equivalents¹⁰.

Irregularities in composition of counterfeit medicines¹¹



Most counterfeit medicines are brought into the European Union from the United Arab Emirates (73.21%), followed by India (22.60%). China, which is traditionally associated with infringement on a massive scale, is only in third place (1.41%)¹². The import of illegal medicines takes third place when it comes to quantities of detained goods among the category of products infringing intellectual property rights (after tobacco products, and labels, tags and stickers). This constitutes 10% of the total number of articles detained in the European Union. The number of customs detentions in this sector in 2009 was up 27.5% on 2008¹³, while the number of medical products detained in 2008 was 11,464,056¹⁴.

¹⁰ World Health Organisation statistics

<http://www.who.int/mediacentre/factsheets/fs275/en/index.html>

¹¹ http://www.wpro.who.int/media_centre/fact_sheets/fs_200311_Counterfeit+drugs.htm

¹² EC Report on EU Customs Enforcement of Intellectual Property Rights; Results at the European Border – 2009

¹³ Ibidem, p. 21

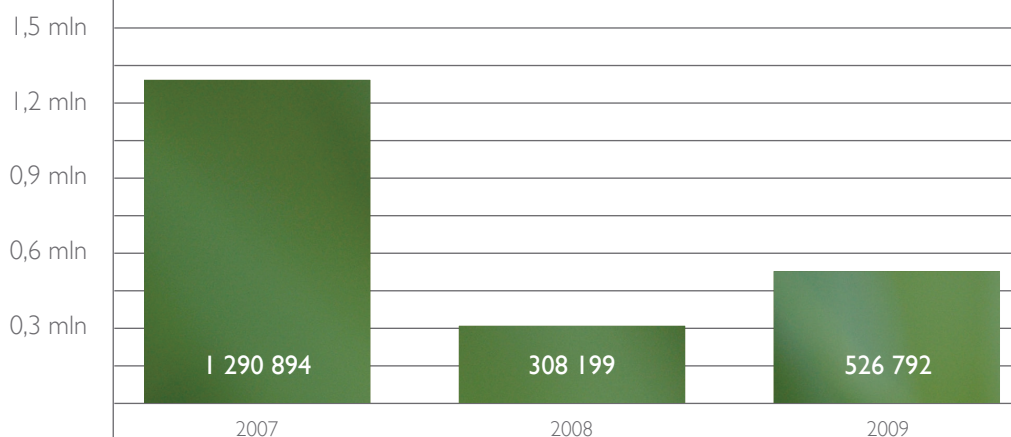
¹⁴ Ibidem, p. 22



Selected categories of goods suspected of infringing intellectual property rights

The counterfeiting of medicines is a growing problem for pharmaceutical firms all over the world. Given the huge costs involved in researching and improving products, medicine prices often depend on the outlay made by the producers. The relatively high prices of medicines means that it is tempting to buy cheaper substitutes that often turn out to be a danger to health as, e.g. sanitary requirements are not met during the production process. Scotland Yard estimates that **one kilogram of heroin** imported into Europe generates a **profit of approx. 200%**, while **one kilogram of counterfeit Viagra** imported from India **approx. 2,000%**¹⁵.

Value of pharmaceuticals detained by Polish Customs Authorities (in PLN) ¹⁶



Ministry of Finance statistics show that Polish customs offices are detaining more and more counterfeit medicines every year. In the years 2007-2009 customs officers seized pharmaceutical products of a total value of **PLN 2,125,885**¹⁷.

The scale of the problem is also demonstrated by the alarming results of a European Commission campaign with the cryptonym "Medi-Fake", during which from mid-October to mid-December 2008 customs inspections were intensified in 27 EU Member States focusing on illegal medicines. During this two-month period **34 million counterfeit pills** were seized¹⁸.

¹⁵ Le Monde, article in the 26 May 2007 issue

¹⁶ Customs Service Statistical Bulletins for the years 2007, 2008 and 2009, Ministry of Finance, April 2009 and April 2010

¹⁷ Ibidem

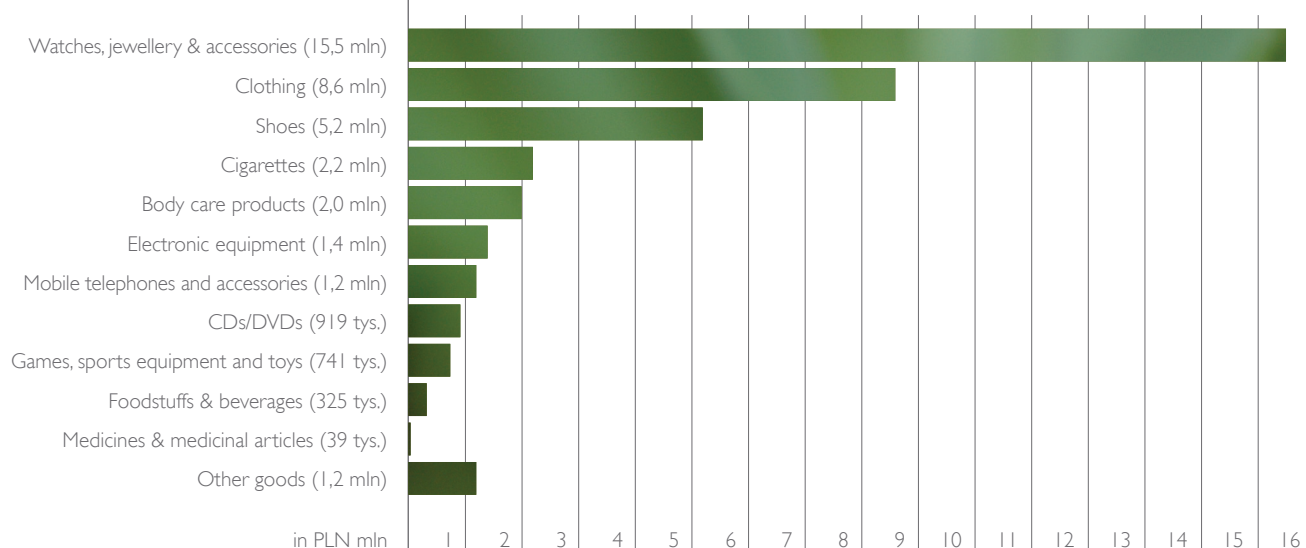
¹⁸ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1980&format=HTML&aged=0&language=en&guiLanguage=en>



2.2. Watches and jewellery

In 2009 in Poland watches and jewellery constituted a category which, in terms of value of goods seized, significantly exceeded other categories of products detained on suspicion of infringing intangibles rights. The value of watches and jewellery seized was over PLN 15,5 million.

Value of articles suspected of infringing intellectual property rights detained by Customs Authorities in Poland in 2009¹⁹



Throughout the European Union²⁰ between 2008 and 2009 the number of cases of customs detentions of counterfeit watches and jewellery rose by 18.8%. The only product sector showing a rise higher than watches and jewellery was shoes. In total in 2009 EU customs officers detained **1,828,913** articles in the watches and jewellery category²¹.

It is worth pointing out here that the high degree of public interest in exclusive imitation products could be a factor in the material increase in the import of fake luxury goods into Poland. The main remedy for this type of consumer behaviour is to restrict access of these goods to the market by effective action being taken when the goods are crossing the EU border, i.e. making use of the possibility for the goods to be detained by customs.

¹⁹ Ibidem

²⁰ EC Report on EU Customs Enforcement of Intellectual Property Rights; Results at the European Border – 2009, p.20

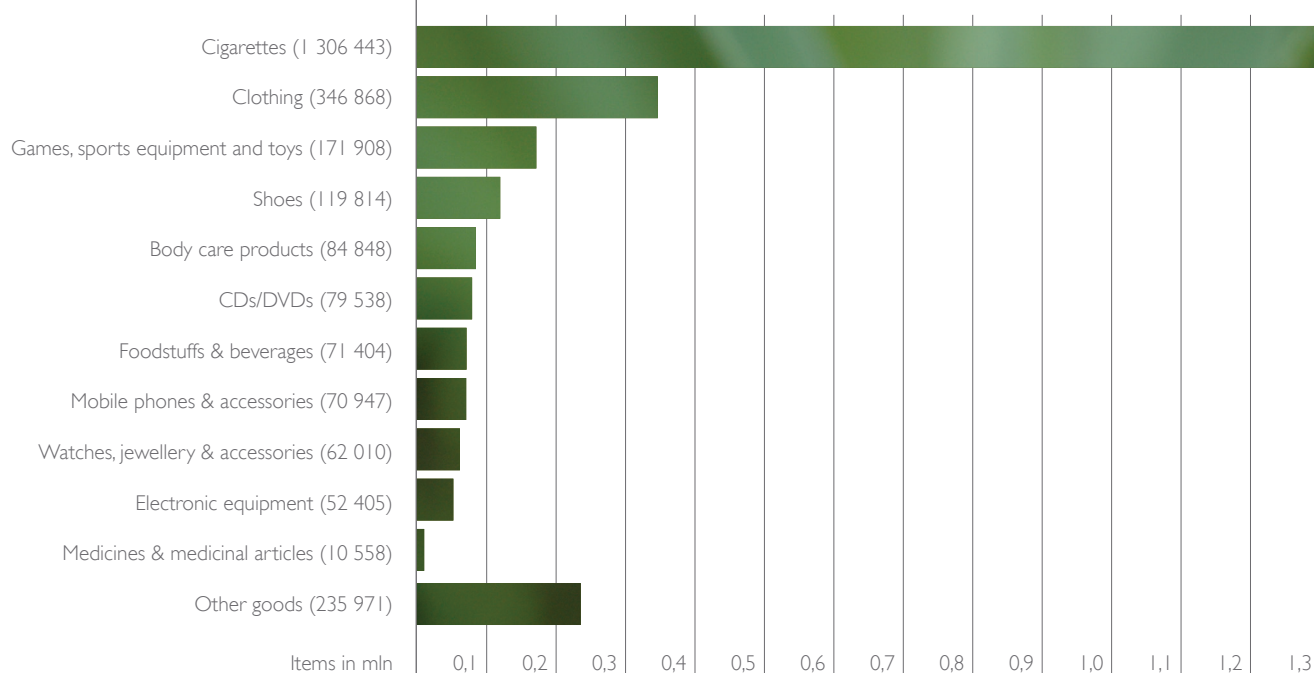
²¹ Ibidem, p. 22



2.3. Clothing

The share of clothing in the quantity and value of goods detained on the grounds of infringement of intellectual property rights is considerable. In 2009 clothing was the second category of detained goods by both number of articles detained (first place was taken by cigarettes) and value (watches and jewellery came first)²². Statistics show that in 2009 a total of **346,868** articles of clothing suspected of infringing exclusive rights under trademarks and utility designs²³ were stopped at the border of a total value of **PLN 8,641,800**.

Number of goods suspect of infringing intellectual property rights detained by the Polish Customs Authorities in 2009²⁴



The European Commission report²⁵ shows that the number of cases related to customs detention of clothing at the EU border over suspected infringement of intangible rights in 2009 was significantly more than the number of actions initiated over other product categories. In 2009 in the European Union, **13,147 actions** were initiated and **7,955,344 articles** of clothing were detained²⁶.

22 Customs seizure statistics from the Intellectual Property Rights Protection Section, Department of Customs Policy, Customs Office – Ministry of Finance – data hitherto unpublished

23 Ibidem

24 Ibidem

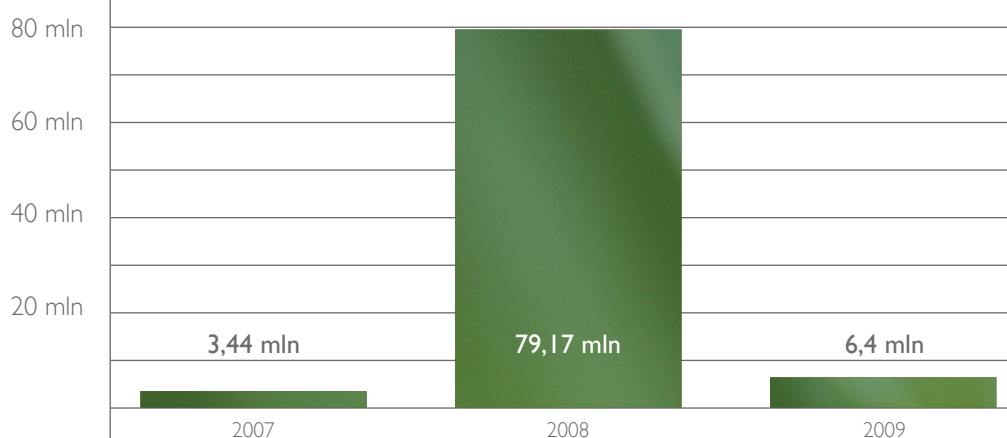
25 EC Report on EU Customs Enforcement of Intellectual Property Rights; Results at the European Border – 2009, p. 20

26 Ibidem

2.4. CDs and DVDs

CDs/DVDs are frequently detained during customs inspections as they are carriers of numerous intangibles rights. It could seem that, given the growing popularity of the internet and P2P networks as file exchange platforms, the illegal trade in physical data carriers with contents, the ownership rights to which are protected, would slowly start to disappear. Unfortunately, despite a fall in the number of CDs/DVDs detained, this number continues to be relatively high²⁷.

Number of articles detained in CD/DVD category in the EU in the years 2007-2009²⁸



The number of articles detained in the European Union in this product sector in 2008 was **79,170,506** (considerably more than in the other product sectors). The percentage rise in the quantity of CDs/DVDs detained at EU borders in 2008 as compared to 2007 was also very high (2,300%)²⁹.

In 2009 there was a perceptible drop in the number of goods detained in the CD/DVD product sector over 2008, though the level was still higher than in 2007 at **6,417,435** items, as compared to **3,442,195** items in 2007³⁰.

The independent information portal, GreenLeft, states that according to the European Commission one kilogramme of cannabis smuggled into Europe generates a profit of EUR 2,000, while the profit on one kilogramme of pirated CDs is over EUR 3,000³¹. It is worth pointing out here that in most European Union countries (including Poland) the level of social acceptance of the illegal trade in CDs/DVDs containing data covered by protected intellectual property rights is high against a remote risk of criminal charges.

27 EC Report on EU Customs Enforcement of Intellectual Property Rights; Results at the European Border – 2009, p. 21

28 Ibidem, p. 9

29 Ibidem, p. 12, p. 22

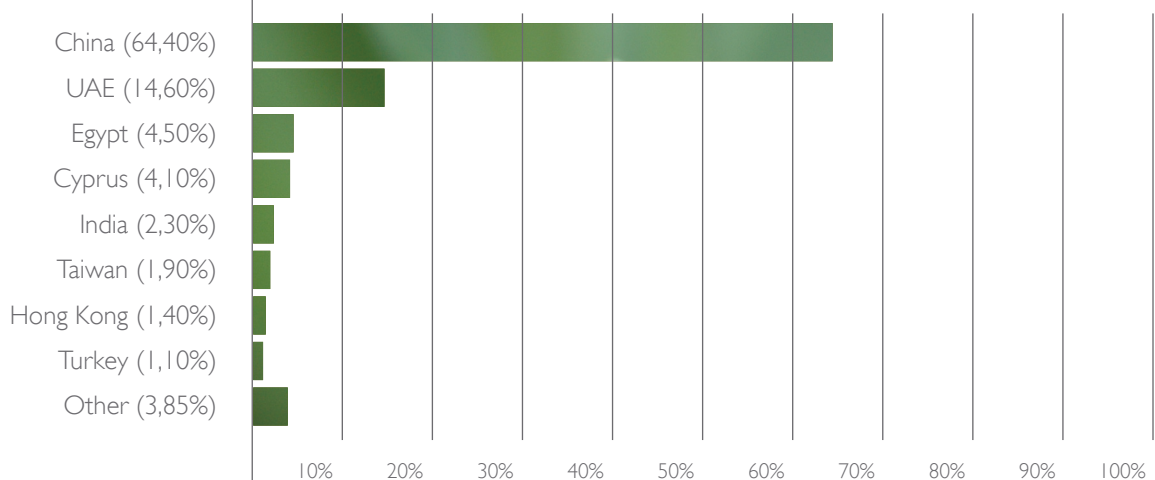
30 Ibidem

31 <http://www.greenleft.org.au/node/39591>

3. China as main exporter of goods detained on suspicion of infringing intellectual property rights

It is commonly known that the majority of counterfeit and pirated goods originate in Asian countries, including China. A recent European Commission report disclosed the huge scale of China's involvement in the market of counterfeit and pirated goods³².

Countries of origin of counterfeit and pirated goods suspected of infringing intellectual property rights detained in EU in 2009³³



In more than half the number of cases, China is the source for the import (**64.40%**) of pirated or counterfeit goods to the EU.

Estimates made by *Le Figaro* daily shows that approximately **3-5 million** workers in China are involved in producing pirated or counterfeit goods. It is also estimated that the flows from this activity constitute approx. **8% of the GNP of the People's Republic of China**³⁴. To compare, the value of Chinese GNP from the production of counterfeit goods is similar to the nominal value of the GNP of Australia or Turkey³⁵. Statistics given in the European Commission report show that the only product sector where China is not the leader in the export of pirated or counterfeit goods is imports to the EU of games and toys, medicines and foodstuffs³⁶.

The geographic origin of counterfeit goods shows that shipments of goods from the above said countries should be examined meticulously by customs as often as possible in order to disclose potential infringements. It should, however, be noted that country of origin of nearly 4% of goods cannot be determined.

³² EC Report on EU Customs Enforcement of Intellectual Property Rights; Results at the European Border – 2009, p. 13

³³ Ibidem, p. 13

³⁴ Le Figaro, article from the 23 May 2007 issue

³⁵ [http://en.wikipedia.org/wiki/List_of_countries_by_GDP_\(PPP\)](http://en.wikipedia.org/wiki/List_of_countries_by_GDP_(PPP)), dane za: CIA World Factbook

³⁶ EC Report on EU Customs Enforcement of Intellectual Property Rights; Results at the European Border – 2009, p. 26



4. How to combat this phenomenon?

4.1. Customs seizure

Customs seizures are the most effective method of preventing counterfeit goods being brought onto the Polish and EU markets.

The European Commission report on “EU Customs Enforcement of Intellectual Property Rights; Results at the European Border – 2009” confirms the major role played in detecting counterfeit and pirated goods by holders of intellectual property rights against the small number of smuggling cases prosecuted by the customs authorities *ex officio*.

Submitting an application for action to be taken by the customs authorities means that customs offices and customs chambers throughout Poland and the EU are notified of the intellectual property rights of the enterprise and detain shipments containing goods that could infringe these rights. The customs authorities then inform the rights holder or his attorney of the detention.

The detention is aimed at confirming whether the suspect goods do in fact infringe intellectual property rights. If they do, the rights holder can file a notification that an offence has been committed and demand that the infringer redress any damage that the holder has sustained (or bring other claims) by way of a civil action.

4.2. Training for customs officers

If counterfeit goods are not detected by the customs authorities, prosecution of the persons involved in trading in the fake goods and removing the goods from the market is considerably more difficult.

Given the scale of infringements indicated in the said report, customs authority officials and officers need to be duly informed of goods that could be deemed counterfeit or pirated products and of the methods applied by infringers. To this end, training should be organised in co-operation with the Intellectual Property Rights Protection Section, Department of Customs Policy, at the Ministry of Finance.

Co-operation with the Ministry of Finance and the active support of DZP's specialists in training for officials is a measure to effectively avoid counterfeit goods being brought onto the market.



4.3. DZP's services in customs seizures and training for customs officials

The services our lawyers offer enable costly litigation to be avoided, while attaining the desired outcome – the destruction of goods infringing intellectual property rights. Making use of professional advisory on customs seizure advisory also allows the costs of destroying goods to be shifted to the importer.

DZP's lawyers, having many years' experience in customs seizures for clients in various industry sectors, handle customs proceedings quickly and efficiently while minimising costs for the client.

We offer full-range advisory services, from filing applications for action to be taken by the customs authorities to monitoring the documented destruction of goods.

We are in constant contact with the customs authorities, whose powers include customs control of the largest ports in Poland: the seaport in Gdynia and the airport in Warsaw. The knowledge of DZP's lawyers of the structure and specific rules of procedure in the actions taken by the customs authorities allow the customs service to react swiftly and decisively to any and all cases of infringement.



DZP's team of intellectual property specialists offers the following services:

- full-range advisory on registering and monitoring industrial property rights in patent offices in Poland and in Alicante, Spain. We support our clients in protecting rights to intangibles with special focus on the European Union market, mediating, e.g. in filing applications for European patents, Community trademarks (CTM) and Community industrial designs – registered Community designs (RCD) and on registering rights in international proceedings – patents (PCT), trademarks (Madrid system), industrial designs (Hague system), and certificates of origin (Lisbon system);
- full-range advisory on the protection of intellectual property rights under Council Regulation (EU) 1383/2003 and particularly on filing applications for action to be taken by the customs authorities;
- representing clients in disputes run by the Patent Office, Community institutions, competent courts and arbitration tribunals over intellectual property rights;
- running training sessions for customs authority officials on key features of the client's original products.

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