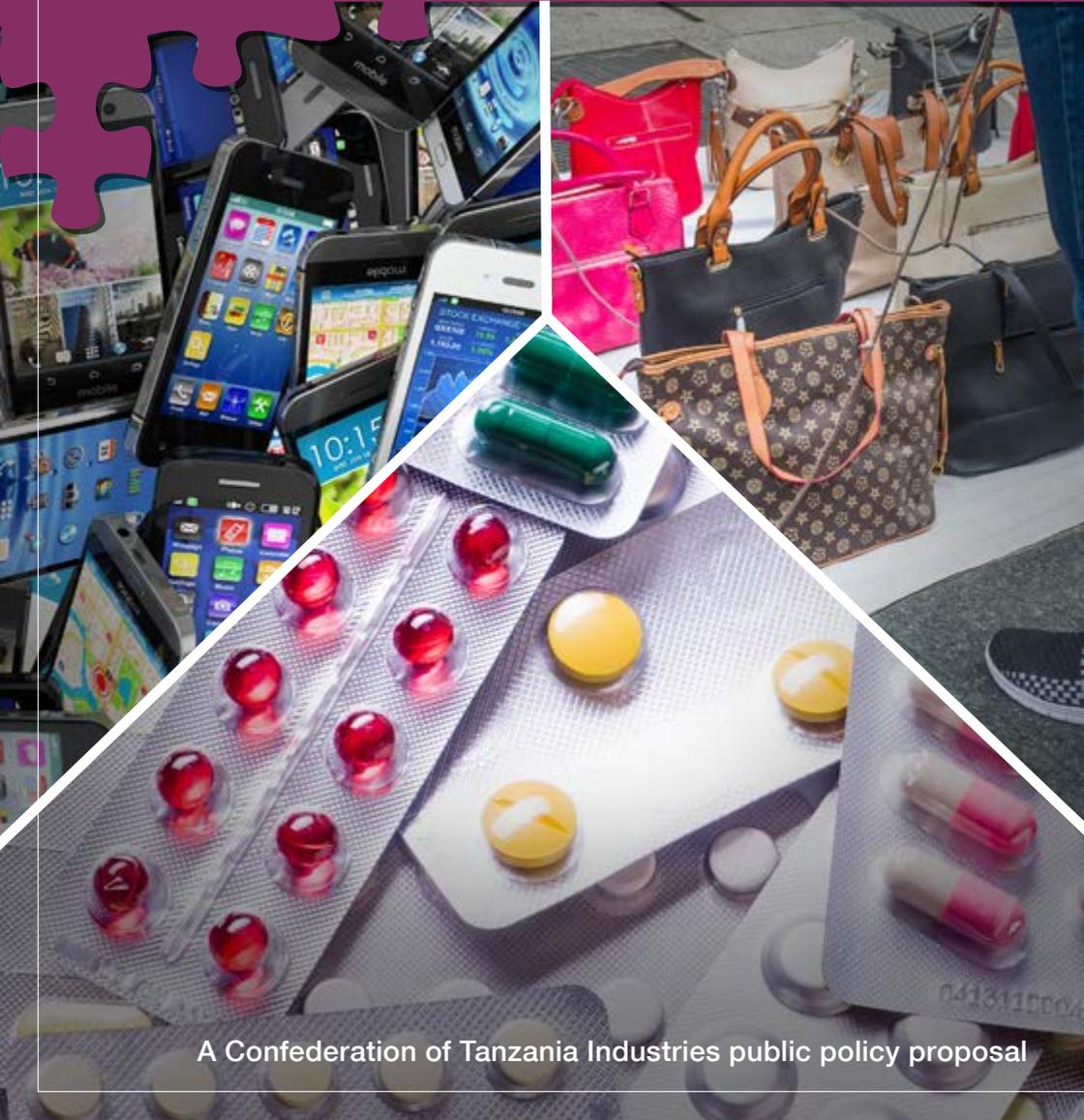




Confederation of
Tanzania Industries

Cut counterfeits: Promote growth



A Confederation of Tanzania Industries public policy proposal

Introduction

The Organisation for Economic Cooperation and Development (OECD) and the European Union Intellectual Property Office (EUIPO) report on Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact claims that the value of imported fake goods worldwide was estimated to be around USD 460 billion in 2013, or around 2.5 per cent of current global imports.

In Tanzania counterfeiting is a large and growing challenge. In the early 2000s, counterfeits were taking a large proportion of the market. The Fair Competition Commission (FCC) was launched in 2007 and, by 2008, had reduced counterfeit products to an estimated 18 per cent of Tanzania's merchandise trade. (CTI 2008), indicating that the Commission was having a positive impact in dealing with the problem of counterfeit goods and they suggest that it may now have fallen to 10 per cent.

However, key informant interviews conducted by CTI amongst manufacturers, businesses, multinational trade mark owners and consumers in 2015/16 suggest that a significant percentage of products on sale are believed to be counterfeit.

Some 92 per cent of international trade mark owners experience counterfeiting of their products and they estimate a consequent loss of market share of as much as 30 per cent. Schneider Electric, for example, estimates counterfeiting accounts for 44 per cent of electrical goods.

Between 2010 and 2016 the FCC seized 1,151 containers containing counterfeit products and carried out 138 raids in different premises and regions. Some 1,711 offenders were prosecuted under the Merchandise Marks Act, 1963. The total value of seized goods was TZS 2.9 trillion.

The counterfeit trade accommodates and further increases corruption putting the Government at risk of the country becoming a shadow economy. The counterfeit trade negatively affects the industrialisation of Tanzania.

Due to related health and safety risks, there is a growing disappointment amongst Tanzanians why the Government is not doing more to curb the illicit trade.

Due to globalisation, the illicit trade is now more complex as counterfeit goods are manufactured within the country as well as being imported, mainly from China. However, it is estimated that as much as 80 per cent of counterfeit goods enter Tanzania through the Port of Dar es Salaam

A close-up photograph of several ears of yellow corn cobs, some with green husks, arranged in a wire mesh basket. The lighting is bright, highlighting the texture of the corn kernels.

Impact of counterfeits on the economy

Loss of market share and turnover for Trade Mark owners

A majority of local manufacturers interviewed by CTI experience a loss of sales due to the counterfeiting of their products.

A survey of multinational TM owners (trading in pharmaceuticals, food stuffs, computers/ IT, mobile phones, electronic and electrical goods, alcoholic and non-alcoholic drinks, cosmetics, sportswear, spare parts and fertilisers) indicates that 92 per cent are experiencing counterfeiting of their products which, they estimate, has led to a loss of market share of as much as 30 per cent and significant reductions in annual turnover. Some 90 per cent report an increase of counterfeits in the Tanzanian market and 78 per cent state that counterfeiting of their products has harmed the good reputation of their brand and has resulted in a loss of consumer trust.

Loss of tax & employment

In 2008, the estimate of lost government revenue was as much as 25 per cent of total domestic revenue, meaning the Government was losing close to TZS 900 billion (\$818 million – at the 2008 exchange rate) per year due to tax evasion related to counterfeit and substandard goods. Survey respondents suggest that the Tanzanian Government's loss of revenue related to the counterfeit trade has continued to grow.

Findings from an in-depth case study on a manufacturer of alcoholic beverages indicate that a consequence of the counterfeiting of their brands has been a loss to Government of up to 50 per cent in tax revenue amounting to an annual loss of around \$4-5 million. According to the company, if its brands were better protected, they would have been able to invest further by building a new factory, creating direct employment for 200 workers and indirect employment for at least another 1,000 workers.

A manufacturer of electrical products was interviewed and indicated that it would have been able to build a bigger factory if their brand was better protected. The further development of the company's business would create indirect employment for at least 100 workers and direct employment for 20 workers.

It is worth noting that companies can themselves better protect their products by adding features to their products to make them harder to copy. Good examples are 'Star Breweries' from Nigeria who added stars to their glass bottles and the Tanzania Communications' Regulatory Authority (TCRA) with their nationwide switch-off of counterfeit phones from the networks by employing the International Mobile Equipment Identity (IMEI) number.

Loss of harvest & reduced food security

Some 75 per cent of the population depends on small-scale farming and agriculture is one of the leading sectors in Tanzania, accounting for 24 per cent of GDP, 30 per cent of exports and 65 per cent of raw materials for industry.

It is believed that 60 per cent of chemicals and 20-30 per cent of seed sold in Mbozi District are not genuine. Since most farmers cannot differentiate between genuine and counterfeit products, they innocently buy fake products. This partly accounts for why farmers' yields are still low despite government efforts to increase them.

Yield of maize declined from 25 to 8 bags per acre during the 2012/13 season, in part due to counterfeits. As the district council levies TZS 1,000 on each bag, the decline implies that the district lost TZS17,000 per acre that year.

(Source: Agricultural Council of Tanzania 'Addressing the Challenges of Counterfeit Agricultural Inputs in Mbozi District' Research Report submitted by the Centre for Policy Research and Advocacy (CPRA) University of Dar es Salaam, Business School (UDBS) 2016).

Loss of foreign direct investment

Some 91 per cent of the multinational trade mark owners and a majority of local manufacturers interviewed would consider further investment in Tanzania if their brands were better protected.

False economy: buying fakes costs more

Some 87 per cent of the multinational TM owners interviewed report that the selling price of the counterfeit product is 30-50 per cent less than the genuine product while 58 per cent report that the life-span of the counterfeit is 50 per cent less than that of the genuine product.

The majority of consumers interviewed explained that they purchase counterfeit goods due to ignorance and when short of money believing they will save while in reality they lose money due to the reduced life span of the counterfeit product.

Loss of property, life, welfare, health and safety for consumers

Some 80 per cent of multinational trade mark owners and the majority of local manufacturers interviewed report that the counterfeit products had negatively affected the health and safety of Tanzanian people in some cases leading to a loss of property due to fires.

A significant reduction of counterfeit goods will generate more income for all parties.



Policy & legislation

Legislation

There is legislation regarding counterfeits enshrined in a large number of Acts, though it is not always consistent. Furthermore, having it spread across so many Acts makes it hard to follow the legal requirements. Acts include:

- Fair Competition Act 2003(aiming to improve capacity of the FCC Anti-Counterfeit Division to deal with counterfeit goods)
- Tanzania Food, Drugs and Cosmetics Act 2003
- Merchandize Marks Act, Cap 85
- Trade and Service Marks Act, Cap 326
- Industrial and Consumer Chemicals (Management & Control) Act 2003
- Environmental Management Act 2004
- Standards Act, 2009
- Penal Code Cap 16
- Copyright and Neighbouring Rights Act, Cap 218
- Patents Act Cap 217
- Tanzania Revenue Authority Act, Cap 399
- East African Customs Management Act, 2004
- Criminal Procedure Act, Cap 20 [R.E.2002]

CTI believes that it is important for the manufacture of and trade in counterfeit goods to remain within the criminal law. Enforcement and close co-operation between MDAs is essential to reduce trade in counterfeits. However, we also believe that the law and fines are not sufficiently punitive and that courts should be able to impose sanctions with strong deterrent measures. There may be merit in the establishment of a dedicated IPR court.

Law enforcement and consumer awareness

A lack of consumer awareness increases the demand for counterfeit goods. CTI findings from a survey of consumers and manufacturers indicate that 40 per cent of consumers understand what constitutes a counterfeit while 50 per cent are unaware and confuse substandard goods with counterfeits. Some 98 per cent of consumers admit that they are not always able to identify fakes. Some 81 per cent of manufacturers interviewed understand the concept of counterfeit goods. It should be noted that:

- Some 92 per cent of consumers interviewed are not familiar with the Merchandise Mark Regulations Act of 2008 which prohibits counterfeit goods and 87 per cent of consumers did not report to any Authority after discovering that they had purchased counterfeit goods;
- Some 60 per cent of consumers stated that they do not know which MDAs are responsible for fighting counterfeits while 40 per cent mentioned that the Tanzania Bureau of Standards (TBS) is the main MDA responsible in cases of IPR infringements;
- Some 34 per cent of manufacturers stated that the MDA responsible for fighting counterfeits is TBS; 23 per cent named the Fair Competition Commission (FCC); and 21 per cent is unaware which MDA is responsible for fighting counterfeits.
- Some 80 per cent of international TM owners have worked with the FCC in the fight against the counterfeits.

Links between the counterfeit trade and organized crime, terrorism and funding of conflict zones

There is evidence in Africa of direct links between the trade in counterfeit goods and other crimes such as the trade in narcotics and diamonds, money laundering, tax and duty evasion, terrorism, human trafficking, kidnapping, murder, the recruitment of child soldiers, mass rape, slavery and torture and funding of conflict zones. (Interpol 2014).

These findings provide arguments for a consumer awareness campaign which could encourage consumers to fight against counterfeits.



Conclusions and recommendations

In Tanzania counterfeiting is a large and growing challenge which the government needs to address. The significant reduction of counterfeit goods in the market will protect the health and safety of the consumers, benefit the economy and the industrialization process and will significantly improve Government revenue and fair trading in the country. Some actions can be undertaken relatively swiftly; others, we recognise, will take longer. CTI therefore now recommends:

Consumer education

CTI recommends a nationwide awareness campaign to explain:

- The difference between counterfeit and substandard products.
- The effects that the counterfeit trade has on the consumer and the economy.
- Which MDAs to contact (and how) after purchasing a counterfeit or substandard product.

Enhance resource & capacity of FCC's Counterfeit Division

CTI recommends strengthening the FCC and increasing its presence in the country, through:

- Zone Offices permanently staffed with inspectors in Tanga, Mbeya, Arusha and Mwanza.
- FCC inspectors to be based at the Port of Dar es Salaam 24 hours per day, 7 days a week.
- Close cooperation at border points with the TRA and other MDAs.
- Close cooperation between the FCC and similar authorities in Zanzibar to combat counterfeits.

Anti-Counterfeit Task Force

CTI recommends that the Anti-Counterfeit Task Force should:

- Put procedures in place to ensure tighter controls and close cooperation at all ports of entry.
- Promote co-operation between the TRA, FCC, TFDA, TBS and other MDAs.
- Promote a close working relationship and the sharing of intelligence between MDAs and Traffic Police through checkpoints and by doing so address the challenge of Tanzania's porous borders.
- Seek closer cross border co-operation and sharing of intelligence between law enforcement agencies in Tanzania, Uganda, Kenya, Zambia, DRC, Rwanda, Burundi, Malawi and Mozambique.

Create a Public Private Advisory Committee on Counterfeits

CTI recommends the creation of a Public Private Advisory Committee on Counterfeits involving the local and international private sector, MDAs (Anti Counterfeit Task Force) and Diplomatic Missions in order to create a close and continuous working relationship between all stakeholders.

- Education of private sector by MDAs on procedures, the legislation available, the cost and procedures to lay a complaint, settle in/out of court, etc.
- Establish realistic expectations re responsibilities and capabilities of MDAs.
- Brand owners will assist MDAs by better protecting their products from being counterfeited.
- IPR owners need to work closely with and educate MDAs on how to recognise a counterfeit product.
- Lack of feedback and follow-up from MDAs after complaints have been filed i.e. transparency and accountability.
- There are incidences of corruption within MDAs which leads to questions of what procedures are in place and how to report such incidences
- How to increase the percentage of successful enforcement actions.
- The continuation of relationships with stakeholders like Interpol and the WCO is necessary for further investigative training on fighting IPR infringement; the newly gained knowledge needs to be implemented and evaluated by MDAs.

Destruction of seized counterfeit goods

CTI recommends the formation of a Working Group, in close cooperation with the National Environmental Management Council (NEMC), which will address:

- Challenges of storage and destruction of seized counterfeit goods
- (Legal) possibilities to recycle counterfeit goods.
- Guarantee and proof that seized goods do not re-enter the market (IPR owners to be present during destruction or recycling of seized goods).

Create Legal Advisory Committee & review the legislation

Create a Legal Advisory Committee involving the Judiciary, the Directorate of Public Prosecutions (DPP) and legal departments of respective MDAs to streamline and review the legislation and have clear definitions on counterfeit goods (CTI 2012) and agreement on the protection of intellectual property rights.

Continuous efforts should be directed within the East African Community towards the agreement and implementation of an apex law for the EAC.