

POSITION PAPER ON

**EFFECTS OF COUNTERFEIT AND SUBSTANDARD GOODS ON THE TANZANIAN
ECONOMY:
THE CASE OF MANUFACTURING SECTOR**

A Report prepared by the Confederation of Tanzanian Industries
(CTI)



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Executive Summary

Tanzania like any other nation around the world is suffering enormously from the adverse effects of the flooding of counterfeit and substandard products in its domestic market. The impact of counterfeit and substandard goods has all along been felt from the economic (e.g. dwindling government revenues), social (health problems) and by government departments, manufacturers and traders in the business community and private sector; and more so by the general public, particularly the end users and/or consumers. In addition, the influx of counterfeit and substandard products in the country has undermined the efforts by the government to create conducive investment climate and attract genuine foreign as well as local investors in the manufacturing sector and promote serious manufacturing of goods in Tanzania, because they are naturally discouraged by the mountains of sub standard and counterfeit goods of low quality, and which undercut the market price of good quality and genuine products. The business and trade environment has been very ugly and unattractive thus promoting unfair competition among key players, and undermining economic growth.

Counterfeiting and substandard goods is a real and serious problem in the world in general, and Tanzania in particular. In view of the magnitude of the problem which has also been growing considerably, the Confederation of Tanzanian Industries (CTI) with financial support from the BEST commissioned the Economic and Social Research Foundation (ESRF) to undertake a study on the effects of counterfeit and substandard products on the Tanzanian economy focusing on the manufacturing sector. This is one of the first studies in Tanzania which focuses on impacts of counterfeit and substandard goods on the economy. The findings from this study are intended to inform the policy process and particularly use it to plead to the Government to take corrective measures. Thus, the overall objective of this study is to provide information and well-grounded arguments that will persuade the Government to take the necessary steps to reduce the proliferation of counterfeit and substandard goods in Tanzania.

Counterfeit products are products, which are unauthorized imitations of branded goods intended to be passed off for an original with the purpose of defrauding or deceiving the consumer of the said product into believing that it is the original product. A counterfeiter causes the owner of the brand name to effectively lose a customer by misleading the said customer into purchasing a counterfeit good (in most cases substandard) in the belief that he is purchasing the genuine article.

Standardization is defined by the International Organisation for Standardization (ISO), as an activity of establishing, with regard to actual or potential problems, provision of common and repeated use, aimed at the achievement of optimum degree of order in a given context. A standard is intended to make a product, process or service fit for its purpose. Such aims can be, but are not restricted to, variety control, usability, compatibility, interchangeability, health, safety, protection of environment, trade etc. Therefore standards by definition are anything taken by a general consent as a basis of comparison, a grade or level of excellence. A substandard product is a product that fails to meet the requirements of the stated characteristics in the relevant standard.

This study was conducted in areas with high trade concentration which are also entry points. Thus, 6 regions of Tanzania Mainland and Zanzibar were selected. The Mainland regions were Dar-es-Salaam, Arusha, Mbeya, and Kilimanjaro. Others are Tanga and Mwanza. In Zanzibar, the survey was conducted in Unguja Island only. To collect counterfeit related information and understand its production and marketing framework, interviews were conducted to a total of 225 individuals and 61 institutions within the 6 Mainland regions and Zanzibar. These individuals and institutions were drawn from 6 major targeted categories of stakeholders namely, Manufacturers, Traders, Importers, Government Departments, Regulatory Institutions, and end users (or consumers).

Tanzania's Development Vision 2025 aspires to create a strong, diversified, resilient and competitive economy. In this regard, such an economy should be able to effectively cope with the challenges of development, including confidently adapting to the challenging market and technological conditions in the regional and global economy. The economic reform programmes implemented especially since 1986 have committed the country to a market economy whereby the private sector is expected to play an important role in productive activities thus creating incomes, generating employment and stimulating economic growth. The Government is expected to create an enabling environment for private sector growth, including policy and regulatory functions and ensuring a fair and level playing field for all players in the economy.

Tanzania has several institutions that are important in any effort directed at addressing the problem of counterfeit and substandard products. The main ones are Tanzania Food and Drugs Authority (TFDA), Tanzania Bureau of Standards (TBS), Business Registration and Licensing Agency (BRELA), Tanzania Revenue Authority (TRA), Fair Competition Commission (FCC), and Attorney General's Chambers (AGC).

In Tanzania, the issue of rampant counterfeits is a recent phenomenon. People have started to question whether Tanzania has been turned into a dumping ground for counterfeits and sub-standard goods. Tanzania began market-based economic reforms in 1986 that included, among many policies, trade liberalization, privatization of public enterprises, and deregulation. During this period, there was misunderstanding of the "free market" system and how it operates. Through out, the concept of liberalization and/or free market system has been misconceived. Some traders and importers called the new system "free economy" and took advantage of every opportunity to supply consumer goods, regardless of the quality and authenticity of the goods. Used goods were imported along with new goods. At this juncture, Tanzania became a haven of counterfeits and substandard goods.

There are many reasons why there is a proliferation of counterfeit and substandard products in Tanzania. The appropriate legal framework and enforcement to support the market economy was absent at the initial stages, especially in early 1980s.

There were also poor regulations and planning after the trade liberalization policy. What actually took place was that there was no sequencing of the reforms as the liberalization process was forced upon the political structures by external forces rather than allow for a systematic and logical approach. Related to absence of awareness are the low literacy rate and particularly the expertise on these goods, most consumers and law makers cannot

distinguish between a genuine product and a counterfeit thus making it easier for counterfeit and substandard goods to flourish. A big and growing market for both counterfeits and substandard goods in Tanzania is also caused by their very nature of commanding low prices compared to genuine ones.

In terms of the scale of the problem, and based on field responses from traders, importers, manufacturers, regulatory institutions and consumers, a rough estimate would put counterfeit products at 18 percent (Field Responses range from 15 to 20 percent) of Tanzania's merchandise trade. In dollar terms, counterfeit products might be US\$ 525 million per annum (Field Responses range from 450 million to US\$ 600 million per annum). Counterfeit products are mainly originating from Asian countries such as China, India, U.A.E. (Dubai) and Indonesia, Taiwan and Thailand. There are some African countries also in the list. They include Kenya, South Africa, Tanzania, Mozambique and Malawi.

Estimation of loss in government revenue was difficult to assess because most respondents are not aware of the magnitudes of tax evasion due to counterfeits or substandard goods. A summary of responses from all surveyed areas provide estimated loss in government revenue to be between 15-25 percent of current total domestic revenue. If this level is used, it means the Government is losing between Tshs 540–900 billion per year due to tax evasion related to counterfeit and substandard goods. Impact on employment and productivity was also difficult to estimate as very few respondents were in a position to provide indicative figures on the extent of employment opportunities lost as well as productivity loss due to counterfeiting in the country. Also foreign investment is necessary and beneficial to Tanzania both in terms of employment generation and technological transfers. Field estimates from respondents put the loss in employment at 30-40 percent of total civil service workforce or over 140,000 individuals. In addition, the survey observed many health and safety impacts of substandard and counterfeit goods on the people of Tanzania.

Some measures to address the problem have been taken. The foremost approach has been to alert the community about the presence of counterfeit products and substandard products. TFDA, FCC, TBS, GCLA, BRELA or the manufacturers whose products have been counterfeited normally does the advocacy and campaigns against counterfeiting. This also involves surveys to identify and find the counterfeiters. In its efforts to curb the entry of substandard products in the local market, TBS conducts surprise market surveillances out of which people found selling sub-standard products are dealt with accordingly. Another step is the opening of offices at border points and certifying products in their original countries to make sure that all products abide by respective Tanzania or international specifications before they enter the local market.

To be able to address the counterfeit and substandard goods crisis in Tanzania, the Government needs to formulate and implement a course sensitization and creation of public awareness on the negative effects on the economy of counterfeit and substandard goods, train large numbers of experts who should be deployed in different Ministries, especially the Legal Enforcement Agencies (LEA's), Punishment for offenders should be scaled up, and there is need to have institutional coordination in sharing information by all stakeholders.

1.0.0 BACKGROUND AND INTRODUCTION

1.0.1 Background

Counterfeit and substandard products circulating alongside genuine quality ones are a serious global, social and economic problem. The World Intellectual Property Organisation (WIPO) has estimated the world value of counterfeit goods to be growing from US \$5.5 billion in 1982 to US \$ 750 billion in 2007.

Currently, counterfeit products represents up to 15 percent of the World Trade. Counterfeiting is the world's greatest form of theft. The global efforts to deal with counterfeits have not been successful because trade regulations are inadequate and inefficient. A global fair trade regime must be developed to be able to address counterfeits. The introduction of Trade Related Intellectual Property Rights (TRIPS) agreement in the World Trade Organization (WTO) was inevitable. Since the national legal instruments do not provide for adequate protection and enforcement against counterfeits, it is advocated that the TRIPS provisions be locally incorporated to address this inadequacy¹.

Tanzania like any other nation around the world is suffering enormously from the adverse effects of the flooding counterfeit and substandard products in its domestic market. The impacts of counterfeit goods have all along been felt from the economic (e.g. dwindling government revenues) to social (health problems), government departments, manufacturers and traders in the business community and private sector, and more so by the general public particularly the end users and/or consumers. In addition, the influx of counterfeit and substandard products in the country has undermined the efforts by the government to create conducive investment climate and attract genuine foreign as well as local investors in the manufacturing sector and promote efficiency and effectiveness in manufacturing of goods in Tanzania.

In view of the magnitude of the problem of counterfeits and substandard goods, the Confederation of Tanzanian Industries (CTI) with financial support from the BEST – decided to undertake a study on the effects of counterfeiting on the Tanzanian economy focusing on the manufacturing sector. This was the first study in Tanzania which focused on impacts of counterfeiting and substandard goods on the economy.

The overall objective of the study was to provide information and to provide options to well grounded arguments to Government so that it can take necessary measures to reduce the availability of counterfeit and substandard goods in Tanzania. More specifically, the study aimed at:

- Clarifying the scale and impact of counterfeit goods,
- Assessing Tanzania's approach to reducing the counterfeit problem (legal, regulatory and implementation) and identify any weaknesses,

¹See for example ESRF: Report on Globalization Project's Retreat (2003); (Ringo, Frederick S. 1994), "The Trade-Related Aspects of Intellectual Property Rights Agreement in the GATT and Legal Implications for Sub-Saharan Africa Perspective Policy Issues for the World Trade Organization." *Journal of World Trade* 28, no. 6

- Identifying possible reforms (legal and implementation) that Government could adopt to reduce the availability of counterfeit and sub-standard goods, and
- Building CTI's capacity to advocate for Government action to reduce the scale of counterfeit and substandard goods in Tanzania.

Enhanced joint efforts to arrest such malpractices are inevitable to promote fair and therefore more productive competition in the country which is necessary to stimulate economic growth. This is a necessary condition for poverty reduction.

1.0.2 INTRODUCTION

1.0.3 The Study Area

The study was conducted in 6 regions of Tanzania Mainland and Zanzibar. The Mainland regions were Dar-es-Salaam, Arusha, Mbeya, and Kilimanjaro. Others were Tanga and Mwanza. In Zanzibar, the survey was conducted in Unguja Island only.

Two criteria were used to select the surveyed regions. Firstly, the regions with relatively high trade concentration were selected. Secondly, the research team targeted the border points. The two criteria were mainly meant to enable the research team capture adequate information on trade and transactions of manufactured products in Tanzania. All the 6 regions and Zanzibar are border points where trade is also highly concentrated relative to other areas in the country.

1.0.4 Sample Size, Sampling Methods and Interviews

A total of 225 individuals and 61 institutions were visited and interviewed during the field survey in the 6 Mainland regions and Zanzibar. These individuals and institutions were drawn from 6 major targeted categories of stakeholders namely, Manufacturers, Traders, Importers, Government Departments, Regulatory Institutions, and end users (or consumers).

Several types of sampling methods were utilized in this study. Simple random sampling was applied to the general public to avoid biasness. Manufacturing firms interviewed were selected on the basis of stratified sampling and purposive sampling because they can be arranged in certain categories, where the key informants for each category were purposively sampled. The Government/Ministries, Immigration officers in the border towns, regulatory organizations and institutions dealing with trade and imports, were also selected using purposive sampling technique.

1.0.5 The Chapter Outline

This report is divided in to 6 chapters. The introductory chapter is followed by chapter one which provides the definition and genesis of counterfeits and substandard goods, while chapter two presents the scale and impact of counterfeits and substandard goods, Chapter three presents the current institutional framework, while chapter four makes some analysis and presentation of the current interventions. Chapter five presents proposed reforms and interventions while Chapter 6 outlines the conclusions.

1.1.0 CHAPTER I UNDERSTANDING COUNTERFEIT AND SUBSTANDARD PRODUCTS

1.1.1 Definition of Counterfeit Goods

According to Ringo (1994), "Counterfeiting" covers manufacturing, producing, packaging, repackaging, and labelling. It involves making, whether in Tanzania or elsewhere, of any goods whereby those protected "genuine" goods are imitated in such manner and to such degree that those other goods "counterfeits" are identical or substantially similar copies of the protected goods. "Counterfeit goods" or "pirated goods" or "offending goods" are in many cases used interchangeably and they mean goods that are the result of counterfeiting or piracy. Counterfeit products occur when the intellectual property rights (IPR) has been stolen. In other words, counterfeiting is stealing. It is theft that needs concerted efforts by governments and the international community to reduce or eliminate. On the other hand counterfeits are substantially substandard products which fail to meet requirements of the relevant standard when tested using appropriate test methods.

1.1.2 Genesis of Counterfeit and Substandard Goods in the World and in Tanzania

The history of human development originates in part with intellectual property. Intellectual property rights are creations of human mind and the legal rights that govern the use of such creations in the market. These creations of human mind are important because human development is enhanced through inventions and innovations that enable the supply and consumption of more goods and services in an economy. Every country in the world faces the problem of counterfeit goods. This makes the protection of patents, rights to industrial designs, trademarks and service marks and artistic, musical and literary works a very serious issue which every country has to be aware of and institute appropriate mitigation measures.

In Tanzania, the issue of rampant counterfeits and substandard goods is a recent phenomenon. People have started to question whether Tanzania has been turned into a dumping ground for sub-standard goods or counterfeits and want to know what is being done to arrest the situation. Historically, between the 1960s and 1980s, Tanzania was run on the basis of central planning and main trade was conducted through parastatal organizations under heavy government control. Government agencies such as the Board of Internal Trade, Regional Trade Companies, National Milling Corporation exerted much control on trade. Although during this period there were some sub-standard goods in the market, counterfeit goods were negligible.

After 1986, Tanzania began market-based economic reforms that included, among many policies, trade liberalization, privatization of public enterprises, and deregulation. During this period, there was misunderstanding of the "free market" system and how it operates. Through out, the concept of liberalization and/or free market system has been misconceived. Other observers of the Tanzanian players, especially traders and importers called the new system "free economy" and took advantage of every opportunity to supply consumer goods, regardless of the quality and authenticity of the goods. Used goods were imported along with new goods. At this juncture, Tanzania became a counterfeits and substandard goods destination. There was no effective control and regulatory institutions or places to seek redress in case of harm caused by a sub-standard goods or counterfeits. The problem grew rapidly until in 1993/94 parliamentary session when some legislators began to query whether

market economy elsewhere in the world are run like the Tanzanian model. Following these observations, Tanzania began to develop regulatory organizations to steer the economy in the right direction, but still the country has a long way to go.

1.1.3 Factors and Reasons for Existence of Counterfeit and Substandard Goods

As noted earlier, to a larger extent the public is not knowledgeable over counterfeit products. This is particularly true because counterfeiting involves cheating and deception to the extent that members of the public can not easily detect the trick. Manufacturers and most traders are aware that counterfeiting is illegal. Nevertheless, since they also know that it is profitable and given the nature of the market they work with, they play whatever innovative trick they can afford to cheat consumers, thus making it extremely difficult for most of the public to reveal the trick. For example, most of the respondents especially in Zanzibar, Dar-es-Salaam, Arusha and Mwanza acknowledged that manufacturers of counterfeit products make a very small change over the original brand name (or copyright or packaging) thus, making it difficult or impossible for consumers or inspectors to notice.

Table 1: Examples of Products with Comparable Brand Names

Sn	Reporter and Region	Original Brand Name	New Names
1	Traders - Dar-es-Saalam	Sulfur 8	Sulfur 16, Sulfur 32
2	Traders-Dar-es Salaam	Sony	Sonny
3	TFDA – Dar-es-Salaam	Ampicillin	Ampilin
2	Nufaika - Mbeya	Gillette	Gilett
3	Nufaika - Mbeya	Always	Freeways, Stayfree
4	Traders - Zanzibar	Blue Band	Gold Band

A list of products with comparable brand names is perhaps endless. Table 1 presents a few examples from some of the study areas. Consumers have always been trapped in to counterfeit goods because the brand names and prints appear similar to the names and prints of the original brands. There are cases where the public believes that they use genuine products because manufactures study carefully packaging of the original or genuine products i.e. the shape of the container, the covers, the prints etc, and then design containers similar to the original ones, but packing different ingredients and sell. This is common to the products with high demand. It therefore becomes difficult initially to persuade end users that they are using counterfeit goods. The original containers have also been used by greedy manufacturers to pack wrong ingredients so as to win the market of the genuine products.

1.1.4 Main reasons for Existence of Counterfeit and Substandard Products in Tanzania

i). Wrong Interpretation of Market Based Economy

Some importers, traders, consumers, and political leaders mistook “market based economy to mean “free economy”. As a result, some leaders thought it would not be prudent to act on counterfeits and substandard goods because they would appear to interfere with market economy. The appropriate legal framework and enforcement to support the market economy was absent at the initial stages, especially in early 1980s. As a result, trade liberalization and even privatization appeared to bring chaos. Counterfeits exports to Tanzania, for example, are cascades of business of what used to be unnoticeable trickles before liberalization.

There was also weak regulations and planning after the 1986 trade liberalization policy. There was no sequencing of the reforms as the liberalization process was forced upon the political structures by external forces rather than allow for a systematic and logical approach. Therefore, sometimes arbitrary decisions and ill-thought out measures were made and implemented which allowed the inflow and manufacturing of both counterfeit and substandard goods.

ii). Organised Counterfeits Dealers

Some people who trade in counterfeits are more or less organized criminals who make huge profits which they then use to interfere with effective enforcement of anti-counterfeits laws and regulations. Although Tanzania had the Merchandise Act that was unveiled in 1963, it never came into force until 2005. The problem of counterfeiting was reinforced by weak legislation that has not been properly enforced, weak national drug regulation enforcement and inadequate and widely unknown reporting systems in case one suspected counterfeit goods.

iii). Highly Porous Borders

Tanzania has a highly porous border that has little surveillance. Apart from Tanga harbour, Horohoro, Sirari, Mtukula and Tunduma border that have on-site regulatory officials, the Tanga coastal line (about 60 kilometers long) has 17 landing sites that handle mostly unofficially declared small cargo, some of which may be counterfeits and substandard. Focus group discussions revealed that such goods largely come from Zanzibar. Similarly, apart from Dar es Salaam harbour and Dar es Salaam airport that have active regulatory bodies, there are many landing sites along the Indian Ocean that cater for small cargo. For example, Kisiju (Coast region), Boko (Dar es Salaam) and Bagamoyo. The border posts such as Horohoro, Namanga, Holili, Tarakea, Songwe and Tunduma have law enforcement authorities but lack expertise for identifying counterfeit and substandard goods. Also, given the porous borders with Kenya, Uganda, Rwanda, Burundi, DRC, Zambia, Malawi and Mozambique, it is no surprise that such routes do exist. The ability of state institutions to police or regulate the conduct of persons living in such areas or using such routes is very limited. Further, any goods actually impounded can still enter the market due to corruption which is on a wider scale in Tanzania.

iv). Poverty, Low Prices and Lack of Consumer Awareness

Poverty, low prices and lack of consumer awareness of effects of counterfeits and substandard goods are also responsible for the rampant trade in counterfeit goods. As noted earlier, the survey clearly revealed that consumers were unable to distinguish between counterfeit good and a genuine good. Some of the fakes are so similar that even with training or conducting analysis would make it impossible to distinguish. It is very common in Tanzania for a shop-keeper to ask customers as to whether they want a genuine (original) item or “ordinary” one – which could be a counterfeit or sub-standard good. Unfortunately due to the price difference, the original being sold twice or three times the “fake”, Tanzanian consumers being poor, often buy the “fake”. Poverty is widespread in Tanzania, especially in the rural area. Poverty and low income brackets of most consumers were mentioned by over 90 percent of all respondents as one of the major factors towards counterfeiting in the country. Most Tanzanians are poor and cannot afford the more expensive genuine products, and as long as counterfeits are the only available products, the public cannot run away from them, even though one is aware that they are harmful.

v). Weak Control System of Counterfeit and Substandard Goods

Before goods enter the country and from the ports of entry to internal market, there is weak control, inspection and legal enforcement capacity to regulate both counterfeit and sub-standard goods. There is also poor performance of pre-shipment inspection agencies such as TSCAN and COTECNA. Respondents during the survey observed that these agencies were not doing their job properly because they could not prevent counterfeits and substandard goods from entering the country. But some thought perhaps inspection of goods to identify counterfeits and substandard goods is not part of their contract and mandates. If this is so, their mandates should be amended to include counterfeiting and substandard provisions. The same should also apply to other regulatory bodies such as TRA who are primarily meant to collect taxes from genuine trade.

vi). Desire to Make Huge Profits

Business people dealing with Counterfeit products are able to sell more products/goods thus making more profit than selling only genuine products. They cater for both the middle income category that can afford the genuine goods and the poorer category that can afford the counterfeit only.

vii). Existence of Corruption

Corruption is endemic. The problem with this aspect is that no reliable data can be gathered to determine the extent of corruption that allows the flourishing of trade in both counterfeit and sub-standard goods. However, one can deduce from the facts in the market that such goods would not be in the market if strict enforcement of the law on controls was imposed. Those who have the capital and means to import or manufacture both counterfeit and sub-standard goods are not poor. In this study, in response to the question of what can be done to stem the import or manufacture of both counterfeit and sub-standard goods, many interviewees noted that nothing can be done unless a concerted and dedicated effort is made to stamp out corruption. The low incomes of law enforcement officers, the low risk of being arrested and charged for corruption and the market appetite for both counterfeit and sub-standard goods make it a lucrative business.

2.0.0 CHAPTER II SCALE AND IMPACT OF COUNTERFEITS AND SUBSTANDARD GOODS

2.0.1 Counterfeit Products

Based on field responses from traders, importers, manufacturers, regulatory institutions and consumers, a rough estimate would put counterfeit products at 18 percent (Field Responses range from 15 to 20 percent) of Tanzania's merchandise trade. In dollar terms, counterfeit products might be US\$ 525 million per annum (Field Responses range from 450 million to US\$ 600 million per annum). Table 2 provides estimates of the magnitudes in several broad sectors of the Tanzanian market.

Table 2: Most Counterfeited Products and their Estimated Market Value

Sn	Main Counterfeit Products	Estimated Range of Market Value (Bill TZS)	Estimated Average Market Value (Bill TZS)
1	Industrial equipment and raw materials	20 - 300	160
2	Agricultural inputs (Dursban, Gladiator, Blue copper, Red copper, Dithane, Cobox, etc)	10 - 150	80
3	Vehicle spare parts (Tyres, batteries, bearings, tubes, engine parts, etc)	20 - 100	60
4	Electronic equipment and appliances (TVs, radios, cassette recorders, computers, wire cables, pirated music etc)	20 - 50	35
5	Cosmetics, detergents (creams, lotions, toothpastes (white dent, Colgate, close-up))	14 - 50	32
6	Pharmaceuticals & medical equipment (drugs, surgical gloves, scissors, Blood Pressure Machines, etc)	6 - 30	18
7	Clothing and apparel (Khanga, shirts, athletic shoes, etc)	5 - 20	13
8	Plastic products	5 - 20	13
9	Building materials (wire cables, door locks, bulbs (Phillips),	1 - 5	3
10	Foodstuffs	1 - 4	3
11	Chemicals (industrial and domestic)	1 - 4	3
12	Alcohol and bottled drinking water (wine, beer, Konyagi, Uhai,)	1 - 2	2

As can be depicted from Table 2, industrial equipment, agricultural inputs and vehicle spare parts appear to take a lead in the list of suspected counterfeit products with an average of TZS 160 billion, 80 billion and TZS 60 billion market value respectively. However, it should be noted that, this assessment is based on responses from the field rather than "uncontested" evidence supported by laboratory analysis or IPR owner/representative

confirmation. What the numbers tell us is that there is a problem of counterfeit goods in the Tanzanian market, but the value is not known. That we have to build the capacity in terms of human skills and analytical equipment to confirm suspected counterfeit goods and take appropriate legal measures.

2.0.2 Standardisation

Standardization is defined by the International Organisation for Standardization (ISO), as an activity of establishing, with regard to actual or potential problems, provision of common and repeated use, aimed at the achievement of optimum degree of order in a given context. A standard is intended to make a product, process or service fit for its purpose. Such aims can be, but are not restricted to, variety control, usability, compatibility, interchangeability, health, safety, protection of environment, trade etc.

A standard is also defined as a document, established by consensus and approved by a recognized body that provides for a common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of optimum degree of order in a given context. Therefore standards by definition are anything taken by a general consent as a basis of comparison, a grade or level of excellence.

Standards can be grouped into the following different categories; i.e. basic standards for:

- a) Mathematical symbols
- b) Tolerance
- c) Drawing rules
- d) Codes of practices etc
- e) Product standards for strength or performance of materials, dimension or other quality factors.
- f) Methods standards for testing, sampling etc
- g) Terminology standards
- h) Process standards
- i) Service standards
- j) Interphase standards (dealing with compatibility)

Standardization when applied in industrial goods does not only serve in assisting industries to produce goods which are safe and of sound quality, but such standards do serve the following:

- 1) Prevent unscrupulous trade practices such as sale of products, which are adulterated or selling of products that are sub-standard.
- 2) Assist in removing trade barriers by the application of specific authoritative standards instead of using separately devised technical agreements, between say, two producers.
- 3) Provide or promote communication between producers, manufacturers and consumers in terms of terminology and the provision of informative labelling, operation manual etc.
- 4) Improving the nutrition status of the population.

In standardization the primary issues that are normally addressed are quality and safety, as they relate to Process/method suitability, Conformity with legal requirements, Consumer

protection and product acceptance. It is in view of the above that since 1977 Tanzania has been active in standardizing various commodities in the manufacturing/ processing industries. Therefore substandard goods are goods that do not conform with acceptable standards.

(a) Locally Manufactured Products.

In order to have an effective linkage in standards of products, good linkage must be established among the key players; which would include the involvement of institutions responsible with the development and implementation of standards and quality grades.

Consumers' decisions on product purchase in the market are primarily influenced by his level of product awareness. The presence of any organization which could play part in influencing his decision making can play part in the improvement of product quality, as well in enabling him to take a leading role in standardization; including quality grading.

One of the major achievements in Tanzania in consolidating linkage on standardization and quality grading is having in place of the Tanzania Bureau of Standards, as a key player, together with other institutions, which in one way or another contribute in standards development and quality grading.

Tanzania Bureau of Standards (TBS) started certification activities in 1982. To date TBS has granted a total of 858 approvals against a total of 1774 tested samples which revealed that about 50% of the locally produced goods were found to be substandard.

(b) Imported Products.

TBS started implementation of imports regulations in 1999. To date TBS has inspected 9670 consignments of different imported products. Approvals granted by 31st December 2007 amounted to 9521 which reveals a 1.5% of substandard imported products passing through official routes. Table 3 below shows the scale of substandard drugs as provided by TDFA

Table 3: Drugs Quality Control Status

Year	Pharmaceutical Analyzed Samples	Passed	Failed	Percent of Failed
2002	2655	225	30	12
2003	360	334	26	7
2004	292	253	39	13
2005/06	1341	1301	40	3
2006/07	452	451	1	0.2
2007/08	100 (September 2007)	98	2	2
Total	2800	2662	138	5

Source: TDFA Drugs Quality Control Laboratory

Because of the existence of many ungazetted entry points, it is an undisputed fact that a lot of substandard products brought by unfaithful importers do enter the Tanzanian market through these routes.

2.0.3 Countries of Origin of Counterfeit and Substandard Goods

Field responses as informed by traders, importers, manufacturing firms, regulatory institutions and consumers, showed the following countries, ranked in terms of frequency of the responses to be the main suppliers of counterfeit and substandard goods.

Table 4: Countries of Origin of Counterfeits and Substandard Goods

Sn	Continent	Country
I	Asia	China, India, U.A.E. (Dubai) Indonesia Singapore Pakistan Hong Kong Korea Thailand Bahrain Taiwan Malaysia Burma
II	Africa	Kenya Tanzania South Africa Mozambique Malawi Zambia
III	South America	Chile

In almost all cases, respondents were willing to mention countries that they believe counterfeits originate but not details of importers or manufacturers or even the type and quantities of goods involved. Only in the case of one manufacturer, Kibo Match Group Ltd located in Moshi was willing to provide details of origins of their counterfeited products: their Lucky brand (India), Kangaroo brand (Pakistan) and Leopard brand (Indonesia).

Note that overall, China is leading followed by India, U. A. E (Dubai) and Kenya. Respondents also mentioned Tanzania as one of the sources of counterfeit goods, especially with regard to alcohol and bottled drinking water (wine, beer, Konyagi, Uhai, Kilimanjaro, etc), music, and cosmetics. The main areas mentioned were Dar es Salaam, Moshi, Arusha and Mwanza.

Table 5.provides a list of countries that were identified by the National Bureau of Standards as origins of substandard goods. Further work would be needed to identify whether some of the substandard goods were also counterfeits, partly because most of the countries mentioned on the table were also identified in the field responses as counterfeit sources.

Table 5: List of Substandard Products Imported in to Tanzania

Sn	Product	Country of Origin
1	Handhoes,Condoms,Toothpaste,Used tyres	China
2	Mosquito coils(TRIG)	Indonesia,Singapore,United Arab Emirates
3	R.B.D Palm Olein	Singapore
4	Razor,Blades,Salt,CornOil,Aerosol,EngineOil,Brake Fluids, Toothbrushes	United Arab Emirates
5	Toilet soap,Detergents,Absorbents Cotton Wool and Surgical Cotton gauze, Safety matches, Jute	India

Sn	Product	Country of Origin
	bags, Condoms, Razor blades(Topaz)	
6	Mineral water, Tomato Paste, Wheat Flour	Italy
7	Gasoil,MOGAS,	Bahrain
8	Tomato Paste	Oman
9	Condoms	South Africa

Source: Tanzania Bureau of Standards

2.0.4 The Economy

As pointed out earlier, counterfeit and substandard goods affect the economy in different ways. This survey has identified a total of 5 areas which are adversely affected by counterfeit and substandard products. These areas include loss of government revenue; loss of employment opportunities; health hazard (causes diseases and loss of life (death)); intensifies poverty and its manifestations such as infant and maternal mortality; and profitability and/or performance of the manufacturing industry.

2.0.5 Government Revenue

Estimation of loss in government revenue was difficult to assess because most respondents are not aware of the magnitudes of tax evasion due to counterfeits or substandard goods. A summary of responses from all surveyed areas provide estimated loss in government revenue to be between 15-25 percent of current total domestic revenue. If this level is used, it means the Government is losing between Tshs 540–900 billion per year due to tax evasion related to counterfeit and substandard goods. This is equivalent to 4.6 – 7.5 percent of the total value of Gross Domestic Product in Tanzania, and 14 – 23 percent of the National Budget in the country. Table 6 provides estimates of loss in government revenue in main categories of products. If total government domestic revenue is TZS 3.6 trillion (2006), then the loss in government revenue is very high. The government's total revenue collection is slightly more than 300 billion TZS per month, which makes a total collection of between 3.6 to 4 trillion TZS per annum. According to the survey, losses in government revenue are highest with regard to industrial equipment, vehicle spare parts and agricultural inputs which account for 1,000 billion, 800 billion and 600 billion TZS respectively each year.

The government can lose revenue through different ways. For example, the tendency of consumers losing confidence on products they once bought and found fake has led to the decline in aggregate demand of the genuine products thus affecting Government earnings. In addition, it is evident that counterfeit traders have the tendency to evade tax by avoiding tax system thus, denying the Government the most needed revenue.

Table 6: Estimated Annual Loss in Government Revenue

Counterfeit Product	Percent of Total Annual Domestic Revenue	Estimated Annual Loss in Government Revenue (Billion TZS)
Industrial equipment and raw materials	25	1,000
Vehicle spare parts	20	800
Agricultural inputs	15	600
Chemicals (industrial and domestic)	10	400
Pharmaceuticals	10	400
Building materials	8	320
Textiles & Clothes	6	240
Food and beverages	5	200
Alcohol and bottled drinking water	5	200
Total		3160

Note: Assuming a total annual revenue collection at approximately 4 trillion TZS

More work is needed in this area, both as a way of knowing the exact magnitude of tax evasion and remedial actions to ensure tax compliance.

2.0.6 Employment and Productivity of Manufacturing Industry

This component was also difficult to estimate as very few respondents were in a the position to provide indicative figures on the extent of employment opportunity lost as well as productivity loss due to counterfeiting in the country. Most respondents thought unemployment caused by large imports of counterfeit products is big, partly because it denies domestic industries the opportunity to expand production and scares-off potential investors to establish their presence in Tanzania – often seen as a dumping place as alluded to by some focus group members. Inability of the domestic manufacturers to expand their capital stock restricts the sector to increase output thus limiting additional employment. Foreign investment is necessary and beneficial to Tanzania both in terms of employment generation and technological transfers.

Field estimates from respondents put the loss in employment at 30-40 percent of total civil service workforce or over 140,000. Example, Kibo Safety Match was forced to reduce staff by 300 employees in 2005 due to counterfeit of their products. All three of their products (Kangaroo, Lucky and leopard brands) were being counterfeited, resulting in huge losses in market share of their products. The company may reduce employment further by 500 employees if the problem persists. General Tyre is also considering retrenching over 30 percent of her workforce due to an influx of imported tyres, some of which are sub-standard, although they may not be counterfeits – especially used tyres are not allowed in Tanzania (see Table 6). Baby Food and Superfood industries that make biscuits and other products has stopped production due to an influx of counterfeits, resulting into over 140 lost jobs. Tanzania Dairies has closed due to existence of competing products, some of which are

alleged to be counterfeits, with consequent loss of 82 jobs. Perhaps the most severe impact on employment is the foregone investment opportunity for domestic and foreign investors due an influx of substandard and counterfeit goods in the Tanzanian market.

The market for local genuine products has been declining overtime following this influx of counterfeit and substandard products which are relatively cheap, and more due to market distortions and the nature of consumers in the domestic market (i.e. their purchasing power and understanding of the effects of counterfeit products).

The era of counterfeiting has also changed the mindset of the business community, where motivated by higher profits most of them have turned out to be the leading dealers of counterfeit and substandard goods.

2.0.7 The Community

The survey observed many health and safety impacts of substandard and counterfeit goods on the people of Tanzania. Some are outlined as follows:

- a. A counterfeit electric iron with the trade mark “Pilips” blew off on first use and caused electricity shortage in the whole block of flats residing nearby. Fortunately the incident did not kill the user.
- b. A counterfeit Johnson baby power caused flu to a mother and child.
- c. A man suffered kidney pains after taking counterfeit Black seed oil.
- d. Loss of money because counterfeits have a short life span and one has to buy the same item over and over again. Goods are not durable.
- e. Counterfeit drugs cost lives, because they can kill the patient. In this study at Mwanza, counterfeit metakelfin resulted in the death of the patient.
- f. In Zanzibar, there is Vicks Kingo tablets which are counterfeit and the consumers stated it is just like peppermint sweets rather than medicine and does not provide any relief to patients.
- g. Substandard tyres are known to have caused accidents and deaths (Scandinavian express tyre burst – that caused deaths and loss of assets to the company).
- h. Phones with counterfeit batteries cannot store charge and sometimes blow off causing harm to the user.
- i. Counterfeits discourage local manufacturing industries of genuine products because they fail to get sufficient market for their products. Some local industries have even shut down due to counterfeits, leading to loss of government revenue, employment and loss to manufacturer.
- j. Counterfeits lead to low exploitation and use of local resources.
- k. Counterfeit bottled drinking water has caused stomach ache (Kilimanjaro, Uhai and Masafi counterfeits).
- l. Skin rushes when using counterfeit lotions and creams or soap.
- m. Counterfeit thermos flasks fail to keep required temperature for a required duration
- n. Customer dissatisfaction with traders who sell counterfeits leading to loss of customers and revenue.
- o. Counterfeit insecticides do not kill insects (counterfeit “Doom” insecticide)

- p. Counterfeit electric cables have caused electrical faults resulting to short circuit and burnt property, including buildings. Some electronic equipments have burned, resulting into loss of property and money.
- q. Counterfeits are destructive to the economy and health of the people.
- r. Counterfeit creams, lotions, deodorants and other cosmetics have high negative impact on health of users. Focus group participants identified skin rushes and burns as some of the effects.
- s. Hydroquinone or hydroquinon chemicals in some of the cosmetics are said to remove Melanin which covers the skin. It is part of the skin which filters ultraviolet radiations (raise), thus causing cancer.
- t. Counterfeit milk products have adverse effects on children, causing diarrhoea and other side effects.
- u. Counterfeit foods (such as imitated Azam flour) become poisonous in the human body when food is cooked using those counterfeits.
- v. Some focus group members said that some food counterfeits may even cause cancer although there is no evidence to that effect.
- w. Substandard or counterfeit Blood Pressure machines are often defective making it impossible to assess the condition of the patient. This could lead to wrong medication.
- x. Substandard or counterfeit surgical gloves that have perforations will make infection prevention impossible. These endanger both the lives of the service provider and the client.
- y. Counterfeited intravenous fluids can make difficult calculation of the actual intake and also it can lead to infection.
- z. Counterfeit spare parts for vehicles and industrial machinery increase operating costs due to frequent breakdown and sometimes become the source of accidents which result to injury and death. For example counterfeit brake shoes often fail when stopping a vehicle risking the lives of passengers and the driver.
- aa. A house got burnt by lightening in Mwanza due to counterfeit lightning rod.
- bb. Numerous cases of skin-burns, liver and kidney failures due to use of counterfeit cosmetics

3.0.0 CHAPTER III INSTITUTIONAL FRAMEWORK AND CURRENT INTERVENTION.

3.0.1 The Legal Framework

Tanzania recognizes that an efficient and well functioning legal framework is necessary for facilitating fair and competitive trade and industrial development. Tanzania further believes on the protection of patents, rights to industrial designs, trademarks and service marks and artistic property.

The Merchandise Marks Act of 1963 confers penal sanctions against a person who forges and falsely applies a trade mark. It shifts the burden of proof to a person found with counterfeits and makes contravention of the Act a criminal offence. The Act also prohibits importation of counterfeits and empowers appropriate officers to seize, detain, forfeit or dispose counterfeits. The Act also makes individuals in the company who sanction acts against the Act severally liable for prosecution and punishment as if they had committed the offence. The Act has been amended, regulations have been made, and the President has accented. It will be operational after being gazetted.

3.0.2 Key Institutions

Tanzania has established legal and regulatory institutions in the detection, control and prosecution of offenders dealing in counterfeit and substandard products. The main ones are discussed below as follows.

3.0.3 Fair Competition Commission (FCC)

The State has criminalized counterfeit by bringing into force the 1963 Merchandise Act in 2005, and creation of the new FCC with a mandate to police counterfeits, despite the fact that there are still no regulations under the FCC to empower FCC to deal with counterfeits effectively. The FCC is the lead institution that deals with counterfeit goods. Apart from its expanding number of staff, there is a functional Task Force under the Chairmanship of the Director General FCC composed of senior officials representing the following regulatory institutions:

- Tanzania Revenue Authority (TRA)
- Attorney General's Chambers (AGC)
- Police Force (PF)
- Tanzania Bureau of Standards (TBS)
- Tanzania Food and Drugs Authority (TFDA).

The objective is to coordinate, share resources of the institutions to increase effectiveness in combating counterfeit and substandard goods in Tanzania.

FCC also works with the Revolutionary Government of Zanzibar on how to plug possible loop- holes, through increased vigilance at sea ports and airports. It also makes a close

watch to the transit goods, and immigration status of counterfeit offenders. There are also programmes to educate consumers, and build their capacity in promoting more cooperation between stakeholder institutions.

FCC is taking the lead in the war against counterfeiting under an established Task Force. Since its establishment recently, FCC has accomplished the following:

- FCC has been able to confiscate and destroy counterfeits. In 2007, FCC impounded a container full of “Phillips” and “Britrimax” counterfeit fluorescent tube lights from China worth about US Dollars 18,000. The tubes were destroyed.
- In 2007, FCC with the help of Twiga Cement Plant at Wazo Hill impounded and destroyed 303 cartons of fake “kiwi” shoe polishes from China worth 20 million Tanzanian shillings. The cartons were impounded at the Dar es Salaam Port.
- Also in 2007, counterfeit TV sets were impounded at the Dar es Salaam Port and destroyed.

The Act being an old Law is not surprisingly prone to lacunas (gaps). The Act was found to be lacking in the following major aspects:

(i) The powers of the Inspector, the person who is empowered to implement the Act are not expressly provided in the Act.

(ii) The act does not have a provision for the making of regulations for better implementations of the requirements of the Act as is normal with other Acts enacted by our Parliament.

(iii) The Act does not allow the Inspector to enter any private premise suspected to contain counterfeits until he obtains a warrant from the District Court. The FCC after consultations with the office of the Attorney Chambers forwarded proposals to Parliament for amending the Act. The proposed amendments have been passed and soon or later the amendments will be gazetted to make them operational.

The Merchandise Marks Act 1963 indeed applies to Tanzania mainland only and leaves Zanzibar not only exposed but also a possible route for counterfeits to Mainland Tanzania. It is prudent that the Act should also apply to Zanzibar. FCC has proposed amendment of 1963 Act as amended in 2004 to instill more stern measures on counterfeiters. Modification of penalty/fine of from not three thousand shillings to not less than hundred thousand shillings to not less than ten million shillings but not exceeding fifty million shillings and or imprisonment if found guilty of counterfeiting. The Government has also reviewed the anti-dumping policy in an attempt to reduce and eventually eliminate substandard and counterfeit goods in the Tanzanian market.

3.0.4 Business Registration and Licensing Agency (BRELA)

BRELA is essentially a business registration authority. It provides an enabling environment for undertaking fair and legal business in Tanzania. Under the Act of its establishment, BRELA has powers to hear and determine opposition proceedings.

With regard to Intellectual Property, there is Industrial Property and Copyrights Act. BRELA's mandate is with Industrial Property matters. Field study conducted as part of this report reveals that BRELA has not been active on issues related to counterfeit and substandard goods. On the quality of products produced locally, BRELA plays an important part as the licences issued do state that goods licenced must meet requirements of standards set by Tanzania Bureau of Standards. This agency needs to be brought in to work more closely with other regulatory institutions in the fight against counterfeiting and substandard goods in the country by coordinating with other regulatory agencies and share information on counterfeit and substandard goods, among others.

3.0.5 Tanzania Food and Drug Authority (TFDA)

TFDA was established by the Tanzania Food, Drugs and Cosmetics Act No.1, 2003. It is an executive agency under the Ministry of Health and Social Welfare. The Agency is a regulatory body responsible for control of quality and safety of:

- a) Food (prepackaged foods)
- b) Drugs (including herbal drugs)
- c) Cosmetics
- d) Medical devices.

TFDA has a role in the war against counterfeits and substandard medicines in the legitimate pharmaceutical market. During the field study as part of this report we found TFDA staff actively involved in all border customs posts performing their duties and responsibilities. However, if this war of counterfeiting and substandard products is to be won, a number of challenges need to be addressed, including:

- a) Forging greater co-operation among law enforcement agencies,
- b) Improving regulation of the drug distribution channels to curb illegal imports,
- c) Improving TFDA's capacity to detect and investigate on counterfeit cases and prosecute offenders,
- d) Addressing the critical shortage of financial and human resources that impact heavily on the agency's capacity to cover Tanzania's porous borders,
- e) Improving the handling of court cases and actions taken against counterfeiters,
- f) Providing timely public alert notices – It takes too much time from suspecting a counterfeit, confirmation and information to the public, and
- g) Undertaking public awareness on the health implications of counterfeit medicines and where to report if one suspects an item is counterfeit.

TFDA as an executive agency under the Ministry of Health and Social Welfare that has regulatory functions for controlling the quality and safety of Food (prepackaged foods), Drugs (including herbal drugs), Cosmetics and Medical devices. Therefore TFDA has a role in counteracting counterfeit medicines in the legitimate pharmaceutical market of the country.

During the survey TFDA was seen to be very active in all border posts during their functions. TFDA has been able to identify the following counterfeit medicines in Tanzania (Ndomondo-Sigonda 2007):

- 1) In August 1999, fake Metakelfin® labeled as a genuine product from original manufacturer, Pharmacia and Upjohn, was found in circulation in some pharmacies in the country. Laboratory analysis confirmed that counterfeit Metakelfin actually contained paracetamol. TFDA alerted the general public to avoid using this medicine.
- 2) In May 2000, counterfeit Ampicillin capsules (250mg) in tins of 1000's were found circulating in some retail pharmacies. Laboratory analysis confirmed the capsules contained potato starch. The genuine antibiotic that was counterfeited is produced by Elys Chemical Industries, in neighboring Kenya. The culprit was prosecuted unsuccessfully.
- 3) In June 2001, expired Chloroquine Injection (from an unregistered Indian company) was relabeled as Quinine Dihydrochloride Injection 600mg/2ml from a company in Cyprus. The culprit was prosecuted but case abetted due to death of the culprit.
- 4) In January 2005, fake Gentrison® Cream (a product of Shin Poong, South Korea) was reported. In this case, the active ingredient was replaced with hand and body lotion. The general public was alerted through Press Release and batches were recalled from the market. The culprit was prosecuted.

TFDA has analysed several samples, out of which 14 were found to be counterfeits. Table 7 shows the number of samples analysed since 2002.

Table 7: Drugs Quality Control Status

Year	Pharmaceutical Analyzed Samples	Passed	Failed	Percent of Failed
2002	2655	225	30	12
2003	360	334	26	7
2004	292	253	39	13
2005/06	1341	1301	40	3
2006/07	452	451	1	0.2

Source: Tanzania Food and Drug Authority

Court cases brought against counterfeiters are lengthy and time consuming given its limited manpower. TFDA also does not have adequate financial resources to deal with the increasing problem of substandard and counterfeit goods in the Tanzanian market.

3.0.6 Tanzania Bureau of Standards (TBS)

TBS is a parastatal organisation established by Act No 3 of 1975. The Act empowers TBS to promulgate Tanzania standards, offer quality assurance and Metrology services to industries. Approvals are granted to products or services provided requirements of the relevant standard are fulfilled. Surveillance inspections are conducted at least twice per year to ensure that the quality is maintained. Quality of imports is monitored through imports regulations provided for in the law by Government notice number 672 of December 1998.

The Tanzania Bureau of Standards (TBS) is, from the survey conducted in this study, the most well-known of the regulatory institutions. Its main focus is ensuring that goods meet the standard made public under its law. Unfortunately, the TBS has no legal 'teeth' to prosecute those trading in both counterfeit and sub-standard goods. Essentially, it remains a toothless bulldog. Given the subtle power of those trading in both counterfeit and sub-standard goods, the TBS has remained so despite long stated intentions to amend the law to give TBS teeth. In the war of fighting the influx of substandard goods, imports covered by compulsory standards are approved by TBS before entry. To date TBS inspectors are stationed at ports of Dar es Salaam and Tanga, Horohoro, Holili, and Sirari. Also market surveillances are carried out countrywide. However, some unfaithful importers do use ungazetted entry points (panya routes) to bring in the country substandard and counterfeit goods. Like other regulatory authorities, TBS does not have enough professional staff and the budget has always been inadequate to enable them execute its roles and functions satisfactorily.

3.0.7 Tanzania Revenue Authority (TRA)

TRA has the responsibility of collecting revenue on behalf of the Government. Most respondents during interviews considered the task of TRA to be unrelated to counterfeits. However, TRA customs officials play a critical role because it has to inspect all imports when doing its function as a revenue collector. During this period, TRA could provide information to other law enforcers such as FCC or TFDA or TBS or the Police Force on recognizing or suspecting counterfeit goods. TRA should be expected to work more closely with other regulatory institutions in the fight against counterfeiting and substandard products in Tanzania.

The Ministry of Finance through TRA has strengthened tax administration. Findings show that in Mwanza and Mbeya regions for example, there is recognition by the Customs department that import of both counterfeit and sub-standard goods has detrimental effects on the economy and the health and welfare of consumers in general. The TRA in the two regions examine the goods at points of entry and provide public education to sensitize the public. It is only in Dar es Salaam that the TRA has introduced a TISCAN Scanner. There are patrols made by an anti-smuggling team, but given the size and porousness of the border it is not a very effective measure. The government has allowed the TRA's customs department to supervise/administer other government institutions and laws at borders, such measure allow it to control entry of counterfeits into the Tanzanian market. It is acknowledged however, that the law is not adequate to meet the demands of anti counterfeit measures in Tanzania.

Table 8: Impounded Counterfeit and Sub Standard Products

Year	Products	Quantity	Manufacturer	Importer	Value
Mwanza					
2005	Safety Matches	11 containers	ROBBIN CO. Kenya	Mr. Kamau	US \$ 210,000
2006	Vim	07 containers	UNILEVER Kenya	Unilever	US \$175,000
2005	Royco	03 containers	UNILEVER Kenya	Unilever	US \$ 135,000
Dar-es-Salaam					
2007	Tube lights	40Ft container	China Trade Company	Chinese	US\$ 20,000 before tax
2007	Sony TV				
2007	Kiwi shoe polish	303 cartons		Mchikichi Trading Company & Akili Trading Company	TZS 21 million
2005	Hand hoe		China (country of origin)		
2005	MOGAS		Bahrain (country of origin)		
2005	Latex rubber condom		South Africa	Vodacom Ltd Box 2369 DSM	
Horohoro					
2002	Surgical gloves	2,000 pairs	NEO Medics	MSD	TZS 500,000
2003	Tablets (erythromycin)	2,000 tabs	Ex-Malawi	MSD	TZS 66,000
2006	Scissors	N/A	N/A	MSD	N/A
2007	Lotions	50 Cartons	N/A	N/A	TZS 500,000

Source: Tanzania Revenue Authority

The Ministry of Finance through TRA has intensified its efforts to curb smuggling of goods across borders. For the past 5 years the customs department in Mwanza, Tanga, Dar-es-Salaam, Mbeya, Arusha, Zanzibar, and Tanga have impounded both counterfeit and sub-standard goods. Table 8 presents some of the impounded counterfeit and sub standard products in the three areas namely, Mwanza, Dar-es-Salaam, and Horohoro.

The TRA customs department does have legal powers to detain suspected counterfeit and substandard goods pending proof from other state organs being provided to it. Unfortunately, the TRA does not have the capacity (experts and equipment) to detect and control counterfeit and substandard goods coming into the Tanzanian market. This is a patent weakness that the Tanzanian government (in the EAC) needs to address if fighting counterfeits and substandard goods is to be successful.

3.0.8 The Police Force

The police play a major role in reducing crime in the country. The police have the mandate to issue search warrants when counterfeit goods are suspected by another law enforcing organ such as FCC. Close cooperation between the police and all other regulatory institutions is necessary in the fight against counterfeiting and substandard goods.

3.0.9 Impediments In Fighting Counterfeit Goods And Substandard Goods

The obstacles to the fight against counterfeit goods can be categorized in to six parts, judging from the field responses.

a) Weak Laws

The laws (such as the Merchants Act, 1963 (CAP 519) which requires the regulatory authorities to seek court approval before making any inspections frustrates the whole exercise of dealing with counterfeit goods. Although proposals are underway to amend the law to make it more responsive to the problem of counterfeiting, as well as empowering FCC to become more effective in dealing with counterfeits, acting alone will not solve the problem. Other regulatory bodies have also to be empowered by law to deal with the problem of counterfeits in a coordinated manner². The reporting, redress and coordination mechanism or institutional arrangement has to be widely known, accepted and implemented by all regulatory institutions³.

b) Lack of Inspection Equipment

Lack of inspection equipment, skills and information to assess and determine whether a good is genuine or counterfeit. Use of “eye” inspection is not adequate to make “uncontested” action on counterfeits. Although it is difficult to check all products, improvement in technology and equipment should help. Nearly all the regulatory and control institutions made us aware of this lack of capacity. Regulators are normally making physical inspections which are not effective and can hardly detect the harmful products. They need equipments which can be used to test the products thoroughly. This is the main impediment of fighting against counterfeits in Tanzania. As counterfeits become more pervasive and sophisticated, the requirement that such information and skills become acutely required.

² The proposed regulation 53 provides: ‘An appeal from the final decision of the Chief Inspector, other than arising from a compoundment order, shall lie to the Fair Competition Tribunal.’

³ The proposed regulation 25 provides ‘The Attorney General’s Chambers, the Tanzania Revenue Authority, the Police Force, the Tanzania Bureau of Standards, the Foods and Drugs Administration Authority, Copyright Society of Tanzania and any other public office from which the Minister may draw members into the Task Force’

c) Inadequate Consumer Awareness

Inadequate consumer awareness on counterfeits and substandard goods and their effects to individuals and society have also been reported as obstacles. Even in situations where consumers suspect existence of counterfeit goods, there is no known efficient reporting mechanisms that not only protects the informer, but also action is seen to be taken on the suspects. Most respondents had the view that reporting to the police was a waste of time, citing unwarranted delays in prosecution and indictment of culprits. The inability to distinguish genuine from fake products is especially true of women and children who are generally unable to distinguish between the genuine and the fake. Awareness creation and ability to recognize counterfeit goods are necessary conditions which can only make an impact when consumers have the drive to reject counterfeit and substandard products. Thus, consumer awareness must be complemented by the urge to reject these products (rather than a mere reporting to the regulatory authorities) if a strategy to fight counterfeiting is to be successful. The owners of legitimate brands are better placed equipped to and possess the necessary impetus to identify and report counterfeits and substandard products to the relevant regulatory authorities. This is an area which owners of goods must invest to protect their infringed rights.

d) Inadequate Human and Financial Resources

The country has inadequate human and financial resources to deal effectively with the issue of counterfeits and substandard goods. Human Resources required to address this problem are in short supply in most developing countries, more so in sub Saharan Africa. Lawyers, customs officers, inspectors of goods and factories, registry officers, technical experts, etc are required.

e) Multiple Enforcers

There are multiple enforcers of import regulations which create loopholes for counterfeiter. These loopholes include: (i) failure by customs to control counterfeit and substandard goods after these enter the local market; (ii) lack of the Tanzania Bureau of Standards to address counterfeits; (iii) no provisions of the penal code makes counterfeiting a criminal offence; (iv) the Tanzania Foods and Drugs Authority does not have specific provisions dealing with counterfeit goods. No policy that harmonizes the functioning of all regulatory authorities. Currently, for control of both counterfeit and sub-standard goods there are several institutions.

f) Globalisation and Advancement of in Technology

Globalisation and advancement in technology make it easier to copy other people's products and trademarks. There are methods of copying, transferring and manufacturing goods that look similar to genuine products. People travel both as genuine tourists or "commercial" tourists looking for opportunities to steal IPRs. Others are local entrepreneurs who go to destinations such as China and request the manufacturers to facilitate access to a consignment of counterfeits to deliver to Tanzania. It is perhaps improper to list technological advancement under obstacles to a fight against counterfeit products because we need to promote and encourage relevant technological advancement. However, this is a challenge to the law enforcers and/or regulatory bodies because the same badly needed technology is also used by counterfeiters to penetrate different markets around the world.

4.0.0 CURRENT INTERVENTIONS

The government and various stakeholders have taken various measures to address the problem. The foremost approach has been to alert the community about the presence of counterfeit products. TFDF, TRA, TBS or the manufacturer whose product has been counterfeited normally does the advocacy and campaigns against counterfeiting. This also involves surveys to identify and find the counterfeiters. In its efforts to curb the entry of sub-standard products in the local market, TBS conducts surprise market surveillances out of which people found selling sub-standard products are dealt with accordingly. However, it should be noted that, not all Regulatory Authorities are dedicated and therefore not genuinely fighting counterfeiting. In some cases mandates and functions of such authorities do not allow them to question and/or prevent and seize counterfeit goods once detected.

Box 1: Irrelevant Mandates and Functions

TRA is mandated to ensure that the business transactions including imports are taxed according to the governing law. That is our core function. Our workers don't have skills and adequate knowledge on counterfeit goods. They are not therefore able to distinguish counterfeits from genuine products. Thus, counterfeit products can easily be allowed to enter the country provided the relevant taxes are paid.

TRA , Mbeya, Thursday, 20th September 2007

There are also issues of capacity in terms of resources, and skilled staff who are able to distinguish counterfeit goods from genuine ones. Another step is the opening of offices at border points and certifying products in their original countries to make sure that all products abide by respective Tanzania or international specifications before they enter the local market. This is done by TBS. Regionally, the EAC has instituted an intergovernmental forum that is addressing the issue. The forum would be expanded to include stakeholders from the private sector and civil society. The East African Legislative Assembly (EALA) has already enacted relevant legislation on Standards, Quality, Assurance and Metrology, as well as an East African Competition Law. On the other hand Kenya Revenue Authority (KRA) and TRA are developing a regional approach in protection of Intellectual Property Rights (IPR's) and control of trade in counterfeit and substandard products⁴.

4.0.1 The Fair Competition Commission (FCC)

As discussed earlier, FCC is taking lead in the war against counterfeiting under an established Task Force. Since its establishment recently, FCC has accomplished the following:

⁴See EAC News Press Release- Secretary General holds talks with Baroness Linda Chalker. http://www.eac.int/news_2007_04_SG_meets_Linda_Chalker.htm

- a) FCC has been able to confiscate and destroy counterfeits. In 2007, FCC impounded a container full of “Phillips” and “Britrimax” counterfeit fluorescent tube lights from China worth about US Dollars 18,000. The tubes were destroyed.
- b) In 2007, FCC with the help of Twiga Cement Plant at Wazo Hill impounded and destroyed 303 cartons of fake “kiwi” shoe polishes from China worth 20 million Tanzanian shillings. The cartons were impounded at the Dar es Salaam Port.
- c) Also in 2007, counterfeit TV sets were impounded at the Dar es Salaam Port and destroyed.

FCC has proposed amendment of 1963 Act as amended in 2004 to instill more stern measures on counterfeiters. Modification of penalty/fine from Tshs 3,000 to Tshs 5,000,000 and or imprisonment if found guilty of counterfeiting. The Government has also reviewed the anti-dumping policy in an attempt to reduce and eventually eliminate substandard and counterfeit goods in the Tanzanian market.

4.0.2 Government Chemist Laboratory Agency (GCLA)

GCLA was established in 1999. This Executive Agency is under the Ministry of Health and Social Welfare. Its mandate is to provide analysis of various samples of foods, drugs, chemicals and their raw materials, chemicals management and forensic science and give expert opinion to industries, the public, and the government, NGO, International organizations and other public or private clients. The Agency has also the role of regulating industrial and consumer chemicals in accordance with the Industrial and Consumer Chemicals (Management and Control) Act No. 3 of 2003. Importantly also is to ensure compliance of all those products mentioned above with local and international standards in order to safeguard public health and the environment.

This Agency plays a critical role in the war on counterfeits and substandard goods, particularly with regard to food and pharmaceutical products. It needs strengthening and accreditation. It also needs modern equipments incorporating the latest technology for detecting counterfeits and substandard products, especially drugs. Further, their services need to be made known within the country, particularly in the regions and districts.

GCLA is not exactly a regulatory agency, but rather, like TBS it is a certifying agency. It is a department within the Ministry of Health and Social Welfare. Its role is providing laboratory analysis and testing of various products, including those suspected of being counterfeits. It does scientific analysis of food (including water and beverages), industrial products such as soap and detergents, pharmaceutical drugs, cosmetics, substances of abuse (such as drugs, petrol,), insecticides, pesticides and herbicides to determine their chemical content and toxicity in accordance to the stated objective(s) of its customers. It's relevance in the fight against counterfeits lies in its authoritative statement on the suitability or otherwise of the tested goods/substance in the market for human consumption or use. The only constraint is that the offices and laboratories are mainly in Dar es Salaam and not widespread thus when

one wishes to avail its services then the customer must travel or send sample to Dar es Salaam with all the attendant risks.

Likewise, Zanzibar has the Government Chief Chemist or Laboratory which is a department within the Ministry of Health and Social Welfare. This department is currently led by the acting Chief Government Chemist. The office is mandated to undertake scientific analysis on food (including water, beverages), industrial products such as soap and detergents, drugs, (pharmaceuticals), cosmetics, and substance of abuse (or drugs of abuse). The department also provides advisory services to all the clients such as consumers and producers, manufacturers, the business community, police and judiciary.

Table 9: Sample of goods Analysed at the Government Chemist

Year	Received	Sub Standard	
		Amount	Percent
2002	90	0	0
2003	72	0	0
2004	115	13	11.3
2005	155	4	2.6
2006	35	1	2.9
2007	16	6	37.5
Total	483	24	4.9*
Average Percent	100		5

Note: Stars mean Normal and Research Samples

Source: Government Chemist

Table 9 shows the analysis conducted by GCLA since 2002. It is surprising that since 2002 this laboratory has not come across a large number of counterfeit products out of a total of 483 products received by the government chemist. These findings do not reflect the impressions from the field gathered by this study. It might be possible also that, the government chemist has used a biased sample; i.e. the sample used was not a true representative of counterfeited products in the country

5.0.0 PROPOSED REFORMS AND INTERVENTION

Counterfeit and substandard goods in the Tanzanian market are bad for our consumers, impacting on their health and sometimes causing death. Bad for investors (domestic and foreign), both in terms of eroding internal markets, business confidence and deterring additional investment. Bad for government in terms of loss revenue and employment, to mention but a few effects. Some people and firms who deal with counterfeits are organised criminals who make huge profits at the expense of consumers, producers and the government. As such a strategic approach is needed to arrest the situation. Three areas deserve particular urgent action. First, reforming internal institutional and regulatory bodies that have close mandate of facilitating production, importation, distribution and control of the quality of goods in the country. Second, reforming internal policies, laws and regulations so as to ensure trading arrangements follow legal procedures and complement government efforts in creating a fair, orderly competitive economy. Third, working more closely with regional economic groupings such as the East African Community, SADC and COMESA to work out modalities for reducing the problem of counterfeit goods within the partner states.

5.0.1 Internal Institutional and Regulatory Organisations

- a) We need to develop a strategy and coordination mechanism under which all key Ministries, Departments and Agencies (MDAs) that oversee production, importation, distribution and retail trade work collectively to fight counterfeits and substandard goods in the country. To begin with, the main ones might be Ministry of Industries, Trade and Marketing, Ministry of Health and Social Welfare, Ministry of Agriculture, Food Security and Cooperatives, Prime Minister's Office, Regional Administration and Local Government, The Planning Commission, Ministry of Home Affairs, and Ministry of Finance. The Ministry of Industries, Trade and Marketing could be the overall coordinator of this effort. Each Ministry could begin by finding out the extent or scale of counterfeit and substandard goods in their respective areas of jurisdiction and map-out a strategic plan of reducing and eventually eliminating the problem. This strategy needs to ensure that adequate number of experts and skilled personnel are identified and/or trained and are allocated in the respective Ministries. Also important is to ensure that a clear and pragmatic procedure which will require the various institutions to inspect products in succession. Before inspection and approval, each Ministry must verify the approval by the preceding authority, and that verification of the approval by previous institution must be taken by the current institution to be the necessary and sufficient conditions for it to proceed with inspection.
- b) Tanzania has several regulatory agencies, each working more or less independently on its mandate. Some include: Tanzania Revenue Authority (TRA), Fair Competition Commission (FCC), Tanzania Bureau of Standards (TBS), Tanzania Food and Drug Authority (TFDA), Government Chemist Laboratory Agency (GCLA), Business and Registration and Licensing Agency (BRELA), the Police, to mention, but a few. These agencies have been doing a good job so far in their respective duties and responsibilities. Since counterfeiting is an organised, largely criminal activity sometimes put in the same yardstick as drug trafficking, the

- agencies need to work more closely together. Sharing information on suspected counterfeit and substandard goods would provide lead for the relevant authority to take action promptly. The war on counterfeits and substandard goods cannot be won without all these agencies coming together (perhaps coordinated by FCC), to map out a strategy for confronting this organised crime and ways of sharing information and reporting, including methods of protecting the informers⁵.
- c) Tanzania has several private sector institutions that could play a more pro-active role in the fight against counterfeiting. Some of these include: Confederation of Tanzania Industries (CTI), Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA), Tanzania Private Sector Foundation (TPSF), Tanzania National Business Council (TNBC), Tanzania Chamber of Agriculture and Livestock (TCAL), Tanzania Oil Marketing Companies (TOMC), Tanzania Association of Consultants (TACO), and many specialised associations such as those for engineers, building and construction, consumer societies and the like. All these institutions, working collectively through information sharing, can considerably alert relevant authorities on any suspected counterfeit and sub-standard goods in their areas of expertise. For example, any information related to counterfeiting can easily be shared among key institutions by distributing any new information compiled by individual institutions monthly or quarterly. The same copies should also be sent to the media for publication and the public awareness. The added value of this information sharing is that the society as a whole becomes conscious of existence of a problem related to substandard and counterfeit products and actions are seen to be taken by relevant authorities within prevailing laws and regulations.
- d) It is high time the internal institutions start thinking on the better alternative of controlling the influx of counterfeit and substandard goods as a compliment to the existing destination inspection. Article 5 of WTO-TBT agreement gives procedures for Pre-shipment verification of conformity to standards (PVoC). In this system; goods are tested and approved by appointed competent firms in the country of origin before shipment. Certificate of Conformity is issued for every consignment. If well managed, PVoC is a system which can reduce the importation of substandard and counterfeit goods as the same will be stopped at the source. Kenya Bureau of Standards (KBS) started the implementation of PVoC since 2005.

⁵ See note 12 supra

5.0.2 Reforming Internal Policies, Laws and Regulations

The current policies, laws and regulations were formed when the problem of counterfeiting and substandard goods in the Tanzanian market was low or negligible. These are now inadequate to deal effectively with the increasing problem of counterfeiting in the country and are in urgent need of review and improvement. Most important of these include consumer protection. Currently provisions dealing with consumer protection are provided in the Fair Competition Act which allows for the establishment of a Council to be known as the National Consumer Advocacy Council whose functions shall be: (a) represent the interests of consumers by making submissions to providing views and information to and consulting with the Commission, regulatory authorities and government ministries; (b) receive and disseminate information and views on matters of interest to consumers; (c) establish regional and sector consumer committees and consult with them; (d) consult with industry, government and other consumer groups on matters of interest to consumers. Nothing on counterfeits is provided for.

As consumer protection legislation in Tanzania is scattered, the other institution we note is the Weights and Measures Agency⁶. The Weights and Measures Agency (WMA) is an Executive Agency responsible for fair trade transactions through certification of Weights and Measures, it is thus responsible for fair trade. The Agency is under the Chief Executive as the Commissioner. Protection of consumers and other buyers/sellers through accurate measurements for fair trade. In order make services reachable to Tanzanians, it has Regional Offices in all the Regions in Tanzania. These offices are manned by skilled officers with experience and knowledge in Legal Metrology. WMA is solely dedicated to protecting consumers, businesses and manufactures from unfair practice through the application of accurate Weights and Measures. It endeavors to ensure optimum uses of resources and fair trade transactions between investors, producers, transporters and consumers with consumer protection emphasis.

5.0.3 Industrial Licensing

In addition to regulating the by-products of industries, such as water pollution, the government has regulated the very existence of such industries requiring them to have effluent treatment facilities. The National Industries Licensing and Registration Act⁷ is intended to provide for registration and regulation of industries in Tanzania. The Act applies to industries which are defined as "any factory which employs more than 10 workers on any

⁶ Its establishment started in 1999 in pursuance to the Executive Agencies Act Number 30 of 1997 to replace the former Directorate of Weights and Measures under the Ministry of Industry and Trade. The move is part of the ongoing Public Reform Programme (PSRP) to improve efficiency and effectiveness of public service delivery

⁷ Cap[R.E. 2002] of the Laws

day." A factory is further defined as: "Any building, place, and machinery or plant intended to be used for manufacture."

An industry is deemed "established" when an article is produced, whether or not such article or part is used, sold, or exposed for sale, etc. (s. 2). The Act divides industries into two categories for purposes of regulation: Small-scale industries and medium and large-scale industries, as may be designated by the Minister.

Small scale industries are required to obtain a Certificate of Registration in order to establish an industry. Failure to comply is an offence (s. 6). Large and medium-sized industries are required to acquire a license, from the Industrial Licensing Board (established under s. 9A). Temporary Industrial Licenses are granted by the Licensing Board and the industry is monitored for three years, during which time the owners must submit progress reports each year, followed by an inspection by the Ministry for Industries at the third year. After approval by the Minister for Industries, a Full Industrial Registration License may be granted. According to officials of the Ministry for Industries, for those industries with potential pollution problems, NEMC is consulted to give assessment, advice and recommend measures to be taken. Regional Industrial Licensing Advisory Committees are also established for each region in order to advise the Industrial Licensing Board (10A). The Board may choose to grant or deny applications for licenses considering factors including interests of the potential consumers of the prescribed product for the manufacture, of which the industry is proposed to be established, (s. 14).

The Board has power to impose conditions on a licensee (s. 15) and may revoke licenses if a licensee has failed to comply with a condition attached or failed or ceased to operate the industry in respect of which the license was granted to him (§20). Part VII addresses miscellaneous issues: Offenses under this Act subject the violator to a penalty of 50,000 TZS, unless otherwise specified (§25). The Minister may exempt any industry or category of industry from the requirements of the Act (§27). ***But there is nothing specific about consumer protection.*** On industrial and consumer chemicals, the government has passed the Industrial and Consumers Chemicals (Management and Control) Act⁸. This deals with chemicals used for domestic households. Under the law inspectors of such industries are provided for and labeling and safety handling provisions are addressed.

5.0.4 Regional Economic Cooperation

Tanzania is an active member of the East African Community (EAC) and Southern African Development Cooperation (SADC). Both EAC and SADC partner states have signed Trade Protocols that among other things, tries to link liberalization of trade to a process of viable industrial development, mutually beneficial trade and fair competition. Tanzania working closely in these regional groupings can extend the fight against counterfeiting beyond its borders. This may entail supporting review of the EAC Competition Act which deals with

⁸ Act No 5 of 2003

consumer protection, public procurement, monopolistic practices and tendencies, so as to incorporate strategies and measures to deal with substandard and counterfeit goods within the region. Further, the region as a whole can voice their concern internationally to countries that are rampant as sources of counterfeit goods exporters to the region. If such countries fail to tame manufacturers of counterfeits in their own countries, the regional bloc could categorically boycott importation of goods in that country, including genuine products.

Tanzania is also a member of many bilateral trade agreements and multilateral trade arrangements and rules under the GATT and WTO. Tanzania should use these forums to voice their concern over counterfeit goods and solicit support for an international strategy to address the problem; including information sharing that might expose culprits and bring them into the arms of the law.

5.0.5 Proposed Government Action

This study was meant to investigate on the effects of counterfeit and substandard goods on the Tanzanian economy focusing on the manufacturing sector. The findings from this study and lessons drawn from review of literature are intended to inform the policy process and particularly use it to plead to the Government to take strategic actions aimed at arresting the situation.

As pointed out earlier, counterfeit and substandard goods are now becoming a world-wide problem. People who deal in these products are involved in high risk business. They are criminals, and therefore, highly organized. There are world spots which specialize in the manufacture of counterfeits and substandard goods aimed for countries where anti-counterfeits regulations are either weak or are not enforced effectively like the case here in Tanzania. Developing countries such as Tanzania are therefore becoming increasingly victims of counterfeits and substandard goods which have very significant negative effects⁹. To be able to address this anarchy the Government needs to formulate and implement an implementable course of action which must entail the following activities:

(a) Creation of the Public Awareness

In addition to reporting counterfeit goods to authorities, consumer awareness has to do with alleviating complacency to accepting counterfeit and substandard goods. The market should

⁹ Literature reveals the following list of negative effects: Counterfeits displace legitimate producers of goods and, therefore, lead to unemployment; Rampant counterfeits erode internal markets and business confidence in a given economy, and therefore, negate inward investment in the economy because it becomes risky for foreign investors to do so in an economy in which goods produced will compete with sub-standard and fake versions of the same products; Counterfeits work against government revenue collection efforts; Counterfeits in foods and medicines have direct negative effects on people's lives and health; Counterfeit machines and instruments may result in substantial destruction of property; In an economy where counterfeits are rampant, transaction costs become extremely high because goods are not trusted at face value; Counterfeits transgress all the social props which support a market based economy. Such props include trust, respect for property rights, economic level- playing -field and respect for contractual obligations.

be able to reject such products. There is therefore a need to have sensitization (and capacity building) programme which will particularly focus on training and on advocacy to enable consumers understand the hazards of these products and be able to reject them. This component is probably the most important one. It is the outreach programme aiming at imparting new knowledge and changing the attitudes and/or mindset of the consumers. There are different ways of doing it. In collaboration with the private sector, Civil Society Organizations (CSOs), the Government should conduct sensitization programmes and campaigns to create awareness thus discouraging use of counterfeit and substandard goods. The use of media to publish and inform the public on hazards of such products, different measures (e.g. destruction of consignment containing counterfeits) taken to stop counterfeiting should also be promoted¹⁰.

Through Business Registration and Licensing Authority, Copyright Society of Tanzania and others, the Government should undertake sustainable country-wide dissemination of the relevant laws. This intervention is immediate and should be continuous.

(b) Training of Experts

While sensitization programmes are an ongoing exercise, there is an urgent need for the Government (Ministries, regulatory institutions etc) to train large numbers of experts who can be allocated in different Ministries and particularly regulatory authorities to deal with the problem, thus strengthening their conceptual capacities of this problem.. This is a long term intervention which needs immediate implementation.

(c) Weak Punishment for Infringement

Tanzania's punishment for infringement is weak as a deterrent. To make it deterrent the magnitude of the punishment need to be scaled up significantly. This is particularly so given the fact that people who trade in counterfeits are more or less rich organized criminals who make huge profits which they then use to interfere with effective enforcement of anti-counterfeits laws and regulations. The Government and legal institutions e.g. Judiciary are better placed to work on the legal reforms whenever needs arise.

(d) Mandates of Regulatory Institutions

FCC once made a search on the legal instruments for fighting counterfeits. There are still no regulations under the FCC to empower FCC to deal with counterfeits effectively. Most was either lacking certain aspects or weak (Mkocha, 2007, Karume 2007). For example, the Merchandise Marks Act redress procedures through civil litigation were found not effective.

¹⁰ The good example is how the media successfully reported Fair Competition Commission (FCC) acts to confiscate and destroy counterfeits in 2007. These acts include a container full of "Phillips" and "Britrimax" counterfeit fluorescent tube lights from China worth about US Dollars 18,000 which was caught and the tubes destroyed in May 2007. With the help of Twiga Cement Plant at Wazo Hill, FCC also destroyed 303 cartons of fake "kiwi" shoe polishes from China worth 20 million TZS. The cartons were impounded at the Dar es Salaam Port. A number of TV sets were also confiscated and destroyed the same time.

The Government and related legal institutions e.g. The Judiciary need to review related legal frame so as to provide more power and mandates to the current regulatory institutions. For example, the Merchandise Marks Act needs refinements to reflect the following needs¹¹:

- Giving more powers to the inspector than there are currently in the Act, to enable them track the counterfeits through the whole supply chain
- Providing provisions in the Act for improving the implementation by enabling the Minister to make regulations as and when the need arises
- The Act applies to Tanzania Mainland only and leaves Zanzibar exposed but also as a possible route for counterfeits to Mainland Tanzania. Thus, the Act need to be comprehensive and inclusive

This is an immediate intervention which has to be taken up whenever the needs arise.

(e) Institutional Linkage

The Government needs to make it an obligation for the effective interaction between agencies and/or law enforcers and regulatory authorities to ensure a success in fighting counterfeits. These authorities are such as Police, FCC, TRA, TFDA, TBS, Government Chemist, Weights and Measures etc. The intervention is also urgent and should therefore be implemented immediately given the seriousness of the problem.

5.0.6 Proposed Matters and Areas for Action

While acknowledging the severity of the counterfeit and substandard goods problem and its detrimental effects on the people, investors and government, the attached Action Plan matrix gives a concise chronology of essential activities to be carried out in an effort to combat the influx of counterfeits and substandard goods in Tanzania.

We put forward the following recommendations with hope of reducing and eventually eliminating the problem.

(a) Public (Stakeholders) Sensitization and Awareness Creation

In acknowledgement the significance of Intellectual Property Rights, Tanzania has both patent and copyright legislations which protect the rights of inventors of technologies, composers of music, authors of books and artists. However, these legislations are not very well known to many stakeholders, a situation which hinders many innovators from benefiting appropriately and equitably from their works.

We also urge institutions which have the responsibility of administering these legislations, including the Business Registration and Licensing Authority and the Copyright Society of Tanzania to undertake sustainable country-wide sensitization to educate the public on Intellectual Property Rights. Public understanding of these rights will not only benefit creators and the nation economically but will also be an incentive to combat counterfeit vigorously as these grossly undermine the great efforts of creators and inventors of technologies. In this awareness campaign, consumers should be sensitized on ways of detecting counterfeits,

¹¹ Some of the problems and therefore proposals have already been submitted to the Parliament for approval

and where a counterfeit is suspected reporting mechanism that is not cumbersome or exposes the informer. Traders' country-wide should be sensitized to reject purchases of counterfeits from importers and urged to report such importers to law enforcement organizations.

(b) Taking a Balanced Approach to Avoid Overprotection

While advocating concerted efforts in dealing with counterfeits, it must be accepted however that over protection may not always be in the public interest and could have detrimental impacts. A balance must be forged between protection and creation of an enabling environment for innovation and investment, taking note that Tanzanian consumers are poor, and nearly 40 percent survive on less than 1\$ per day. Thus for example, the availability of pharmaceutical products is substantially reduced by the present intellectual property protection. Pharmaceutical patent holders enjoy the freedom to increase their prices beyond the means of poor persons and are adamant to reduce their prices for the benefit of poor developing nations, and pharmaceutical patent protection prohibits production of easily affordable generics. In this regard, Least Developed Countries including Tanzania should be encouraged to exercise their exclusive preferences as provided by the World Trade Organization to produce generic medications for treatment of diseases including HIV/AIDS and malaria.

(c) Promote Institutional Coordination and Ensure More Regulatory Power to Regulators

Regulatory institutions should perform their duties and responsibilities more diligently and efficiently and work as a team in combating counterfeiting. In particular, TBS should not only inspect and issue TBS quality and permit approval, but also make regular follow-up to ensure the approved product maintains the declared quality. Similarly, FCC and other regulators should be given more powers by an act of Parliament to deal more effectively with counterfeit goods, including stiff penalties to act as deterrent. Thus, the existing laws and regulations need urgent review to provide for more stern measures in case of infringement. FCC should also establish its presence in the regions to ensure its mandate is known to a wide range of stakeholders, including traders, importers and manufacturers. TRA, TFDA, BRELA, and police should work as a team along with TBS and FCC, sharing and exchanging information that will enable elimination of counterfeit goods in the Tanzanian market. In addition, TSCAN and COTECNA should perform their duties more efficiently to stop counterfeits from entering the country. If thorough inspection of counterfeits is not part of their mandate, their contracts should be reviewed and amended to empower these agencies to deal with suspected counterfeit goods before being issued a certificate. Further, capacity building is urgently needed in all these law enforcement institutions to inculcate necessary skills and equipment for analysing suspected counterfeits.

(d) A need for Brand Owners to take a Proactive Role

Owners of IPR who suspects their products are being counterfeited should take lead in reporting the matter to relevant law enforcement authorities. We urge these IPR owners to apportion some funds from their advertisement fund to make follow-up by tracing where the counterfeits are being manufactured, who are the importers and supporters within the

country – partly because counterfeiting is an organised crime involving many individuals or firms.

(e) Instituting Vigorous and Continuous Surveillance Programme

Undertake vigorous surveillance to curb unofficial border and sea routes (often called “panya routes” to reduce illegal imports, including counterfeits and substandard goods. This action may require empowering patrol officers with adequate transport and motivational rewards to do a thorough job. In this regard also, the two governments Tanzania Mainland and Zanzibar might work out a win-win situation under which the later plugs counterfeit loopholes en-route to the Mainland. In the same framework, Tanzanian law enforcers should be more vigilant on “transit cargo” which sometimes is off-loaded within the country and may be conduit for substandard and counterfeit goods.

(f) Scaling Up the Role of Media

The role played by the media, particularly the print press, and television in highlighting the dangers and causes of counterfeiting is commendable. We urge the media to cover reports of raids and impounding of fake goods by the Police, Tanzania Revenue Authority, Weights & Measures body, Tanzania Bureau of Standards, TFDA and FCC and any other law enforcement agency. This publicity enables consumers and would be counterfeiters to learn that the Government is serious about reducing and eventually eliminating counterfeit products in the Tanzanian market.

(g) Intensify the Ongoing Fight on Corruption

Efforts by Governments’ anti-corruption control agency (TAKUKURU) to fight corruption in all sectors and institutions in the country should be intensified. Focus group discussions involving traders, importers, manufacturers and consumers were resolute that without putting an end corruption by taking stern measures on corrupt law enforcers, the war against counterfeits cannot be won.

(h) Fight Drug Dealers

It has been noted in political circles that those who engage in counterfeit trade are the same persons who are trade in drugs and are involved in money-laundering. So, a concerted effort is required to address the other two arms of the trade, notable drugs and money-laundering. Counterfeits are use as laundry to siphon ill-gotten gains from drugs trade. Capacity building in the government in putting in place special initiatives addressing drugs and money-laundering is required.

6.7 CONCLUSIONS

This study has reviewed a counterfeit and substandard industry in the country. The overall objective of the study is to generate information and well grounded views which can persuade the government to take the necessary steps to reduce supplies of counterfeit goods in Tanzania. Thus in specific terms the study has assessed the scale and impact of counterfeit goods, Tanzania's approach to reducing the counterfeit and substandard problem (legal, regulatory and implementation) and identify any weaknesses, and identified possible reforms (legal and implementation) that the government could adopt to reduce the rampant supply of counterfeit and sub-standard goods.

From the findings, it is evident that counterfeit and counterfeit substandard products dominate the domestic market and therefore this is a serious problem in Tanzania which requires immediate remedial measures. Counterfeit and substandard products have impacted negatively on the Tanzanian economy in different areas namely government revenues, employment opportunities, productivity and therefore performance of the genuine manufacturing sector in the country as well as the business community. Other effects are related to the health conditions of the people of Tanzania particularly in terms of diseases caused by counterfeit products, and loss of life. Immediate actions should be taken to arrest this situation.

ACTION PLAN FOR COMBATING INFLUX OF COUNTERFEITS AND SUBSTANDARD GOODS

Objective 1	Institute Effective Mechanisms for Combating Influx of Counterfeits and Substandard Goods	
	Critical Problems	<ul style="list-style-type: none"> • Lack of clarity of information on counterfeits and substandard products • No networking on sharing of information on counterfeit and substandard products • Lack of coordination of Law Enforcing Agencies dealing with counterfeits and substandard goods • Consumers driven by lower prices of counterfeit and substandard goods

Output 1	Established networks/linkages among stakeholders	
	Success indicators	<ul style="list-style-type: none"> • Availability of information on sources of counterfeits and substandard goods • Improved networks/linkages • A strong committee made up of stakeholders formed and regularly meets to review progress to combat counterfeits and substandard goods • Stakeholders committee is operational and regularly holds consultative meetings

Activities for Output 1	Responsible parties	Duration		Milestones
		Start Month	End Month	
Identifying stakeholders	CTI, FCC, GCLA, TBS, TFDA, TRA	1	2	Stakeholders identified
Formation of Committee to deal with Counterfeit and Substandard Goods	CTI, FCC, GCLA, TBS, TFDA, TRA	1	2	Committee formed
Strive to develop working linkages	CTI, FCC, GCLA, TBS, TFDA, TRA	1	2	Networking among LEA's and stakeholders

Group mobilization and Team work	CTI,FCC,GCLA,TBS, TFDA,TRA	1	2	Linkages developed, effective lobbying performed by CTI
Objective 2	Brand Owners Take Proactive Role on Counterfeits and Substandard Goods Critical Problems			<ul style="list-style-type: none"> • Owners of IPR not aware of infringement on their products • IPR owners not reporting infringement to relevant law enforcers • Business people accepting counterfeits and Substandard goods which fetch lower prices
Output 2	Cooperation from IPR in Combating Counterfeits and Substandard Goods Success Indicators			<ul style="list-style-type: none"> • More information on brand and characteristics made available to LEA's • IPR apportioning some funds from their advertisements to make follow-ups by tracing where the counterfeits are being manufactured • Chronic importers and supporters of counterfeits and substandard goods identified • Heavy fines instituted to the culprits which is a deterrent for would be violators
Activities for Output 2	Responsible Parties	Duration		Milestones
		Start Month	End Month	
1. Identifying suspects of Counterfeits and Substandard Goods	CTI, TBS, TDFA, GCLA, TRA.	1	3	List of dealers in Counterfeits and Substandard Goods available
2. IPR making advertisements on infringements on their products	CTI and All producers	1	12	Public awareness enhanced through advertisements by IPR owners
3. Scaling up the role of the Media	CTI, IPR and all Producers	1	12	The Media taking up a pivotal role in educating the Public

on the adverse effects of using counterfeits and substandard goods and its repercussions in the Economy

Objective 3	Build capacity of LEA's in Combating influx of Counterfeits and Substandard Goods
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Critical Problems

- Lack of clarity on knowledge of Counterfeits and Substandard goods by some stakeholders
- Lack of Market Information on Counterfeits and Substandard Goods
- Limited Knowledge of Counterfeits and Substandard Goods
- Lack of cooperation among stakeholders in dealing with Counterfeits and Substandard Goods

Output 3	The capacity of LEA's strengthened and establishment of transparent system of sharing information and actions taken on combating counterfeits and substandard goods.
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Success Indicators

- Strong cooperation of LEA's, Stakeholders and the Public
- Quality standards for both domestic and imported goods in place and functioning
- Information on suspected consignments of counterfeits and substandard goods voluntarily given by stakeholders

Activities for Output 3	Responsible Parties	Duration		Milestones
		Start Month	End Month	
Identifying stakeholders in the Chain	CTI, TBS, TDFA, GCLA, TRA	1	3	Stakeholders in the Chain identified
Determining the roles of each	CTI, TBS, TDFA, GCLA, TRA	1	3	Roles of all strategic stakeholders

stakeholder					determined
Strive to develop working linkages	CTI,TBS,TDFA,GCLA,TRA	1	3		Working linkages developed
Training on identification of Counterfeits and Substandard Goods	CTI,TBS,TDFA,GCLA,TRA	1	3		Trained LEA's and stakeholders available
Objective 4	Monitoring and Evaluation				
	Critical Problems				<ul style="list-style-type: none"> Poor data collection on Counterfeits and Substandard Goods No accountability of Public Officials No coordination of LEA's operations There is just not enough manpower in LEA's. Importers using un-gazetted entry points (Panya routes)
Output 4	Institutionalised Monitoring and Evaluation Mechanism				
	Success Indicators				<ul style="list-style-type: none"> Public Private Partnership cemented Booklet on Counterfeits and Substandard Imported and Local products launched Findings, Actions and Punishments of offenders made public so that it acts as deterrents for any would-be culprits Quality standards and Counterfeits campaigns launched. TAKUKURU taking active role to fight corruption in all sectors and institutions in the country
Activities for Output 4	Responsible Parties	Duration		Milestones	
		Start Month	End Month		
Forming of an	CTI,GCLA,TBS,FCC,TRA,TFDA.	1	3	Public Private	

institutionalized Public Private Partnership				Partnership institutionalised to deal with counterfeits and Substandard Goods Document prepared
Identifying elements for evaluation	CTI, GCLA, TBS, FCC, TRA, TFDA.	1	3	
Objective 5	Facilitate Training on Identifying Counterfeits and Substandard Goods to Stakeholders			
	Critical Problems			<ul style="list-style-type: none"> • Limited Knowledge of Counterfeits and Substandard Goods by some stakeholders • Lack of knowledge sharing
Output 5	Knowledge on Counterfeits and Substandard Goods available to Stakeholders			
	Success Indicators			<ul style="list-style-type: none"> • Knowledge of Counterfeits and Substandard Goods disseminated to Stakeholders • Consumers awareness on bad effects of Counterfeits and Substandard goods enhanced • Knowledge sharing enhanced
Activities for Output 5	Responsible Parties	Duration		Milestones
		Start Month	End Month	
Short-Term training for LEA's	GCLA,TBS.TFDA,CTI,FCC	1	6	Clarity and better knowledge on combating the influx of counterfeits and substandard goods
Seminars and Workshops given to consumers	GCLA,TBS.TFDA,CTI,FCC	1	6	Appreciation of quality and standard of goods instead of cheap sub-standard and counterfeits.
Dissemination of vital information on Counterfeits and Substandard goods	GCLA,TBS.TFDA,CTI,FCC	1	6	Public made aware of counterfeits and substandard goods on their whereabouts, countries of origins and identities of such goods

