



Confederation of Tanzania Industries

THE STATE OF COUNTERFEIT GOODS IN TANZANIA

RESEARCH REPORT

OCTOBER 2017



Sponsored by

BEST-Dialogue







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List of Abbreviations

AGC	Attorney General's Chambers
BASCAP	Business Action to Stop Counterfeiting and Piracy (International Chamber of Commerce)
BEST-D	Business Environment Strengthening Tanzania – Dialogue
BRELA	Business Registration and Licensing Agency
CSOs	Civil Society Organizations
CTI	Confederation of Tanzania Industries
DPs	Development Partners
EAC	East African Community
EU	European Union
FCA	Fair Competition Act
FCC	Fair Competition Commission
FDI	Foreign Direct Investment
FMCG	Fast Moving Consumer Goods
INTERPOL	International Police
IPR	Intellectual Property Right
MDA	Ministries, Departments and Agencies
MNE	Multinational Enterprises
MITI	Ministry of Industries, Trade and Investment
NEMC	National Environmental Management Council
OECD	Organization for Economic Cooperation and Development
OSINT	Open Source Intelligence
PF	Police Force
PSOs	Private Sector Organizations
R&D	Research and Development
SOE	State Owned Enterprises
TACO	Tanzania Association of Consultants
TBS	Tanzania Bureau of Standards
TCAL	Tanzania Chamber of Agriculture and Livestock
TCCIA	Tanzania Chamber of Commerce, Industry and Agriculture
TCRA	Tanzania Communication Regulatory Authority
TFA	Tanganyika Farmers Association
TFDA	Tanzania Food and Drugs Authority
TNBC	Tanzania National Business Council
TOMC	Tanzania Oil Marketing Companies
TPSF	Tanzania Private Sector Foundation
TRA	Tanzania Revenue Authority
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UAE	United Arab Emirates
UNBS	Uganda National Bureau of Standards
USA	United States of America
UK	United Kingdom (UK)
URA	Uganda Revenue Authority
WCO	World Customs Organization
WMA	Weights and Measures Agency



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Any shortcomings in the report are the responsibility of the CTI.

Executive Summary

Introduction

The main objective of the study was to document the current status of counterfeiting and counterfeit (not to be confused with substandard) goods in Tanzania, through the voices of consumers, manufacturers, key informants and (Multinational) Trade Mark owners and how this illicit trade affects the country and its citizens. In 2015 and early 2016 both primary and secondary data sources were used in the research and primary data sources were utilised through numerous field studies and in-depth case studies. The overall findings, conclusions and recommendations of the study are outlined below and are based on the data collected in 2015 and early 2016.

Intellectual Property Rights and Development

Intellectual property is a creation of the human brain and has significant economic value when put into practice. Trade Marks, Patents and Copyrights are all Intellectual Property Rights (IPR) and the counterfeiting of goods is therefore referred to as IPR Infringement. Economic development is directly related to innovations, and inventions must be protected by Intellectual Property Laws in order to encourage creativity and public disclosure of intellectual properties for the greater benefit of society. Most of the world's Research and Development is conducted in industrial countries and its results diffuse into developing countries such as Tanzania.

Situation of Counterfeits in East Africa and Tanzania

Findings indicate that Tanzania and Kenya suffer higher levels of counterfeit goods than the other three East African Community (EAC) countries due to their geographical location. In Tanzania counterfeiting is a large and growing challenge based on the findings from different sources within the country.

Between 2010 and 2016 the Fair Competition Commission (FCC) seized 1,151 containers containing counterfeit products and further carried out 138 raids in different premises and regions within Tanzania. A total of 1,711 offenders were dealt with as per the provisions of Merchandise Marks Act, 1963. The total value of the seized goods was TZS 2,898,904,833.3. The 'hot spots' for counterfeit goods are: Dar es Salaam, Arusha, Mwanza and Mbeya. Based on their seizure data the FCC is of the opinion that approximately 10% of goods available in Tanzania are likely to be counterfeits.

Origin of Counterfeits

- In Tanzania, counterfeits originate from both within the country and from imports, which are mainly from China while distribution often takes place in Dubai, UAE.
- Imported counterfeits cover a wide range of both intermediate and finished products, affecting almost every category of consumer.
- Domestically, there are counterfeiting practices across various sectors and products and in the major cities and towns of Tanzania. These products include, but are not limited to, alcoholic and non-alcoholic drinks, fertilizers, seeds and pharmaceuticals.

How Imported Counterfeit Goods enter Tanzania

- The majority of imported counterfeit goods (80 per cent) enter Tanzania through the Port of Dar es Salaam and to a lesser extent through Tanga and Mbeya, while entry via Zanzibar is also widespread.

Major findings from a Survey conducted in 2015/16 on Consumers and Manufacturers in Tanzania

- Some 40 per cent of consumers responded that they understand what constitutes a counterfeit while 50 per cent is unaware and confuse substandard goods with counterfeits.
- Some 81 per cent of manufacturers interviewed understand the concept of counterfeit goods.
- Some 98 per cent of interviewed consumers admit that they are not always able to identify fakes.
- The majority of consumers purchase counterfeit goods due to ignorance and when they are short of money.
- Some 92 per cent of consumers are not familiar with the Merchandise Mark Regulations Act of 2008 amended in 2010 which prohibits counterfeit goods and 87 per cent did not report to any Authority after discovering that they had purchased counterfeit products.
- A total of 60 per cent of consumers stated that they do not know which MDAs are responsible for fighting counterfeits while 40 per cent mentioned that the TBS is the main MDA responsible in cases of IPR infringements.
- Some 34 per cent of manufacturers stated that the MDA responsible for fighting counterfeits is the TBS, 23 per cent named the FCC while 21 per cent is unaware of which MDA is responsible for fighting counterfeits in Tanzania.

Major findings from Anonymous Questionnaire distributed on Multinational TM/Patent/ Copyright owners in 2015/16

The survey findings below are based on the feedback received from 17 Companies which are trading in pharmaceuticals, food stuffs, computers/IT, mobile phones, electronic and electrical goods, alcoholic and non-alcoholic drinks, cosmetics, sportswear, spare parts and fertilizers.

- Some 75 per cent of the Companies has been conducting their business in Tanzania for the past 10 years.
- Some 92 per cent is experiencing the counterfeiting of their products which has led to the loss of market share (10 - 30 per cent) and a loss of annual turnover.
- Some 90 per cent reports an increase of counterfeits in the Tanzanian market.
- Some 78 per cent states that the counterfeiting of their products has harmed the good name of their Brand, resulting in the loss of consumer trust.
- As a result of the loss of turnover all companies report a loss of Tax Revenue for the TRA ranging between 20 and 50 per cent and above.
- Some 91 per cent of the companies would consider investing in Tanzania if their Intellectual Property was better protected.
- Some 80 per cent of those interviewed report that the counterfeit products have negatively affected the health and safety of the Tanzanian people.
- Some 87 per cent report that the selling price of the counterfeit product ranges between 30 and 50 per cent less than the genuine product while 58 per cent report that the life- span of the counterfeit is 50 per cent less than that of the genuine product.
- Some 90 per cent of the companies is aware of which MDA to contact in case of IPR infringement.
- Some 80 per cent of the companies have worked with the FCC in the fight against the counterfeits, 50 per cent with the TRA Customs, 40 per cent with the TFDA, 40 per cent with the TBS, 40 per cent with the Tanzania Police Force and 10 per cent with the WMA.
- Some 38 per cent have actively investigated the infringement of their IPR but enforcement action was unsuccessful, 24 per cent have actively investigated IPR infringements and report that enforcement has been both successful and unsuccessful and 15 per cent have actively investigated IPR infringement leading to successful enforcement action while some 23 per cent of the companies have not actively investigated the infringement of their Intellectual Property.
- Approximately 78 per cent of the companies interviewed state that they have no experience with the Tanzanian Courts in relation to IPR cases.
- Some 70 per cent of the companies is of the opinion that the Legislation in relation to IPR infringement in Tanzania is inadequate.

The Loss of Tax Revenue, Foreign Direct Investment and Employment

Findings from an in-depth Case Study on a Manufacturer of Alcoholic Beverages in Tanzania in 2015/16

- The Company has conducted its business in Tanzania for the last 23 years and has experienced the counterfeiting of its Brands for the last 18 years. The company has reported an increase in the illicit trade of at least 30 per cent.
- For the last 5 years the Company has experienced a 20 per cent loss of market share to counterfeiters, resulting in an annual loss for the Company of US\$ 10 million.
- As a result the Government has incurred a loss of between 40 and 50 per cent in Tax Revenue, amounting to an annual loss for the TRA of US\$ 4 million.
- If the Company had not suffered from the counterfeiting of their brands they would have been able to invest further by building a new factory, creating direct employment for 200 workers and indirect employment for at least another 1,000 workers.

Findings from an in-depth Case Study on an Electrical Products Manufacturer in Tanzania in 2015/16

- The Company has conducted its business in Tanzania for the last 38 years and has experienced the counterfeiting of its products for many years. The Company has reported an increase in the illicit trade.
- For the last 4 years the Company has experienced a 30 per cent loss of market share to both the counterfeit trade as well as the importation of substandard electrical products, which has resulted in an annual loss of TZS 38 - 40 billion.
- As a result the Government has incurred a loss of between 5 - 10 per cent in Tax Revenues.
- If the Company had not suffered from the counterfeiting of their brand they would have been able to invest further and develop their business by building a bigger factory creating direct employment for 20 workers and indirect employment for at least another 100 workers.

Reasons for the Existence of Counterfeits in the Tanzanian market

- To-date, measures taken by Government do not appear to be curtailing the increase of counterfeits in the economy.
- The Government's inability to monitor the highly porous and lengthy borders with Kenya, Uganda, Rwanda, Burundi, DRC, Zambia, Malawi and Mozambique
- Inadequate budgets allotted to the MDAs fighting the counterfeit trade
- Lack of coordination between and within the MDAs
- Insufficient enforcement action and light punishments meted out to culprits when apprehended
- Poor Governance, vested interests and corruption within the MDA's concerned
- Huge profits are reaped by traders in counterfeit goods.

Conclusions

Lack of consumer awareness increases the demand for counterfeit goods in Tanzania. Due to the related health and safety risks connected to counterfeit products, there is growing disappointment amongst Tanzanians as they see the Government apparently doing little to curb the illicit trade.

The effect of the Counterfeit Trade on Consumers leads to the loss of employment, creates a false economy ('Buying Fakes Costs More'), a loss of property due to fires and loss of life, welfare, health and safety.

The effects of the Counterfeit Trade for Manufacturers, Farmers and TM/Patent/Copyright owners leads to a loss of profit, the inability to compete, a loss of consumer trust, a loss of market share and turnover, all negatively affecting growth and development and a loss of income for farmers due to failed/reduced harvests.

The effects of the Counterfeit Trade on the Government of Tanzania amount to the loss of Tax Revenue, employment and a loss of Foreign Direct Investment. The counterfeit trade accommodates and further increases corruption, putting the Government at risk of becoming a shadow economy. The counterfeit trade further negatively affects the industrialisation of Tanzania. The illicit trade in counterfeit goods reduces the Government's ability to protect the welfare and property of its citizens and to create an environment where its people can thrive economically and socially.

Links have been established between the Counterfeit Trade and Organised Crime, Terrorism and the Funding of Conflict Zones all of which further destabilise the economy and negatively affect the security and development of the Nation. The significant reduction of counterfeit goods will generate added value for all parties involved.

Recommendations

Short term (one year)

Consumer Education through a nationwide awareness campaign explaining the following.

- 1) The difference between a counterfeit and a substandard product
 - 2) The effects the counterfeit trade has on consumers (false economy) and the Tanzanian economy
 - 3) Which MDA's to contact - and how - after purchasing a counterfeit/substandard good
- Establish a Consumer Protection Policy through a **Consumer Agency** under the Ministry of Industry and Trade to address counterfeit trade and other issues.

- **Enhance the resources, budget and capacity of the FCC – a Counterfeit Division** in order to increase its presence in the country, through the three steps below.
 - 1) Zonal Offices staffed with permanent inspectors in Tanga, Mbeya, Arusha, Mwanza
 - 2) FCC inspectors to be based at the Port of Dar es Salaam 24/7
 - 3) FCC staff to be well remunerated in order to give them incentive and motivation

- The **Anti-Counterfeit Chief Inspector/FCC** needs to address the following.
 - 1) Put procedures in place to arrange for **tighter controls and close cooperation at all Ports of Entry, involving** TRA, FCC, TFDA, TBS and other MDA's (Dar es Salaam, Tanga, Mbeya, Namanga).
 - 2) **Close cross border cooperation** is needed between **MDA's** from Tanzania, Uganda, Kenya, Zambia, DRC, Rwanda, Burundi, Malawi and Mozambique, by sharing intelligence leading to cross border enforcement operations.

- **Enhance TFDA resources, budget and capacity, interagency cooperation in order to address corruption** through the six steps below.
 - 1) More inspectors are needed; preferably at every port of entry.
 - 2) Improvement of detection (through technology) so inspectors can quickly refer to the genuine product.
 - 3) The Anti-Counterfeit Task Force only meets during joint operations but needs to meet more frequently.
 - 4) There should be Terms of Reference between the different MDA's.
 - 5) Lack of cooperation between MDA's results in the TFDA not always receiving the necessary cooperation.
 - 6) Corruption within the Police and the Courts has led to cases being dismissed. This challenge needs to be addressed through the PPACC.

- **TBS has suggested enhancing technological capacity for MDA's** in the fight against counterfeit goods.

- Creation of a **Public Private Advisory Committee on Counterfeits (PPACC)** involving the local and international private sector, MDA's (Anti-Counterfeit Task Force) and Diplomatic Missions in order to create a close and continuous working relationship between all parties involved, in which the following ought to be addressed.
 - 1) Education of the private sector by all MDAs involved in registration of TM's, Patents, Copy Rights, etc., and regarding procedures, which legislation is available, cost and how to lay a complaint, compounding.

- 2) Establish realistic expectations regarding responsibilities and capabilities of MDAs.
 - 3) Brand owners will assist MDAs by better protecting their products from being counterfeited.
 - 4) IPR owners need to work closely with and educate MDAs on how to recognise counterfeits from genuine products.
 - 5) Lack of feedback/follow-up from MDA's after complaints have been filed, i.e. transparency and accountability.
 - 6) Incidents of corruption within MDA's; which procedures are in place/how to report?
 - 7) To increase the percentage of successful enforcement actions.
 - 8) The continuation of relationships with stakeholders like INTERPOL and the WCO is necessary for further investigative training in fighting IPR infringement; the newly gained knowledge needs to be implemented and evaluated by MDAs.
- **Destruction/Recycling of seized counterfeit goods:** Formation of a **Working Group**, in close cooperation with the National Environmental Management Council (NEMC), who will address:
 - 1) Challenges of storage and destruction – FCC to have its own storage facility?
 - 2) (Legal) possibilities to recycle counterfeit goods.
 - 3) Guarantee and proof that seized goods do not re-enter the market (IPR owner to be present during destruction/recycling seized goods).

Mid-term (two years)

- As part of raising awareness on the counterfeit issue for the current and future generations we suggest the formation of '**Counterfeit Guest Lessons**' in Primary and Secondary Schools, Colleges and Universities in cooperation with TM owners and MDAs.
- **Evaluation** of the achievements of the **Public Private Advisory Committee on Counterfeits (PPACC)**, including all manufacturers, businesses and IPR owners who assisted us with this Study in order to establish the following two things.
 - 1) The success rate of law enforcement actions with MDAs
 - 2) The success of the working relationship between the private and public sectors
- **Evaluation of Awareness Campaigns** through nationwide Consumer field surveys in order to establish if and to what extent the campaigns have been successful, i.e. a better understanding of what is a counterfeit/substandard product, where to report and feedback received.

- **Evaluation of Awareness Campaigns** with MDA's in order to establish the following.
 - 1) The number of complaints received from consumers, manufacturers and IPR owners
 - 2) The results of the follow up actions taken by MDAs as a result of complaints received

Long term (two- three years)

Creation of a **Legal Advisory Committee** involving the Attorney General, Judiciary, the Directorate of Public Prosecutions (DPP) and Legal departments of all respective MDAs in order to **streamline legislation** and have **clear definitions** regarding counterfeit goods (reference: 'Review of Laws and Regulations Relating to counterfeit Goods', CTI 2012).

- The Legal Advisory Committee needs to **review the current legislation** regarding IPR protection in relation to the following Acts and/or Regulations.

The Fair Competition Act 2003

The Tanzania Food, Drugs and Cosmetics Act 2003

The Merchandise Marks Act, Cap 85

The Trade and Service Marks Act, Cap 326

The Industrial and Consumer Chemicals (Management and Control) Act 2003

Environmental Management Act 2004

The Standards Act, 2009

The Penal Code Cap 16

Copyright and Neighbouring Rights Act, Cap 218

The Patents Act Cap 217

Tanzania Revenue Authority Act, Cap 399

East African Customs Management Act, 2004

The Criminal Procedure Act, Cap 20 [R.E.2002]

- The Legal Advisory Committee should furthermore address the following considerations received from the private sector: 1) The fight against the counterfeit trade should remain within the Criminal Law, 2) the laws and fines are not sufficiently punitive; courts should be able to impose sanctions with strong deterrent measures, and 3) look into the establishment of a dedicated IPR Court.
- Continuous efforts should be directed within the East African Community towards the inception of an **APEX Law for the EAC**.

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

Evidence has been obtained in Africa of direct links between the trade in counterfeit goods and other crimes such as the trade in narcotics and diamonds, money laundering, tax and duty evasion, terrorism, human trafficking, kidnapping, murder, the recruitment of child soldiers, mass rape, slavery and torture and funding of conflict zones, leading to the arrest, prosecution and conviction of a Mokhtar Belmokhtar (an Algerian national) aka 'Mr Marlboro' in the USA and the arrest and conviction of a Tribert Rujugiro (a Rwandan national) in South Africa.

(Source: Against Organized Crime, INTERPOL Trafficking and Counterfeit Casebook 2014).

Loss of harvest leading to reduced food security

In Tanzania, at least 75 percent of the entire population depends on small-scale farming, and agriculture is one of the leading sectors in Tanzania, accounting for 24 percent of the GDP, 30 percent of total exports and 65 percent of raw materials for Tanzanian industries.

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

Due to the use of counterfeit agro-inputs, productivity of maize declined from 25 bags to 8 bags per acre during the 2012 /2013 season. The district council levies TZS 1,000/- on each bag of maize (and beans) and so the decline in productivity of maize from 25 bags to 8 bags implies that the district lost TZS 17,000/- per acre in that year.

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



1 Introduction and Background

The Confederation of Tanzania Industries (CTI) is a Business Membership Organisation for the industrial sector. Among other things, CTI advocates the creation of a conducive business environment within which Tanzania's businesses, specifically manufacturing, can become more competitive in the domestic, regional and international markets. Among the ways of making manufacturers competitive is to advocate and lobby for a good, friendly and conducive business and investment environment in the country. This, together with other things, involves ensuring that there is fair competition. Methods of ensuring fair competition include, but are not limited to, ensuring that a close watch is kept on the emergence of counterfeit goods in the market because these goods negatively affect the ability of genuine manufacturers and traders to compete.

At the present time, counterfeit goods are more complex, due to the fact that they are made within the country as well as being imported. This situation has made Tanzania a country whose market is adversely affected by counterfeit goods. Most shops, markets and street stalls are filled with counterfeits that include electronic equipment, motor vehicle spare parts, tyres, wires and cables, pirated music, cosmetics, clothing, footwear, pharmaceuticals and medical equipment, to name a few.

Two studies on counterfeit goods have been conducted by the CTI. These are studies on *The Effects of Counterfeit Goods on the Tanzania Economy (2008)* and the *Review of Laws and Regulations Relating to Counterfeit Goods (2012)*. The studies revealed that, apart from distorting competition in providing such goods, they also tarnish the image of legitimate producers and abuse brand names. Counterfeit goods undermine employment creation and reduce Government revenue. They also pose risks to consumer health, safety and welfare. The fact that the effects of such goods are felt throughout society, calls for immediate responses from all stakeholders including business associations, legislators, industry, individual companies, enforcement agencies, regional and local authorities, as well as consumers.

CTI has found it crucial to enhance the fight against counterfeits by proposing more measures to be undertaken by the Government. CTI found the previous two studies out-dated and did not have sufficient basis for requesting further measures to be undertaken by the Government and other stakeholders. Therefore CTI proposed to undertake a follow-up studies to revisit the previous studies. The aim is to have more up-to-date information that will assist all stakeholders to introduce practical solutions in the fight against counterfeiting.

1.1 The Study Objective

The objective of this study is to have updated data on the effects of counterfeits in order to advocate for the elimination of counterfeits in Tanzania, hence improve industrial outputs and fair trade.

The Report is to be used to persuade the Government and other stakeholders to strive to eliminate counterfeits in the economy. This will not only protect the health of the consumer, as well as the health of the economy, but will also improve Government revenue, industrial outputs and fair trading in the country.

1.2 Methodology

The Study is based on both primary and secondary data sources. Whereas secondary data was obtained from review of various documents, primary data was obtained through field studies. The field studies were conducted through distribution of questionnaires, in-depth interviews and observations. Primary data was collected in various regions from institutions, companies and individuals. The regions include Dar es Salaam, Tanga, Kilimanjaro, Arusha, Mwanza, Mbeya and in Zanzibar. Institutions involved include the Fair Competition Commission (FCC), Tanganyika Farmers Association (TFA) and Trade Mark (TM) owners. A total of 47 respondents from manufacturing firms and over 250 consumer respondents participated in responding to our enquiries, thus representing the opinions of their respective sectors.

For the purpose of field data collection among manufacturers, a questionnaire was prepared. The questionnaire was distributed by e-mail to all CTI members in Tanga, Arusha, Moshi and Mwanza Outreach offices. Following a rather poor response through e-mails, follow-ups were made both via phone and by physically visiting the members. A total of 70 questionnaires were distributed by mail. After the telephone and physical follow-ups, a total of 47 questionnaires were received, making a response rate of about 67 per cent. The table below shows the distribution of questionnaires in various regions and response rates for the same.

Table 1: Distributed and returned questionnaires

S/n	Region	Distributed	Returned	Response rate
1	Tanga	12	5	41.7%
2	Kilimanjaro	5	3	60%
3	Arusha	26	16	61.5%
4	Mwanza	27	23	85.2%
	Total	70	47	Average: 67.1%

The general survey of all the CTI members through questionnaires and interviews gave a general overview of the state of counterfeit goods in Tanzania. In the interest of obtaining detailed information on the state of counterfeits in the country five in-depth interviews were undertaken. These involved the FCC and a manufacturer who has experienced - and been affected by - both domestically-produced and imported counterfeit goods. Apart from the institutions and manufacturers, a survey was also carried out on consumers with the aim of obtaining their views on counterfeits in the context

of the study informing this Report. The over 250 consumers involved in the study were mainly from Dar es Salaam, Mbeya, Tanga and Moshi.

1.3 Study Findings

The study findings will now be presented, analysed and discussed. The findings are given in two major parts. Part one presents the findings based on the document review and gives the situation of counterfeit goods in general, based on earlier studies and documentations that are not specific to the current study. Therefore, these findings emanate from secondary data. Part two constitutes findings from the field study that was conducted specifically for this purpose, and is collated from various individuals, institutions, manufacturers and multinational TM owners who were studied in the field.

1.3.1 Findings from Document Review

In the following sub-sections, a summary of findings from document review on various key issues in the context of counterfeit goods is presented. It sets the stage for the field research findings.

1.3.1.1 Understanding Counterfeit Goods

There are various definitions and descriptions of counterfeit goods, some of which will be outlined in this section of the Report. The Merchandise Marks Act Regulations 2008 of Tanzania, amended in 2010, defines counterfeit goods as goods available as a result of counterfeiting and piracy. Piracy involves the unauthorized copying of any intellectual property right (Copyright Protection) in the course of trade.

According to Ringo (1994), “Counterfeiting” covers manufacturing, producing, packaging, repackaging, and labelling. It involves making, whether in Tanzania or elsewhere, of any goods whereby the TM protected “genuine” goods are imitated in such a manner and to such degree that the “counterfeit” goods appear identical or substantially similar to the genuine goods. “Counterfeit” goods or “Pirated goods” or offending goods are in many cases interchangeable and they constitute goods that are the result of counterfeiting or piracy. Counterfeiting occurs when the Intellectual Property Right has been stolen. In other words, counterfeiting is stealing.

The law that deals with counterfeits in Tanzania is the Merchandise Marks Act 1963 as amended. The FCC is mandated to deal with counterfeits. Section 3 of the Act provides that counterfeits are goods that are produced with forged or fraudulently imitated brands, trade descriptions or trade names without having prior approval of use of such trade description, brand or trade name from the intellectual property holder. The same intends to deceive consumers in the market to commit their resources into buying such goods. Section 10 of MMA prohibits importation into the country of such goods.

According to Czinkota, Ronkainen and Zvobgo, (2007), counterfeit goods include but are not limited to fake, forged, copied, and reproduced, bogus, imitated or dummy goods. To counterfeit is to imitate, to copy, to reproduce or forge something especially with intent to defraud or deceive the consumers or users. Counterfeit products are fake replicas of the genuine products, often produced with the intention of taking advantage of the superior value of the imitated products.

Counterfeiting means that another Company uses the firm's competitive advantage to supply products to consumers at lower prices (Frank Bradley, 1999). According to a key informant, however, counterfeits can be sold at a higher price, where the high price of a good infers superiority. According to the International Trade Mark Association counterfeiting is the practice of manufacturing products, often of inferior quality, and selling them under a brand name without the brand owner's authorisation. Generally, counterfeit products are sold under a trademark that is identical to or substantially indistinguishable from the brand owner's trademark for the same goods. This is done without the approval of, or due to oversight of, the trademark owner.

The principal focus of counterfeits is often concentrated on luxury products such as branded shirts, suitcases, ladies' handbags, and watches. Counterfeits usually occur only where the TM holder receives relatively high margins, where the brand is international and where the competitive advantage reflects a worldwide interest in acquiring the best in the market, irrespective of origin (Bradley, 1999).

According to our key informant, counterfeiters tend to focus on Fast Moving Consumer Goods (FMCG) as well as luxury goods because they are high value and therefore attract more money, and their turnover is greater.

It is worth noting that Intellectual Property Rights (IPR) forms the conceptual basis as well as the legal basis for fighting counterfeits. IPR comprises property belonging to Companies or individuals. The basis for ownership of IPR is established in Law. Companies or individuals who use other people's property without authorisation from the owners of the property are, in fact, stealing.

The concept of "passing off" is important in understanding counterfeits. "Passing off" involves presentation of a product as though it is a genuine product by means of trickery, misrepresentation or imitation. This is how dishonest entrepreneurs contrive to steal IPR from TM owners. In courts, "passing off" is normally an area of contention where one wins or loses the case upon proof (or otherwise) of the "passing off of a commodity".

Conceptual-theoretical Framework

In the following, some key conceptual-theoretical frameworks are addressed in order to facilitate the understanding of the “counterfeiting” concept.

Counterfeiting involves the utilisation of another party’s Intellectual Property for the purpose of making a profit. According to the Trade-Related Aspects of Intellectual Property Rights (TRIP) Agreement, counterfeiting and piracy are defined for the purpose of this Agreement:

a) counterfeit trademark goods shall mean any goods, including packaging, bearing - without authorisation - a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the Law of the country of importation;

b) pirated copyright goods shall mean any goods which are copies made without the consent of the rightful holder or person duly authorised by the rightful holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the Law of the country of importation.

Counterfeits are products which are unauthorised imitations of branded goods, and are intended to be passed off for an original with the purpose of defrauding or deceiving the consumer of the said 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 the belief that the customer is purchasing the genuine article.

Counterfeiting is an infringement of intellectual property rights (IPRs) which refer to the rights of persons or firms who invent or innovate. Such infringements, when carried out on a commercial scale, are classified as piracy if they involve unauthorised reproduction of copyright materials or counterfeiting where there is copying of TM’s with the intention of passing the goods off as those of the authentic producer.*

Relation between Counterfeits and Substandard goods

A good is sub–standard when it does not meet the “standard” set for the good by the producer, consumer, and national or international standards body. A good may be sub-standard by many standards.

It is important to show how the issue of counterfeits differs from that of sub-standards and how they relate. Counterfeits involve the production of a good using a brand name, trade mark or design which does not belong to the one producing such goods. Although the goods need not necessarily be sub-standard, it is fair to assume that there is a very high probability that a counterfeit good is also substandard. The standards provider in a country (for example TBS in Tanzania) may not be suited or legally mandated to deal with general counterfeits issues unless they bear the Bureau's standard or they are inspecting also on behalf of other local and international standards bodies. Standards bodies and anti-counterfeits bodies have to work together or coordinate their work.

Substandard goods relate to goods produced without conforming to requirements of Standards Authority such as the Tanzania Bureau of Standards (TBS). Enforcement of violations under this area fall under the purview of the Standards Act enforced by TBS.

Imitation and reverse engineering

Imitation and reverse engineering are different from counterfeiting. Counterfeiting involves passing of a fake product as a genuine article through the design and trademarks of the genuine owner of those intellectual property rights. Reverse engineering involves taking a machine or product apart or disassembling it in order to see how it works for purposes of duplicating it or improving it. What differentiates the two depends on how one proceeds after the learning process. A counterfeiter would produce the product and continue to sell it under the brand name of the original branded product which was taken apart; this would constitute counterfeiting and is illegal. However, if one improved upon the original product, registered the improvement and started producing the product under a different brand name, then subject to the status of the patent of the particular technology and acceptance by the competent authorities, it would be a properly constituted business. In this case the new item would have its own identification mark.

Consumers as Voters for the Product they buy

Similarly, consumers need to understand that when they buy a product they are actually voting for further production of that product. Consumers can shop differently, for instance they can ask how the products they are purchasing are produced, whether or not the products are genuine and from where the products originate, before they decide to buy. Consumers, which we all are, including Governments which are among the biggest single consumers, exercise a voting power when choosing what to buy.

The 'Commodity' aspect of Counterfeits

From the international business point of view, counterfeits are commodities. Business-people seek out countries where the commodity sells. They look for countries whose legal frameworks and law enforcement organs are weak or not sufficiently strict. They then consign large amounts of counterfeits and pirated goods to that country in the knowledge that it is not too great a risk and in case they did happen to be caught, they know it would be possible to “pay” their way out. Therefore it is in the interest of the target countries to act and to be seen as “no –go” countries for counterfeits and pirated goods.

Intellectual Property Law and Development¹

Intellectual property is a creation of the intellect of the human brain and has significant economic value when put into practice and has the capacity of affecting the market. Economic development is directly related to innovations, especially in the industry which depends upon the inventions by the intellect of the human brain. Inventions must be protected by Intellectual Property Law in order to encourage creation and public disclosure of intellectual property for the benefit of the economy and society.

Most of the world’s Research and Development is conducted in industrial countries. Its results diffuse into developing countries such as Tanzania through *inter alia*: technology licensing, joint ventures, Foreign Direct Investment, international trade, cross-country movement of labour and imitation. Only countries with credible Intellectual Property Rights Protection Regimes are likely to benefit freely and legally from the Research and Development of other Nations.

Intellectual Property Rights Protection Law provides for remedies in the form of injunctions, damages and accounts of profits in favour of the owner of intellectual property against those who make an unauthorised use of Intellectual Property Right. Such protection encourages inventors to disclose their creations to the public without fear of their rights being infringed by others. It also protects the interests of nations where such inventions take place. New inventions are important to the economic development of any Nation, Tanzania included. Intellectual Property Law is more important in these times of unprecedented development in science and technology in general and in IT in particular, where infringement of Intellectual Property Rights in one part of the world spreads rapidly to the rest of the world.

It is to be noted that protection of Intellectual Property Rights is not conducted with total disregard to public interest. Amongst other things, the TRIPS Agreement of the WTO aims at balancing the interests of various stakeholders. These include innovators, producers and consumers in a manner that enhances social and economic welfare.

1.3.1.2 Global Situation of Counterfeiting

According to the OECD and EUIPO report on 'Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, 2016' and based on the data provided by Customs Authorities, indicate that counterfeit and pirated products accounted for as much as US\$ 461 billion in world trade in 2013. Given that total imports in world trade in 2013 amounted to US\$ 17,905 billion, this number implies that as much as 2.5 per cent of total world trade in 2013 was in counterfeit and pirated products. According to the OECD, the trade in counterfeit and pirated goods is a major challenge in an innovation driven global economy. These practices have negative effects on the sales and profits of affected firms, while also having adverse revenue, economic health, safety and security effects for Governments, businesses and consumers. Organised criminal groups are seen as playing an increasingly important role in these activities, by benefitting significantly from profitable counterfeiting and piracy operations.

1.3.1.3 Counterfeits in Tanzania

The most extensive research-based report on counterfeit goods in Tanzania is that conducted by CTI in 2008. Unless otherwise stated therefore, the reviewed literature on various aspects of counterfeits in the country has its source in CTI (2008).

1.3.1.3.1 Origins of Counterfeit Goods in Tanzania

The Confederation of Tanzania Industries– CTI- (2008) has documented that counterfeits are results of the breach of IPR. The issue of rampant counterfeits is a recent phenomenon in Tanzania. It is seen to be a direct result of the reform policies of the mid-1980s in general and trade liberalisation, privatisation and deregulation in particular. Liberalisation among other things is said to have led people to assume that a free market economy meant "free for all" and no rules. There was a mechanism in place to regulate the market from 1986 until the early 1990s, when market economy principles for running the economy were officially adopted, which allowed many negative trading practices to take place in Tanzania, including importation of counterfeits.

According to CTI (ibid), the new system had no effective control, regulatory institutions or places to seek redress in case of harm caused by counterfeits. In the mid-1990s Tanzania began to develop regulatory organisations to steer the economy in the right direction.

1.3.1.3.2 Reasons for Existence of Counterfeits

CTI (ibid) has documented a number of factors behind the existence of counterfeit goods in Tanzania. These include but are not limited to wrong interpretation of the meaning of a market-based economy, highly porous and long borders, poverty, lure of low-priced counterfeits, lack of consumer awareness, weak control system of counterfeit goods and corruption.

As 1.3.1.3.3 Counterfeiting Situation in Tanzania

Previously pointed out, counterfeiting is a growing challenge in Tanzania. A wide variety of goods are counterfeited. These include domestically produced as well as imported goods. There are more imported counterfeits than domestically manufactured products. Therefore more efforts should go into fighting imported counterfeits. According to *The Guardian Newspaper*, 14th May 2015, the main counterfeited products in Tanzania are electrical products, motor vehicle spare parts, building materials, mobile phones, TV sets, clothes, medications, toothpaste, mosquito coil, razor blades, salts, corn oil, engine oil, aerosol, brake fluids, tooth brushes, toilet soap, detergents, CDs, DVDs and baby formula.

Most counterfeit products enter the market through unauthorised ways. However, due to corruption, some products do enter the market through authorised routes. For example, in March 2015, the FCC burned counterfeit toner cartridges and mobile phones with a street value of approximately TZS 230 million, seized in Kilimanjaro and Dar es Salaam. As previously stated, China is the major supplier of counterfeit products in Tanzania. It was estimated by key informants in this study that counterfeit products are mainly imported and constitute 35 per cent – 40 per cent of the total products in the local market.

1.3.1.3.4 Example of Counterfeits in Electronic Products

According to an Electrical Company, counterfeit common electrical products are wide spread across all African countries (including Tanzania), representing 40 per cent – 80 per cent of the total products in the market, such as: cables, breakers, sockets, switches and extension cords. According to the Study, most African countries are using counterfeit electrical products. Approximately 75 per cent of electrical counterfeit products are supplied by China. The Report informs that the Tanzanian market has counterfeit electrical products. The Report estimates that 56 per cent of electric wire, 42 per cent of switches and 40 per cent of switch lights are counterfeits. The Report further states that the monetary value of electrical counterfeits in Tanzania is approximately TZS 1 billion per month and that China remains the main source of electrical counterfeit products. (*Mwananchi*, April, 9 2015). According to FCC, most fake electronic products in the country are from the Far and Middle East.

1.3.1.3.5 Pharmaceutical counterfeits

Tanzania also suffers from counterfeits in the pharmaceutical industry. For example, in February 2014, various media outlets reported on fake Anti-Retro-Viral (ARV) drugs which were produced in the country. In April 2011, 7,776 fake ARV bottles were supplied which is against the Tanzania Food and Drug Authority (TFDA) Act No.76 (1) (2) of 2003. On 11th April 2011 4,476 fake ARV bottles were also supplied, causing a loss to the Government to the tune of TZS 148,350,156.48. (*Mwananchi*, February 11, 2014).

1.3.1.4 Effects of Counterfeits

There are many economic, social, health and safety impacts of counterfeit goods. Potentially counterfeits can cause huge losses in a country such as Tanzania. These include losses in Government revenue (it has been estimated that the Government loses from 15 per cent – 25 per cent of the total domestic revenue as a result of counterfeiting: See CTI (2012). Other effects include loss of employment opportunities, bad performance of firms including but not limited to reduced production, sales, revenues, profits, growth, honouring financial obligations, etc. Other impacts include undermining genuine product dealers, weakening of innovation and growth, demoralising local industries leading to their shutdown, unemployment and discouraging Foreign Direct Investments (FDI). The field findings of the study informing this Report update some of these effects including some detailed case studies.

1.3.2 Field Findings

1.3.2.1 Introduction

The earlier section of this Report is based on document review. It is based on various literature sources on the subject of counterfeit goods in general and the Tanzanian context in particular. In this second major part of the Report new findings based on field research conducted specifically for this study as described in the methodology section of this Report are presented, analysed and discussed. The information in this section was given by some key informants with whom in-depth interviews were conducted. It is also advised by a survey of manufacturers and consumers in Tanzania with a focus on Dar es Salaam, Mbeya, Tanga, Mwanza, Moshi, Arusha and Zanzibar.

1.3.2.2 Findings from Key Informants of the Fair Competition Commission

The key informants providing information for this section of the Report are senior past and current officials at the FCC as well as senior corporate chiefs of selected manufacturing firms that have been exposed to the challenges of counterfeit goods. These are people with in-depth, practical, realistic and experiential knowledge regarding counterfeit goods.

1.3.2.3 Situation of Counterfeits in East Africa

According to the results of field interviews, Tanzania is more successful than other East African Community countries as far as fighting counterfeits is concerned. In Kenya, for example, the Law in respect of counterfeits is modern but too broad: it has loopholes that culprits can exploit in Court. In Tanzania the legal procedures for inspection or raid of suspect premises is simple and Police do provide security to inspectors who carry out the actual inspection. The 2007 Amendment of the Law gave FCC greater opportunity for presenting their case. In the 2012 amendments, the scope of work was widened to criminalise website adverts of counterfeits. Further, individual and brand owners' complaints were permitted as a basis for initiating an investigation by FCC. FCC now receives complaints on a daily basis, both verbally and in writing.

Field interviews of the key informants discovered that Kenya and Tanzania have more counterfeits than the other three East African Community (EAC) countries of Uganda, Rwanda¹ and Burundi. This is due to the fact that the ports of Dar es Salaam, Tanga, Zanzibar and Mombasa on the Indian Ocean are the gateways to landlocked Uganda, Rwanda and Burundi. This is a challenge in the context of the EAC common market that allows for *inter alia*, free movement of goods. It is therefore recommended that either an Apex Law on counterfeits in EAC be formulated, or each individual country should be obliged to have a Counterfeit Law which must be enforced. It was also reported in the field interviews that Uganda has a significant issue with fake drugs and that Burundi does not have an anti-counterfeit law.

1.3.2.4 The Magnitude of the Existence of Counterfeit Goods in Tanzania

It was revealed in the study that counterfeit goods are a major problem in Tanzania. These goods are widespread across all sectors of the economy. They are found in almost all categories of products and in all regions and districts in Tanzania. According to one key informant, some businesses and trade partners in Tanzania (especially multinational enterprises - MNEs) are not making full disclosures on the extent of the problem. This is because they fear it is likely to have negative commercial influence on their products and therefore may cause their customers to shy away from their products thinking that all of their products are counterfeits. Therefore, this partial disclosure of the extent of counterfeits in Tanzania hides the true magnitude of the problem.

According to the key informants, there is inadequate data as to the actual extent of counterfeit goods in Tanzania at the FCC. However, from the year 2000, counterfeits were estimated to incorporate approximately 50 per cent of goods in the market. Before establishment of the FCC in 2007 there was no control or regulator; consumers presumed counterfeits to be second editions of genuine products. It is assumed that following establishment of the FCC the extent of counterfeits will have decreased.

1.3.2.5 Fighting the war against Counterfeiting in Tanzania

From the time that the FCC was established in 2007 up until February 2015, it has been responsible for destroying products worth up to TZS 4.5 billion. There are many other goods in go-downs that have been impounded but are yet to be destroyed for various reasons including “environmental destruction” as claimed by the National Environmental Management Council (NEMC). For example, some dumpsites were hindered from taking FCC cargoes. This hampers FCC progress, in that it cannot destroy yet it has no storage facility for the impounded goods, which are hence stored in TRA warehouse at the Government’s expense. At the time of writing this Report arrangements were

¹ According to a key informant in this study, Rwanda has an Anti Counterfeit Law and Uganda has a Trade Marks Act as well as the Penal Code. Rwanda National Police has set up a specific anti-counterfeit unit and has asked INTERPOL to provide specific training. This indicates that Rwanda is showing a commitment to fight counterfeits

being made to destroy goods worth approximately TZS 1 billion at a private incinerator at Mkuranga on the outskirts of Dar es Salaam. The value of destroyed products is an indicator of the extent of counterfeit goods in the market.

1.3.2.5.1 Background to Fighting war against Counterfeits in Tanzania

The Fair Trade Practices Act of 1993 which was later reviewed and renamed Fair Competition Act of 2003 was one of the first instruments for overseeing the market economy in Tanzania. This Act covers competition issues and consumer protection in the country. The follow on Merchandise Trade Marks Act in 2007 is the body which deals with counterfeits. Merchandise Marks Act is the Law governing counterfeits. It governs the use of Trade Marks. Goods are identified and sold under their registered Trade Mark. Counterfeiters deceive the consumer by imitating or using the TM of others without proper authorisation by their owners. In the process, the counterfeiters sell products which are not produced by the owners of trade marks. Therefore, it is the trade marks owners and the consumers who suffer directly in this process. The law prohibits such practices.

The Merchandise Marks Act 1963 as amended is implemented by the Inspector, who is also the FCC Director General. The Law is enforced by impounding and fining on site or taking the counterfeiters to Court. If culprits accept the offence they can be fined as stipulated by Law and ordered to pay the destruction costs.

BRELA is the Registrar of Intellectual Property Rights (IPRs) in the country meaning that BRELA would be the Arbiter in cases of disputes regarding ownership of IPRs, including trademarks. In order for the FCC to assist IPR owners in the fight against counterfeit goods, it is essential for all IPR owners (both national and international) to register their Trade Marks, Trade Descriptions and Trade Names in Tanzania for their lawful protection.

1.3.2.5.2 Incentives for Counterfeiting

There are various incentives that trigger businesses to engage in counterfeiting. The incentives outlined by key respondents include the following.

1.3.2.5.3 High profit margins

According to the Study findings, there are various incentives that trigger businessmen to engage in counterfeiting. Among these incentives are the high profit margins attained in the counterfeit trade. Those involved in counterfeit deals do not make substantial investments in the products they are counterfeiting. They do not invest in Research and Development (R&D); they do not invest substantially in any production process including quality and all other regulatory requirements. Neither do they invest in packaging and advertising. All these activities are carried out by the owners of genuine trademarks yet those engaging in counterfeits pocket the profits.

1.3.2.5.4 The China factor

Another major driver behind counterfeits is the China factor. It was stated by a key informant that China has one day in a week for destroying counterfeits confiscated during their searches. However some Chinese firms enter into production contracts with counterfeit traders from Tanzania who submit samples of fast moving products for imitation by the Chinese firms and ultimate sale with huge profit margins in Tanzania. This illicit business is risked because China is relatively technically advanced, the imitators are paid for their work and China has a huge unemployment problem.

Multinationals based in China, have informed that China is in effect planning ahead. In the future it will become a major international trading Nation. Chinese Authorities understand the importance of IPRs and are taking action. However, regional policies, unequal spatial development and unemployment are affecting the National Authorities' ability to control the situation, therefore making it difficult to control counterfeits.

1.3.2.5.5 Globalisation

Globalisation is another driver behind counterfeits due to the fact that counterfeits are commodities which are internationally traded. Therefore counterfeits are world goods sold everywhere depending on demand, strength of regulation, enforcement and the extent of corruption, being the factors which determine the risk of being caught, prosecuted and punished. In countries where these conditions prevail, mostly being in developing countries, counterfeits acquire popular destinations.

1.3.2.5.6 Weak regimes

According to the findings of the study that informs this Report, regimes that are not strong enough (including Tanzania) to fight counterfeits are more targeted by counterfeiters than strong regimes. This makes weak regimes more susceptible to counterfeits.

1.3.2.5.7 Informal economy

The high degree of informality in the economy drives counterfeiting by, amongst other factors, giving easy access into and exit from the market for practically anyone who can buy or sell anything. Informal sector operators are not required to apply for licences, permission, formal business premises, etc., therefore making it very easy to trade in counterfeit goods.

1.3.2.5.8 Interlinkages with other Cross Border Crimes

The significant sums of money involved in the counterfeit trade make it a suitable conduit for money-laundering, Human and Drug Trafficking, Organised Crime, Terrorism and the Funding of Conflict Zones.

1.3.2.6 Most Dangerous Counterfeit Goods

According to the key informants, the most dangerous counterfeit goods in Tanzania include, but are not limited to, electrical gadgets, drugs, food, agricultural seeds (e.g. cotton seeds), cosmetics, beverages (especially spirits), medicines and fertilizers. Others are fuels, tyres and other motor vehicle spare parts. They are the most dangerous due to their far-reaching social, health and economic implications at individual, household, community, Company and National levels. The implication is that these goods should be in the front line of any efforts made towards fighting counterfeits.

1.3.2.7 Sources of Counterfeits

According to the findings of the field study, most counterfeits enter Tanzania through the port of Dar es Salaam which involves mainly imports from China, India, and Dubai. This means that the solution to reducing the numbers of counterfeit goods entering Tanzania also begins at the Port of Dar es Salaam. Apart from the port of Dar es Salaam, a number of counterfeit goods also enter the Tanzanian market through the port of Tanga, and entry through Zanzibar is also common place. In some border regions, such as Mbeya, a variety of counterfeit goods such as cosmetics enter the Tanzanian market from DRC and Zambia² because these products are legal in those countries.

Due to their in-depth product knowledge it is recommended that TM owners become involved and cooperate in fighting counterfeits by investigating where their products are counterfeited. It is acknowledged, however, that this comes at great cost to Trade Mark (TM) owners and especially smaller companies in particular have extra difficulty in carrying the cost of investigations.

1.3.2.8 The Way Counterfeiting Works in Tanzania

For some counterfeits, businessmen take fast moving consumer goods (for example textiles, spirits, etc.) to manufacturers normally in China. They commission manufacturers to imitate the products at lower quality while faking the Trade Mark. For example, a mobile phone with a genuine name or cover may contain fake inner components. Logos are simply inserted at the warehouse, thereby deceiving consumers.

1.3.2.8.1 Imported Counterfeits

Imported counterfeits are mainly consumables from China (90 – 95 per cent) and Chinese manufacturers argue that they produce on demand from Tanzanian businessmen. Because they do not like to be identified with the Tanzanian businesses, they do not put their identity or traceable information on the counterfeit products. Counterfeit production is illegal even in China and attracts high penalties. Other countries from which counterfeits emanate include India and Malaysia.

1.3.2.8.2 The Role of Dubai

² According to a key informant in this study however, Zambia is of the opinion that the majority of its counterfeit cosmetics enters the Zambian market from Tanzania. This is one of the areas requiring further study in order to establish the facts

Dubai is a new (distribution) centre for counterfeits and where often re-packaging and labelling is carried out after production in China. The goods arrive from China in plain packaging before being packed and labelled in Dubai. Plain products such as DVDs are re-labelled with the names of well-known Brands.

1.3.2.8.3 Domestic Counterfeits

According to key informants, domestically-produced counterfeits are also a problem, but these are minor when compared to imported counterfeits. Domestically-produced counterfeits generally amount to petty-counterfeiting, involving repacking in the packaging of higher quality brands. For example, water bottles of an authentic brand were found to be filled with piped water and sold as the original product.

A trader purchased genuine local Tanzanian beer which he repacked into bottles of an imported brand. One bottle of the Tanzanian beer fitted into two of the imported beer bottles, which then sold at twice the price of the local product. This resulted in a massive profit-margin for the counterfeiter but market-loss to the genuine overseas producers.

There have also been cases of counterfeiting of a skin care product, in which a fake crème/lotion was repackaged into original bottles of the genuine product. These examples are also referred to as “refills” and also constitute counterfeits, as they are deliberately meant to deceive the consumer. Other cases involved re-writing the names of preparations with names very similar to those of the genuine article, in order to deceive consumers. These are considered to be “copy-cat” cases and not necessarily counterfeits.

Yet another case involved a genuine spirit being diluted and re-packed into genuine bottles of the original product, once again cheating consumers. In the agricultural sector, in Moshi there have been cases of expired fertiliser and seeds being re-packaged into new bags with new expiry dates. Further cases include that of an inferior fertiliser which is sold for approximately TZS 30,000 per bag, being repacked into bags labelled with the brand of a superior fertiliser which sells for up to TZS 70,000 per bag.

1.3.2.9 The FCC and the War on Counterfeits in Tanzania

1.3.2.9.1 Role of the FCC in Fighting Counterfeits in Tanzania

According to a key respondent from the FCC, the following are the roles and major accomplishments of the FCC in fighting counterfeits in Tanzania.

- i) To ensure that prevalence of counterfeits in Tanzania is fought at all levels
- ii) To ensure that dealing in counterfeits in Tanzania “does not pay”; it is not worth the risk

- iii) To collaborate with brand owners who know their products but cannot enforce the Law because they are not the Government³
- iv) To protect and promote consumer welfare
- v) To educate the public concerning their rights and responsibilities in the fight against counterfeits

1.3.2.9.2 Accomplishments of the FCC from 2010/11- 2015/16

The following activities were carried out by the office of the FCC Chief Inspector (2010/11-2015/16).⁴

- In total 1,151 containers holding counterfeit products were seized.
- A total of 138 raids were conducted in different premises and in different regions within Tanzania.
- A total of 1,711 offenders were dealt with as per the provisions of Merchandise Marks Act, 1963.
- The total value of the seized goods is TZS 2,898,904,833.3.

Detailed summary of performance/achievements of the FCC from 2010/11 – 2015/16:

Year	Number of Containers Seized Through Inspections at the Dar es Salaam Port & ICDs	Number of Raids Conducted in Shops, Stores & Go downs in Various Regions	Number of Offenders Dealt With as per the Provisions of Merchandise Marks Act, 1963
2010/2011	212	20	255
2011/2012	228	22	301
2012/2013	211	21	300
2013/214	271	26	374
2014/2015	103	20	276
2015/2016	126	29	205
TOTAL	1,151	138	1,711

DETAILED SEIZURE DATA FROM FAIR COMPETITION COMMISSION - FINANCIAL YEAR 2013/14

S/N	DATE OF SEIZURE	NATURE/TYPE OF GOODS SEIZED	VALUE OF GOODS SEIZED IN TZS	LOCATION OF THE SEIZURE	ENFORCEMENT ACTION
1.	24/07/2013	738 PVC pipes	1,000,000/=	Dar es Salaam	Goods were destroyed
2.	26/07/2013	244 pcs Tube lights 94 pcs energy saver 525 pcs starter	4,500,000/=	Dar es Salaam	Paid fine, goods destroyed
3.	13/08/2013	55 Mosquito nets	1,500,000/=	Dar es Salaam	Paid fine, goods destroyed
4.	15/08.2013	7416 pcs shavers 7412 pcs razor blades	2,500,000/=	Dar es Salaam	Goods were destroyed
5.	22/08/2013	57 pcs mobile phones	4,000,000/=	Dar es Salaam	Goods were destroyed

³ The brand owners are both foreign and local. According to interviews with the FCC, brand owners do cooperate with the FCC in cases of seizures.

⁴ The FCC accomplishments are detailed in the Tables that immediately follow the list.

6.	23/08/2013	Sportswear: 484 jerseys 228 ribbon 189 mugs 1248 culture	8,000,000/=	Dar es Salaam	No destruction; goods were donated
7.	19/09/2013	30 pcs mobile phones	4,500,000/=	Mwanza	Paid fine, goods destroyed
8.	03/10/2013	37 bottles body lotion	5,000,000/=	Mwanza	Goods were destroyed
9.	03/10/2013	121 bottles liquor	1,500,000/=	Dar es Salaam	Paid fine, goods destroyed
10.	09/10/2013	20 mobile phones	2,000,000/=	Arusha	Paid fine, goods destroyed
11.	15/10/2013	Electric appliances 10 bulbs, 50 fittings (boxes)	4,000,000/=	Arusha	Paid fine, goods destroyed
12.	29/11/2013	154 pcs mobile phones	5,000,000/=	Dar es Salaam	Goods destroyed
13.	06/12/2013	72 pcs ink jet	3,500,000/=	Dar es Salaam	Paid fine, goods destroyed
14.	11/12/2013	37 pcs mobile phones and 141	2,000,000/=	Mwanza	Paid fine, goods destroyed
15.	16/01/2014	765 pcs electric appliances	6,000,000/=	Dar es Salaam	Paid fine, goods destroyed
16.	27/02/2014	120 pcs Toners	5,000,000/=	Dar es Salaam	Goods destroyed
17.	27/02/2014	60 pcs inkjet	3,000,000/=	Dar es Salaam	Goods destroyed
18.	18/03/2014	52 pcs mobile phones and accessories	1,500,000/=	Dar es Salaam	Goods destroyed
19.	09/04/2014	12 pcs insect sprays	3,000,000/=	Mwanza and Mbeya	Paid fine, goods destroyed
20.	09.04.2014	216 pcs mobile phones 2556 pcs batteries	6,500,000/=	Mwanza and Mbeya	Paid fine, goods destroyed
21.	13/05/2014	34 pcs mobile phones and accessories	9,500,000/=	Arusha and Mwanza	Paid fine, goods destroyed
22.	22/05/2014	30 pcs mobile phones	2,500,000/=	Kigoma	Paid fine, goods destroyed
23.	13/05/2014	616 pcs mobile phones	3,000,000/=	Dar es Salaam	Goods were destroyed
24.	14/05/2014	84 pcs cleaning detergent	3,000,000/=	Dar es Salaam	Paid fine, goods destroyed
25.	20/05/2014	162 pcs mobile phones 60 batteries	5,500,000/=	Dar es Salaam	Paid fine, goods destroyed
26.	19/06/2014	Phone accessories: 52 pcs screen 750 batteries 1958 housing	5,000,000/=	Dar es Salaam	Goods destroyed
27.	25/06/2014	5300 handset housing	3,000,000/=	Dar es Salaam	Goods destroyed
SUBTOTAL			105,500,000/=		

DETAILED SEIZURE DATA FROM FAIR COMPETITION COMMISSION - FINANCIAL YEAR 2014/15

S/N	DATE OF SEIZURE	NATURE/TYPE OF GOODS SEIZED	VALUE OF GOODS SEIZED IN TZS	LOCATION OF THE SEIZURE	ENFORCEMENT ACTION
1.	31/07/2014	7922 pcs piston rings	39,610,000/=	Dar es Salaam	Goods were destroyed
2.	14/08/2014	10 ton table salt	115,000,000/=	Dar es Salaam	Goods were destroyed
3.	21/08/2014	10 pcs mobile phones	500,000/=	Dar es Salaam	Goods were destroyed
4.	11/09/2014	30 pcs mobile phones	10,000,000/=	Dar es Salaam	Goods were destroyed
5.	22/09/2014	115 pcs ironing devices	6,000,000/=	Arusha	Paid fine, goods destroyed
6.	21/10/2014	30 pcs electric appliances	2,000,000/=	Mwanza	Paid fine, goods destroyed
7.	23/10/2014	1450 pcs shavers	4,000,000/=	Arusha	Paid fine, goods destroyed
8.	30/10/2014	360 pcs mobile phones	28,000,000/=	Dar es Salaam	Paid fine, goods destroyed
9.	14/12/2014	765 pcs shoe polish 200 pcs shavers 100 pcs mobile phones	28,000,000/=	Mwanza	Paid fine, goods destroyed
10.	26/02/2015	1700 pcs razor blades 216 pcs shavers	6,000,000/=	Kilimanjaro	Paid fine, goods destroyed
11.	26/02/2015	63 pcs toners	16,000,000/=	Kilimanjaro	Paid fine, goods destroyed
12.	26/02/2015	63 pcs water heater	16,000,000/=	Kilimanjaro	Paid fine, goods destroyed
13.	26/02/2015	51 pcs laser jet	10,000,000/=	Kilimanjaro	Paid fine, goods destroyed
14.	27/02/2015	107 pcs ear phones 189 pcs ironing devices	6,000,000/=	Dodoma	Paid fine, goods destroyed
15.	05/02/2015	22 pcs toners	6,000,000/=	Dar es Salaam	Goods destroyed
16.	12/03/2015	894 pcs shavers 251 pcs sanitary pads	2,000,000/=	Mbeya	Paid fine, goods destroyed
17.	15/03/2015	189 pcs mobile phones	7,000,000/=	Arusha	Paid fine, goods destroyed
18.	29/04/2015	19 pcs sanitary pads 3013 pcs razor blades 73 pcs toners	12,000,000/=	Tanga	Paid fine, goods destroyed
19.	22/05/2015	241 pcs solar lights	8,000,000/=	Dar es Salaam	Paid fine, goods destroyed
20.	27/05/2015	510 pcs sanitary pads	2,000,000/=	Arusha	Goods destroyed
21.	25/06/2015	645 tins shoe polish	8,000,000/=	Dar es Salaam	Paid fine, goods destroyed
SUBTOTAL			332,110,000/=		

DETAILED SEIZURE DATA FROM FAIR COMPETITION COMMISSION - FINANCIAL YEAR 2015/16

S/N	DATE OF SEIZURE	NATURE/TYPE OF GOODS SEIZED	VALUE OF GOODS SEIZED IN TZS	LOCATION OF THE SEIZURE	ENFORCEMENT ACTION
1.	01/07/2015	182 bottles clove oil	4,000,000/=	Dar es Salaam	Paid fine, goods destroyed
2.	28/07/2015	10 electrical cables boxes roles	4,000,000/=	Dar es Salaam	Pending
3.	07/08/2015	148 pairs of shoes	11,840,000/=	Dar es Salaam	3 offenders paid fine; follow up continues
4.	25/08/2015	348 pcs razor blades	14,500,000/=	Dar es Salaam	1 out of 2 offenders paid fine; follow up continues
5.	31/08/2015	Fork lift (3 units)	210,000,000/=	Dar es Salaam	Follow up continues
6.	04/09/2015	3500 pcs motorcycle spare parts	2,000,000/=	Kilimanjaro	Paid find; goods destroyed
7.	17/09/2015	39 pcs mobile phones 1509 shoe polish 166 cards razor blades	24,000,000/=	Mwanza	Paid fine, goods destroyed
8.	30/09/2015	72 pcs shoe polish 13 pcs mobile phones 18 cards razor blades	4,000,000/=	Kahama (Shinyanga)	Paid fine, goods destroyed
9.	01/10/2015	89 pcs cooker controls 1240 pcs wall sockets	6,000,000/=	Dar es Salaam	Paid fine, goods destroyed
10.	15/10/2015	8257 pcs shoe polish	57,799,000/=	Dar es Salaam	2 out of 19 offenders paid fine, follow up continues
11.	12/11/2015	386 pairs of shoes	23,160,000/=	Dar es Salaam	1 out of 4 offenders paid fine, follow up continues
12.	27/11/2015	Lubricants 49 cartons	18,000,000/=	Songea (Ruvuma)	Paid fine, goods destroyed
13.	11/12/2015	Cosmetics	500,000/=	Dar es Salaam	Paid fine, goods destroyed
14.	15/12/2015	99 pcs earrings 30 pcs rings 116 pcs wrist watches 3 pcs handbags 25 pcs fashion jewelleryes 3 pcs key holders	2,000,000/=	Dar es Salaam	2 out of 5 offenders paid fine. Follow up continues
15.	04/02/2016	8741 boxes ball points	43,705,000/=	Dar es Salaam	Legal proceedings continue
16.	03/03/2016	496 pcs mobile phones	19,840,000/=	Dar es Salaam	Pending
17.	21/03/2016	175 pcs spark plugs	1,500,000/=	Dar es Salaam	Pending
18.	18/03/2016	22 pcs clutch covers 1 pc engine 216 pcs motorcycle tubes 286 pcs front rubbles	10,000,000/=	Tunduma (Songwe)	Paid fine, goods destroyed

19.	01/06/2016	128 mobile phones 360 tins shoe polish 56 pc phone accessories Razor blades and shavers	24,000,000/=	Mwanza	Paid fine, goods destroyed
20.	08/06/2016	934 tins shoe polish 4 cartons sanitary pads 82914 shavers 6081 pcs razor blades	24,000,000/=	Arusha	Paid fine, goods destroyed
21.	21/06/2016	Jewelleries: 24 pcs Earrings 37 pcs rings 104 pcs wrist watches 96 gallons lubricants	2,000,000/=	Dar es Salaam	Follow up continues
SUBTOTAL			506,824,000/=		
TOTAL (3 years)			944,434,000/=		

Based on the above mentioned seizure data the following cities and towns can be considered the 'hot spots' where counterfeit products are readily available: Dar es Salaam, Arusha, Mwanza and Mbeya.

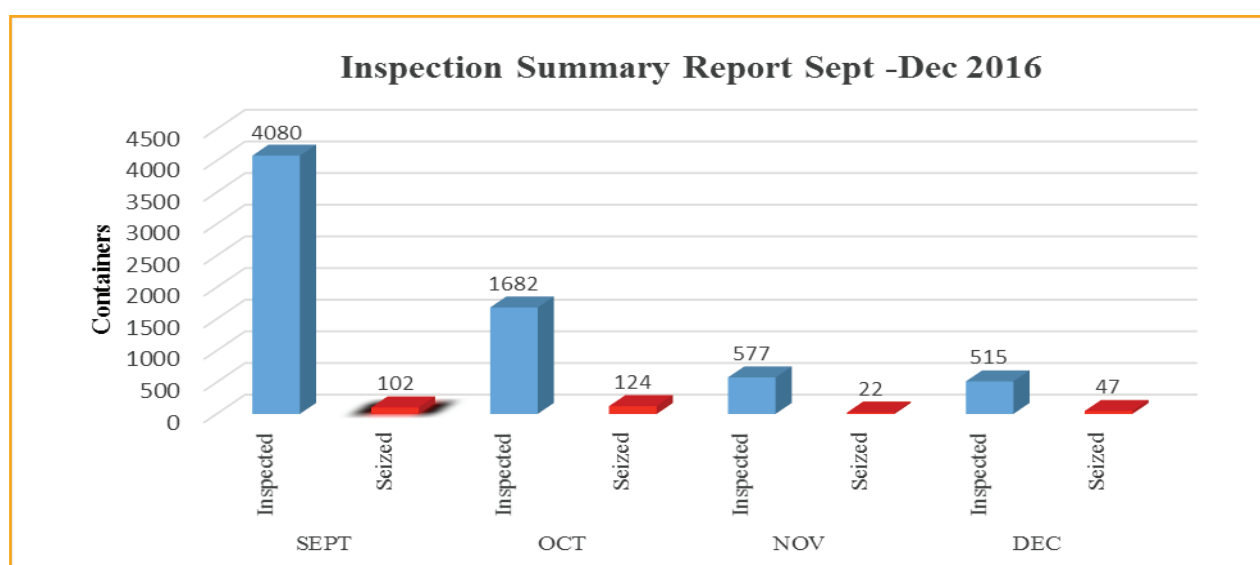
According to the FCC 80 per cent of counterfeit goods enter Tanzania through the Port of Dar es Salaam and, unsurprisingly, the majority (50 – 60 per cent) of counterfeit goods are found in Dar es Salaam.

2 Estimates of Counterfeit Goods in the Tanzanian Market

Introduction

During the period under review (September – December 2016), the department inspected a total of 6,854 containers in the Dar es Salaam port and ICDs. Out of the inspected containers; 4.3% or 295 were seized for contravention of either Section 3, 6 or 10 of the MMA 1963 as amended. Summary of the goods seized in each month is as shown in the Figure 1 below.

Figure 1: Inspection Summary Report



Source: FCC Compilation 2016

The estimates are based on the inspection conducted at major entry points as summarised in the Table 1 below.

Table 1: Inspection conducted during the Second quarter September to December 2016

MONTH	ACTIVITY	MAJHAZI	TRH	AZAM	AMI	ALHUSHOOM	TPA	JEFAG	DICD	AF-ICD	PMM	TICTS	GALCO-ICD	TOTAL
DEC	Inspected	0	15	39	152	4	105	2	4	105	0	76	13	515
	Seized	0	11	1	10	9	0	2	3	5	4	2	0	47
NOV	Inspected	0	59	8	150	25	0	26	59	79	4	148	19	577
	Seized	0	3	2	7	3	0	0	3	4	0	2	0	24
OCT	Inspected	0	152	109	450	34	6	93	114	298	189	230	7	1682
	Seized	0	25	14	18	6	1	5	9	15	12	17	2	124
SEPT	Inspected	0	314	85	1307	179	18	468	367	815	378	149	0	4080
	Seized	0	11	1	10	9	0	19	7	11	13	21	0	102

Source: FCC compilation 2016

Based on the raids in various areas during the period under review, it is estimated that below 1.5 % of counterfeit goods conducted may find their way into the country through unauthorised entry points.

3 General Challenges in Fighting the War on Counterfeits

3.1 Introduction

Numerous challenges are encountered in the efforts to fight the war against the counterfeit goods trade in Tanzania. Key challenges are as outlined below in (i) through (vi).

- i) Due to high technology, counterfeiters are capable of imitating genuine products to almost 100 per cent perfection, making it extremely challenging to differentiate between genuine and fake products, except through the use of even better technology and superior knowhow.
- ii) Whilst some consumers are aware of the concept of counterfeit goods, they are more concerned with cost than quality. Therefore, they continue to buy and consume the cheaper but fake products.
- iii) The role of Institutions in Society is not fully comprehended and, as such, not sufficiently appreciated or respected. Therefore institutional support in the fight against counterfeits is inconsistent.
- iv) Rampant counterfeits in the economy indicate prevalence of corruption and weak governance. In such instances, a few of those in positions of power may be supporting the culprits. There is also lack of accountability, there being both vested interests and conflict of interests due to the fact that a number of those who should be fighting against the counterfeit trade are in fact benefitting from it.
- v) There are no well-functioning institutions of the market economy in place, including proper regulatory authorities (nor are there any proper regulatory authorities in existence).
- vi) Stakeholders, including the Government, the private sector and consumers alike, do not appear to appreciate the negative impact which counterfeit trade has on the development of Tanzania.

3.2 Specific Challenges faced by FCC

According to a key informant, the FCC has been faced with a number of challenges as it fights the war on counterfeits in Tanzania as captured in field interviews.

- i) The major challenge is the comparatively small FCC workforce in relation to the size of the country. The Division dealing with counterfeits consists of a mere eight (8) persons rather than the expected ideal of fifty (50). As such, the FCC operates with only 16 per cent of the ideal workforce requirement. The whole of FCC has only a total of 70 persons as its workforce,

compared to, say, TBS which has been permitted to employ an extra 200 staff in 2015 (bringing up staff numbers in that year from 130 to 330) plus already an extra 137 in 2016, thus bringing up numbers of TBS staff from 330 to 467.

- ii) Another challenge is that of the highly porous multiple borders of Tanzania.
- iii) The Law on counterfeits in Tanzania applies only to the Mainland and does not include Zanzibar, in spite of the fact that significant numbers of goods enter the Mainland via Zanzibar, where control is very lax.
- iv) Aside from the lack of human resources at the FCC, there is also the issue of the insufficient budget allotted to it, which frustrates efforts in combating counterfeits in the country.
- v) A further challenge is the mind-set of the consumers, mainly due to reasons of poverty, the majority of consumers opt for cheap products above quality ones.

3.3 Findings from Key Informants

3.3.1 Findings from key informants of the TFDA (2005-2015)

The TFDA is mandated to ensure the quality of medicines, food stuffs and cosmetics, and to protect the public health. The TFDA has developed an Action Plan to combat substandard and counterfeit pharmaceuticals. Furthermore, a committee has been established between the TBS and the TFDA regarding the overlapping of legislation and mandates between these two government agencies.

The seizure data presented below was received from the TFDA Directorate of Medicines, and is the trend of encountered counterfeit, substandard, expired, unregistered, withdrawn and deviated government and donated medicines in Tanzania between 2005 and 2015. The seizure data has not been analysed. The data below was partly retrieved from INTERPOL and WCO operations as well as from normal follow up operations from zonal offices in Tanzania. Illicit medicines were seized from retail and wholesale outlets as well as from Ports of Entry. The Directorate of Medicines informed us that no baseline survey has been conducted in Tanzania.

The majority of genuine pharmaceuticals (up to 80 per cent) are imported into Tanzania and most of the counterfeit pharmaceuticals are also imported into Tanzania using illicit trading routes or channels.

Year	Number of counterfeit medicines found	Number of substandard medicines found
2005	5	2
2006	1	0
2007	4	8
2008	1	0
2009	5	5
2010	3	17
2011	7	17
2012	7	29
2013	11	16
2014	10	40
2015	10	34
Totals	64	168

Most of the counterfeit medicines were imported into Tanzania.

Seven types of medicines manufactured locally were counterfeited during the years listed below.

2007 – 1

2011 – 1

2012 – 2

2013 – 3

3.3.1.1 Operation Mamba I (September 2008)

More than 100 different products were seized during this operation. Among the confiscated drugs were anti-malarial, cardiac, anti-fungal, multivitamin, hormonal and topical medicines.

3.1.2 Operation Mamba II (August 2009)

There was prosecution of several individuals suspected of being involved in the illicit trafficking of medical products, which has led to at least 10 convictions. During this operation a number of fake, unregistered and banned products were seized, which pose a potentially serious risk to public health.

3.3.1.3 Operation Mamba III (July – August 2010)

Nearly 200,000 pills were seized. The confiscated medicines were counterfeit, unregistered and banned products which pose a potentially serious risk to public health.

3.3.1.4 Operation Giboia I (October 2013)

S.No	Type of medicines	Quantity	Value (USD)
1	Counterfeit medicines	2	1,804
2	Expired medicines	76	1,253
3	Deviated government and donated medicines	28	1,142
4	Unregistered medicines	86	18,465
5	Substandard medicines	40	7,513
6	Withdrawn medicines	41	844
	Total	273	31,022

The confiscated medicines were mainly antibiotics, pain killers and anti-malarial pharmaceuticals.

3.3.1.5 Operation Giboia II (August 2015)

S. No	Type of medicines	Quantity	Value (TZS)
1.	Counterfeit medicines	3	114,400
2.	Expired medicines	35	1,517,500
3.	Deviated government and donated medicines	3	98,250
4.	Unregistered medicines	97	21,412,000
5.	Substandard medicines	15	3,187,500
6.	Withdrawn medicines	3	113,000
7.	Cosmetics with prohibited ingredients	127	85,804,000
8.	Unregistered cosmetics	37	2,511,200

TFDA Cosmetics and Food stuffs

Through CTI the consultants have requested comments and seizure data for this report from the TFDA Directorates of Food Stuffs and Cosmetics. Up to the moment of writing this report the response from TFDA had not yet been received.

3.3.2 Findings from key informants of the Tanzania Bureau of Standards

A representative from TBS commented on the low existing capacities of the regulatory authorities in terms of technology in comparison to those who produce counterfeit goods. This situation therefore creates a gaping loophole for counterfeit goods to easily enter the market undetected.

The representative further emphasised the need for more enforcement mechanisms to curb the counterfeit problem, in comparison to similar measures taken by other countries in the region and in the world. TBS is taking measures to curb the counterfeit problem by enhancing security of licensed products through introduction of 1) a Security Mark on all products and 2) through collaboration with other MDA's such as the TFDA.

Through CTI the consultants have requested seizure data for this report from the Tanzania Bureau of Standards. At the time of writing this report the response from TBS had not yet been received.

3.3.3 Findings from key informants of the Tanzania Revenue Authority

Through CTI the consultants have requested comments and seizure data for this report from the Tanzania Revenue Authority. At the time of writing this report the response from the TRA had not yet been received.

3.3.4 Findings from Manufacturers and Businesses Operating in Tanzania

3.3.4.1 Findings from the Survey of Manufacturers in Tanga, Moshi, Arusha and Mwanza

In order to conduct the Manufacturers' Survey, a questionnaire was compiled and distributed to all CTI members in Tanga, Moshi, Arusha and Mwanza in the months of May and June 2015, with the aim of researching various aspects of the counterfeit goods trade in Tanzania. Due to an overall lack of response, follow-ups were carried out both physically and via telephone calls, which increased the rate of response. The Table below sets out the numbers of questionnaires distributed and returned, by Region, as at 30th July 2015.

Table 2: Distributed and Returned Questionnaires

S/n	Region	Distributed	Returned	Response rate
1	Tanga	12	5	41.7%
2	Kilimanjaro	5	3	60%
3	Arusha	26	16	61.5%
4	Mwanza	27	23	85.2%
	Total	70	47	67.1%

The findings of the Survey carried out on a variety of issues regarding counterfeit goods from the perspective of manufacturers are presented, analysed and commented on below.

1. UNDERSTANDING COUNTERFEIT GOODS

Out of the 47 manufacturers surveyed, a total of 38 (80.9 per cent) responded that they understand the concept of counterfeits, a total of nine (9) respondents (19.1 per cent) did not understand it. This indicates an acceptable percentage of manufacturers who are aware of and understand the meaning of counterfeiting. However, whilst others stated that they were aware, they were unable to give proper descriptions when asked to do so; instead, they described counterfeits as "sub-standard" goods. Therefore this anomaly should be included as part of the awareness creation campaign.

2. EXTENT OF PREVALENCE OF COUNTERFEITS IN THE MARKET

Of the total 47 Manufacturers questioned, only 5 (10.6 per cent) were of the opinion that a very large amount of counterfeit goods enters the Tanzanian market.

Only 6 respondents (12.8 per cent) believed that there was a large amount of counterfeit goods in the market.

A total of 12 (25.5 per cent) were of the view that there was a small amount of counterfeits in the Tanzanian market, whilst 10 (21.3 per cent) stated that there are no counterfeits at all in the Tanzanian market. However, 14 (29.8 per cent) did not answer this question at all.

1. PLACES WHERE COUNTERFEITS ARE MANUFACTURED IN TANZANIA

A total of 32 respondents (68.1 per cent) out of the total 47 questioned were aware of locations in Tanzania where counterfeits are manufactured. These locations they said included every major city and town. Regions that were mentioned include Dar es Salaam, Arusha, Mwanza, Mbeya, Singida, Tanga and Kilimanjaro. A total of (10) respondents (21.3 per cent) did not know where counterfeits were manufactured in Tanzania and only a total of (3) respondent (6.4 per cent) did not respond to the question at all. One person interviewed in Moshi stated that *“Right here at the centre of the town and behind the shop premises there is a huge spirit factory. No one dares to tell the Authorities such as the Police because the Authorities have been paid off by the businessman and one’s life will be in danger if one attempts to disclose the place.”*

2. COUNTRIES THAT MANUFACTURE IMPORTED COUNTERFEITS

Out of the 47 Manufacturers interviewed, a total of 16 (34 per cent) responded that imported counterfeits are manufactured in China. Another country named by 6 respondents (12.8 per cent), was India. Other countries named include: Egypt, Singapore, Thailand, Malaysia and the Middle East. A total of 3 (6.4 per cent) out of those questioned did not know where imported counterfeits are manufactured. Only 1 respondent did not answer the question at all.

3. MDAs RESPONSIBLE FOR FIGHTING THE WAR AGAINST COUNTERFEITS IN TANZANIA

Out of the 47 respondents, a total of 16 (34 per cent) stated that the MDAs responsible for fighting counterfeits in Tanzania include TBS; whilst only 11 (23 per cent) named the FCC, thus indicating that the FCC is itself in dire need of proper marketing and public relations exercises.

The following were also named (figures in brackets indicate the corresponding number of respondents): TRA (1), TFDA (7), Police (4), Weights and Measures (1), Clearing Agents (1) and Municipal Authorities (1). This is interesting in that the majority consider TBS, rather than FCC, to be the leading Agency in the fight against counterfeits.

The issue of “standards” featured prominently in replies to the above question regarding MDA’s, which implies that the interviewees tended to confuse “counterfeit” with “substandard” goods. This confusion was also clearly illustrated when providing descriptions of counterfeits: the inclination leaned more in the direction of substandard goods, which may not necessarily be counterfeits.

It is patently clear that there is an urgent need to educate the general public as to the correct definition of “counterfeits,” and to raise awareness that the prime agency in fighting the scourge is the FCC.

A total of 2 (4.3 per cent) respondents are unaware as to which MDAs are responsible for dealing with counterfeits in Tanzania; and 1 did not answer the question at all.

Given the number that do not know the MDAs responsible for the war against counterfeits in Tanzania as well as the respondents who did not respond at all (assuming that they do not know), there is a need to ensure that these MDAs and their roles become known to the manufacturers and the general public at large.

4. RESPONSIBILITIES OF THE RELEVANT MDAs IN FIGHTING COUNTERFEITS IN TANZANIA

Out of the 47 respondents, a total of 10 (21.3 per cent) stated that they were unaware of the responsibilities of the MDAs with regard to fighting the war against counterfeits in Tanzania, while only 5 (10.6 per cent) did understand the role of the MDAs. The remaining 32 (68.1 per cent) did not reply to the question at all: the assumption here is that this is due to the fact that they are uninformed as to the duties of the relevant MDAs in this context. Given that 42 (89 per cent) of those questioned were ignorant as to the role of MDAs, there is definitely the need for dedicated efforts and intervention to put the facts across; duties and rights of consumers with regard to the war against counterfeits should also be stressed. If Awareness Campaigns are conducted successfully, consumers will become the main ally in fighting the war against counterfeit goods in Tanzania.

5. CHALLENGES FACED BY THE RELEVANT MDAs IN THE WAR AGAINST COUNTERFEITS IN TANZANIA

A total of 12 (25.5 per cent) of the 47 Manufacturers questioned, responded that corruption is the major challenge faced by the relevant MDAs in the fight against counterfeits in Tanzania. This corruption applies both to officials in various MDAs as well as to the counterfeiters. The following were mentioned as further challenges experienced by the relevant MDAs (numbers of respondents are bracketed): ignorance on the part of consumers (15 or 31.9 per cent); the large area covered and the country’s long porous borders (3 or 6.4 per cent); inadequate budgets allotted to the relevant MDAs for the purpose of fighting the war against counterfeits (15 or 31.9 per cent); vastly insufficient quantity and quality of staff required to adequately deal with the magnitude of the problem (12 or 25.5 per cent); lack of, or poor coordination between and within the relevant MDAs (5 or 10.6 per cent); lack of proper enforcement of Laws, Rules and Regulations and loss of opportunity cost due to the light penalties handed down to culprits (5 or 10.6 per cent).

A total of 3 respondents (6.3 per cent) were unaware of the challenges that are faced by relevant MDAs in fighting the war against counterfeits in Tanzania, and a total of 3 respondents (6.3 per cent) did not respond to the question at all. Taking these numbers into account, there is a call for



determined effort and intervention to ensure that manufacturers and the general public are made aware of these challenges.

6. -IMPACT OF COUNTERFEITS

Those questioned gave a variety of negative effects or impact of counterfeit goods in Tanzania. Some of these effects that impact the market are captured below in the form of the voices from the field.

7. VOICES FROM THE FIELD ON THE IMPACT OF COUNTERFEITS

In what follows, selected voices from the field are presented. These are direct quotes from selected manufacturers on how counterfeit goods have impacted the Tanzanian market, on the basis of personal experience. The category of product that a respondent is engaged in is indicated, followed by descriptions of the effects as narrated by the respondent.

Box 1: Selected Voices from the Field on the Impact of Counterfeits in Tanzania**Leather Manufacturer**

We are manufacturers of machines. Customers who buy fake machines from counterfeiters blame us that the machines have low performance and efficiency.

My business is on the verge of collapse. Therefore I will lay off staff and therefore there will be reduced money circulation and the possibility of increased crime. The country will lose foreign currency because the domestically produced goods cannot compete with imported counterfeits, therefore lots of money will be used to pay for imports.

Tanning Manufacturer

Consumers will lose money because they will buy items that will not be durable and that are not useful. Therefore they will have to buy them now and then.

Food Processor

Competition from counterfeits leads to slow money circulation for those dealing with genuine goods. Customers suffer because they do not get value for money they spend to buy counterfeit goods. The country's economy may deteriorate due to widespread counterfeits.

Spirit Producer

They cause a bad effect on consumers' health and customers lose faith even in genuine products, thinking that they are the same as counterfeits. This affects sales volumes and revenues as well as profitability and growth of the company. They lead to a reduced market share, may lead to a loss and therefore inability to pay loans and going bankrupt. At the national level it leads to Government losing tax revenues thereby being unable to provide adequate public goods and services. It also leads to Local Government and MDAs missing their share of revenues such as service levy to Local Government Authorities (LGAs) and various fees for institutions such as TBS.

Bags Manufacturer

The local factories will close down due to these counterfeit goods because they are selling at such cheap prices that we cannot compete. Also the health of consumers will be in danger, the Government will not collect tax on these counterfeit goods and it will affect the economy in general.

Milk Processor 1

There are many fake spare parts in the machinery we are using to process milk. This costs us in their replacement now and then as the production machines break down. Machines using such fakes do not last long so we incur costs of purchasing new ones more frequently. These costs render us uncompetitive compared to imported processed milk. Counterfeits can affect consumers and lead to health problems, Government loses revenue and the country stands in a danger of becoming a dumping ground.

Milk Processor 2

They constrain business growth, short lifespan of products implies economic loss and burden to consumers as they have to purchase the same item often, loss of Government revenue through tax evasion and unemployment due to genuine manufacturers' inability to compete, leading to inability to expand and eventual business collapse, easily destroys hard-won reputation and credibility of genuine manufacturers, makes genuine products uncompetitive, they constrain local industrial establishment and development.

Soap Manufacturer

Fakes can reduce market share and lead to business slow down for affected businesses; they can have negative health effects and they lead to reduced Government revenue collection because counterfeiters do not pay tax and this can lead to economic problems.

Spinning and Milling Company

These goods have low prices and therefore my customers tend to buy them due to their high poverty level. I therefore lose market even for my quality products. They also affect consumers' health. At the national level the economy will be affected due to costs related to health impact of counterfeits such as food, drinks and drugs. Unemployment can be occasioned by closure of businesses that cannot compete with counterfeits. Properties and lives may get destroyed and lost due to poor quality counterfeit electrical goods that may cause fires or explosions.

Textile Manufacturer

Fakes lead to low sales volumes and revenues for genuine goods manufacturers, low economic growth and unfair competition in the market as fakes are sold at lower than production cost price of genuine products.

Construction Materials Producers

Counterfeits hinder business growth; they threaten employment and Government revenue and can lead to economic deterioration.

Toilet Paper and Serviettes Manufacturer

Fakes lead to slow down of business growth and therefore slow down economic growth.

Maize Flour and Millet Miller

Counterfeits lead to customers losing faith with my genuine products as they think that the fakes are from my company, thereby negatively affecting my business, consumers purchasing counterfeits do not get value for money for fake products they buy, economic decline because counterfeits are in the informal sector and do not pay tax to Central Government, levies to LGAs and various fees to MDAs.

Fertiliser Trader

Farmers (most of them smallholders) stand to suffer a lot economically due to counterfeiting in fertilisers and seeds. There have been cases of faking the packing materials in which case cheap and poor quality fertilisers are packed in high quality and expensive fertiliser bags. Also expired fertilisers and seeds have been packed in 'new' bags stamped with new expiry dates instead of destroying them. Also normal seeds that are not improved in any way have been packed in high quality treated seed bags. The same has been done for pesticides and animal medicine. For seeds it means they will not germinate, grow and produce properly if at all. For fertiliser, it will not react as needed and expected. The results include a devastating economic situation on poor farmers as well as possibilities of food insecurity.

Mattress Manufacturer

Counterfeiters have imitated a genuine mattress by just pressing (with hot iron) the original mark/logo on a normal mattress. Therefore the normal poor quality mattress is sold as if it was a genuine mattress. This affects the genuine TM owner very much. In one instance of pressing the original logo onto a fake mattress in Moshi, the counterfeiter forgot to remove the hot iron. This led to fire and huge destruction of properties including buildings.

Car Owner

Fake engine oil has destroyed a number of cars. Counterfeiters mix grease with paraffin to make fake engine oil and pack it in genuine engine oil containers. This has resulted in destruction of many vehicles and huge economic losses for vehicle owners. To avoid this problem, the interviewed car owner has resorted to purchasing engine oil from official agents of genuine brands and avoids informal 'under the tree' garages.

Cement Manufacturer

We have been targeted by counterfeiters who produce low quality lime and imitate our name. Instead of our correct name, they label their products with a slight change (which can be overlooked by consumers). They did so after we stopped producing lime. When we came back to the market we alerted customers about the fake product and the fake was phased out. However the genuine producers incurred a lot of cost in winning the trust and goodwill of customers back.

Electrical Cable Manufacturer

This Manufacturer has factory in Dar es Salaam. Some of its competitors have tried to imitate its cables. However they could not imitate them 100 per cent. They failed to have the proper mark in the wires. After getting complaints from its customers, the Manufacturer took legal measures and there have been several court cases. The cases are costly to follow up in terms of legal fee when external lawyers are used but also in terms of man-hours used by the company's staff following up the cases. If not controlled the company could lose its market to the counterfeiters. Because electrical wires are very sensitive for safety, counterfeiting them in poor quality is a very big danger as it could easily lead to fire outbreaks and many far-reaching negative implications.

Door Lock Trader

Counterfeiters have been imitating these locks that we are supplying from the brand owners based in South Africa and Israel. They buy our locks and duplicate them almost 100 per cent. They then sell them very cheaply at times at half of our price. In this way we cannot compete. What we do to avoid this is to change our designs frequently. This is costly though.

Source: Extracted from field responses May and June 2015.

The brief voices (or cases) from the field set out above show the prevalence of counterfeits and their effects. There is a need for further studies in the future to capture specifically detailed and precisely focused information from some of the Companies referred to above. Such information would include, amongst other things: the market share (percentage) and turnover (in TZS) that have been lost (for example, over the past three years); the relationship between the loss of turnover and loss of tax revenue; the extent to which the loss of turnover has affected employment and issues involving health and safety risks.

There were 2 (4.3 per cent) respondents who did not know the impact of counterfeits and another 2 (4.3 per cent) who did not respond to the question. It is to be noted that even those who are aware of the impact or effects of counterfeits mentioned only a few of the possible impacts. The list of effects given by each is far from exhaustive. Given the number that are unaware of the full impact of counterfeits, as well as those that did not respond (assuming that they do not know), and the far from exhaustive list of effects given, dedicated effort and intervention is required to make these full impact known to

manufacturers and the general public.

10. MANUFACTURERS' SUGGESTIONS CONCERNING HOW TO FIGHT THE WAR AGAINST COUNTERFEIT GOODS IN TANZANIA

From the field study findings the following measures were recommended to fight against counterfeit goods in Tanzania.

- I. The public should be alerted about the presence and effects of counterfeit products.
- II. CTI should popularise results of this study.
- III. Anti-Counterfeit Clubs, similar to Tax Clubs, should be formed in schools at all levels, including universities.
- IV. Formation of Counterfeiting Victims Associations, which will play an essential part in the fight against counterfeits.
- V. Manufacturers/Brand owners should actively raise awareness among consumers when counterfeits are detected in relation to their products and should educate consumers as to the unique features of their products and ways in which to differentiate between counterfeits and their genuine goods.
- VI. Laws, Rules and Regulations should be properly enforced and existing Laws should be reviewed and updated accordingly.
- VII. Appropriate Authorities should increase the amount of checks and controls at each point of entry.
- VIII. Support Institutions to perform their roles effectively.
- IX. All Institutions dealing with counterfeits should better communicate and coordinate with one another.

3.3.4.2 Findings from a Brief Survey on Manufacturers in Tanzania

Introduction

The CTI undertook a small Survey in April 2016 to establish the impact of the counterfeit trade on manufacturers in relation to market share, annual turnover, cash flow, employment and Government Revenue. Below are the findings from this Survey, to which 25 CTI members responded.

Findings When asked how frequently they encountered counterfeiting problems in their day-to-day business undertakings, approximately **50 per cent** of the respondents informed us that they were occasionally faced with counterfeiting problems during their day-to-day business operations; **8 per cent** never encountered the problem; **13 per cent** rarely encountered counterfeiting issues whilst **29 per cent** encountered them all the time.

When asked what has been the negative impact of the counterfeit trade on their businesses, the response was as follows: **67 per cent** of the respondents have suffered a loss in market share due to counterfeit goods; **14 per cent** have encountered other challenges such as loss of consumer confidence;

9 per cent have experienced a decrease in cash flow; **5 per cent** have lost annual turnover and **5 per cent** had to lay off employees.

When asked to provide an estimate of the impact of counterfeit goods on their businesses in percentage terms and the effects of counterfeiting on the economy, we received the data presented in the table below.

Estimates of the impact of counterfeit levels on the Manufacturers’ business and the economy

Answer Options	05% -10%	10%-20%	20% - 30%	30% - 40%	40% - 50%	50% or more
Loss of market share	4	5	2	4	1	3
Loss in annual turnover	1	3	5	2	1	3
Decrease in cash flow	1	3	6	1	0	1
Loss of employment	4	3	1	2	2	1
Loss of Government Revenue	1	3	2	1	5	2

When the manufactures were asked if they were aware of the legal framework and/or MDAs dealing with counterfeiting issues, we received the following feedback: **74 per cent** of the respondents were not aware of the legal framework and/or MDAs dealing with counterfeiting, while only **26 per cent** of the respondents replied that they were aware.

Furthermore, **72 per cent** of the participants in the Survey were not satisfied with the current efforts made by the Government towards addressing the scourge of counterfeiting, **22 per cent** were partly satisfied whilst only **6 per cent** were satisfied with the efforts made.

3.3.4.3 Findings from a Survey on businesses in Mbeya Region

Introduction

The research informing this Report involved a Survey on the counterfeiting phenomenon in Mbeya Region, which is among the border Regions of Tanzania. A total of 70 businesses were involved in the Mbeya Study that was conducted in June 2015. The details of these businesses are in Appendix I of this Report. The following is a presentation of the survey findings.

Awareness of Counterfeiting and Counterfeit Goods

From a total of 70 respondents, only 4 (5.7 per cent) were not aware of the existence of counterfeiting and counterfeit goods. A total of 66 (94.3 per cent) responded that they were aware of counterfeiting and counterfeit goods and defined the meaning of counterfeiting and counterfeit goods.

Incidence of the Existence of Counterfeiting and Counterfeit Goods

The respondents were asked to indicate the extent of counterfeiting and counterfeit goods affecting the various businesses and manufacturing concerns in which they were involved. The responses are as shown in Table 3 below.

Table 3: Extent of the Existence of Counterfeit goods

Very large Extent	Large Extent	Little Extent	No counterfeit goods	Total
20 (28.6%)	30 (42.9%)	16 (22.9%)	4 (5.7%)	70 (100%)

Source: Field data from Mbeya and the author's computation (June 2015)

As can be seen from Table 3 above, the majority of respondents in Mbeya (71.5 per cent) indicated that counterfeits are a problem in Mbeya. They indicated that there is a wide or extensive prevalence, i.e. counterfeits exist to a very large extent (28.6 per cent) and medium prevalence - i.e. they only exist to quite a large extent (42.9per cent) in the Tanzanian market.

Explanation of Types of Counterfeit Goods

Respondents were asked to give detailed explanations as to the kind of counterfeit goods they come across or encounter in their businesses. The findings are recorded in Table 4 below.

Table 4: Detailed Explanation of Type of Counterfeit Goods Encountered

Type of Goods	How they differ from genuine goods	How they resemble
Clothes: Khanga-wax, caps, socks, hats, trousers (jeans), handkerchiefs, bed sheets, blankets, T-shirts, track suits, executive suits, suiting and sofa materials, shirts, sports and footwear	Quality, size, price, Brands, durability	Colour, price, quality
Electronic products: Electric wire, bulbs, sockets, cables, main switches, circuit breakers, energy savings bulbs, small motors, lamps, fuses, extension cords, etc.	duration, quality, price, guarantees, Brands and durability	Size, quality, uses
Building material: Iron sheets, paint, cement, limestone, floor tiles, steel, ceiling-board, door-locks,	Quality, price, Brands, quantity and durability	Quantity, price

<p>Motor Vehicles Spares such as booster, cable, body trim, seat covers, disc plate, lubricants, oils, brake fluid, batteries, rims, belts, side mirrors, power windows, tubes, scooters, engines, engine parts, body panels, air-bags, windscreens, tyres, bearings, shock -absorbers, suspension and steering components, automatic belt, spark plugs, disc brake pads, clutch-plates, oil filters, oil pumps, water pumps, chassis parts, engine components, lighting products, belts, hoses, wiper blades, grilles, gasket materials, rings, interior trim, brake fluid, sealing products, wheels, hubs, anti-freeze, windshield wiper fluid, etc.</p>	<p>Price, quality, Brands, quantity, guarantee, warranty and durability</p>	<p>Price, size, appearance</p>
<p>Cosmetics such as lotion, soap, cream, hair tonic, perfumes, body spray, lipsticks, medicated soap, body oils, razors & blades, shampoo, medicated hair vitaliser, pampas, women pads, tooth paste, cotton wool, etc.</p>	<p>Price, quality, Brands, quantity and durability</p>	<p>Price ,size, appearance</p>
<p>Medicines (for humans) such as: - analgesics; , malaria tablets, antibiotics, anti-psychotic products, steroids, anti-inflammatory tablets, ARVs, cough medicines, hormones, vitamins, treatments for hair and weight loss, gloves, scissors, malaria lab tests, condoms, toilet papers, dentures; medicines used for treating cancer, osteoporosis, diabetes, hypertension, cholesterol, cardiovascular disease, obesity, infectious diseases, Alzheimer’s disease, prostate disease, erectile dysfunction, asthma and fungal infections</p>	<p>Quality, price, Brands,</p>	<p>Quantity and usage</p>
<p>Foodstuffs such as: wheat flour, rice, sugar, maize flour, beans, peas, cooking oil</p>	<p>Quality and price</p>	<p>Quantity and expiry date</p>

Computer accessories/equipment such as: laptop charger, computer screen, buttons, modem, battery, computer housing, hard drive, CD-ROM, fake DVD, flash, memory card, calculators, laptops and desk top computers, pirated CD Music, USB adapters, headsets, loudspeakers	Quality ,guarantee, warranty price	Appearance and size
Foods products such as: Processed Meat and Milk, tomato sauce, chilly, Blue Band margarine, peanut butter, jams, chocolate, tea bags, Fruit, shoe polish (kiwis), conserved vegetables, milk powder, butter, ghee, baby food, instant coffee, alcohol, drinks, candy/sweets, hi-breed corn seeds	Price, quality and size	Processing and expiry date
Phone accessories such as: cover, battery, charger, phone handsets	Quality, guarantee, warranty price	Appearance and size
Agricultural products such as: seeds, fertilisers, agro-medicine, etc.	Quality, guarantee and price	
Shoes, pants, sandals, clothes	Price, Brands and quality	Size, colour and appearance
Beverages (alcoholic & non-alcoholic) such as: bottled water, spirits, wine, whisky	Price, Brands and quality	Size , volume and appearance
Home appliances , such as: Pans, Thermos flasks, etc., blenders, glasses, spoons, plates, cups, hot pots, kitchen kits, shavers, hair dryers, irons, mixers, blenders, pressure cookers, kettles, deep fryers, lighting appliances, smoke detectors, clocks	Price, Brands and quality	Size, volume
Personal accessories such as: rings, earrings, sunglasses, bracelets, necklaces, sun-shades, watches, jewellery, spectacles, luggage, handbags, and leather articles	Price, Brands and quality	Colour, size and appearance
Television sets and radios , flat screens, music systems, remote controls	Price, Brands and quality	Colour, size and appearance
Tobacco such as: cigarettes, cigars, snuff		

Toiletry and other household products		
Insecticides, herbicides, fungicides, non-stick coatings		
Others such as: Toys, games, furniture, sporting goods (e.g. basketballs and golf clubs), stickers, dyed and printed exotic fabrics, belt buckles, decals, flags, lighters, table tops/cloths, flowers, plant cuttings, qualification certificates, abrasive tools, sanitary products (bathtubs, wash basins, toilets), tableware (plates, bowls, cups)		

Source: Field data (Mbeya, June 2015)

Table 4 shows among other things that there are very diverse types of counterfeit products that people in Mbeya come across. This may reflect the estimates that up to 60 per cent of goods found on the Tanzanian market could be counterfeits.

Sources of Counterfeits within Tanzania

The respondents were asked to state the sources of counterfeit goods that originate from within Tanzania. Their replies are presented in Table 5 below.

Table 5: Sources of Counterfeits within Tanzania

Regions	Frequency	Percentage (%)
Dar es Salaam	42	60.0
Arusha	2	2.9
Mwanza	3	4.3
Mbeya	10	14.3
Tanga	2	2.9
Mtwara	1	1.4
Zanzibar	1	1.4
Morogoro	2	2.9
Not known	7	10
Total	70	100

Source: Field data (Mbeya, June 2015)

It can be seen in Table 5 that the overwhelming majority (60 per cent) of the respondents indicated that counterfeits within Tanzania mainly originate in Dar es Salaam. This is understandable, considering that Dar es Salaam is the leading commercial city in Tanzania with the majority of manufacturers located there. Also Dar es Salaam has the major port through which most imports enter the country.

Sources of Imported Counterfeits

The respondents were asked to indicate the sources of imported counterfeit goods (countries in which the goods are produced and entry points). Responses are presented in Table 5 below.

Table 6: Sources of Imported Counterfeits

Countries of origin	Frequency	Percentages	Entry point
China	28	40	Dar es Salaam and Tanga Ports, unauthorised/porous ports, JNIA, KIA and Songwe Airport, Mtwara Harbour, Namanga, Sirari, Tunduma
India	6	8.5	JNIA Airport, Dar es Salaam Port, KIA
UAE-(Dubai)	5	7.1	KIA, JNIA Airport, Zanzibar and Dar es Salaam Ports, Songwe Airport
Indonesia	1	1.4	Zanzibar, Dar es Salaam Airports and Ports, porous ports
Malawi	2	2.8	Kasumulo Border, Songwe River porous border, Lake Nyasa
Zambia	3	4.2	Tunduma border, Ileje, Sumbawanga, Kasumulo border
Japan	2	2.8	Dar Harbour and JNIA
South Africa	1	1.4	Tunduma border, Kasumulo border and porous border
Taiwan	2	2.8	Dar es Salaam and Tanga Ports, Zanzibar, JNIA
Malaysia	2	2.8	Dar es Salaam and Tanga Ports, Zanzibar, JNIA
Singapore	1	1.4	Dar es Salaam and Tanga Ports, Zanzibar, JNIA
Germany	1	1.4	KIA, Dar es Salaam and Tanga Ports, Zanzibar, JNIA
Brazil	1	1.4	Dar es Salaam and Tanga Ports, Zanzibar, JNIA
Canada	1	1.4	Dar es Salaam and Tanga Ports, Zanzibar, JNIA
Thailand	4	5.7	Dar es Salaam and Tanga Ports, Zanzibar, JNIA
Hong Kong	2	2.8	Dar es Salaam and Tanga Ports, Zanzibar, JNIA
South Korea	1	1.4	Dar es Salaam and Tanga Ports, Zanzibar, JNIA
Nigeria	2	2.8	Dar es Salaam and Tanga Ports, Zanzibar, JNIA
DRC Congo	1	1.4	Tunduma, Kigoma Ports,
Burundi	1	1.4	Kigoma Port, Tunduma
Kenya	2	2.8	Horohoro, Sirari, Namanga, Tanga and Zanzibar Ports, porous ports/border
Uganda	1	1.4	Mtukula, Namanga, porous border
Total	70	100	

Source: Field data (Mbeya, June 2015)

It can be seen that 40 per cent of the respondents were of the view that imported counterfeits entering Tanzania originate in China, followed by India (8.5 per cent). This is consistent with the literature that suggests that most counterfeits originate in China. It is also evident that these goods enter the country through its various formal and informal entry points such as airports, ports and land borders. It also suggests that the majority of counterfeit goods enter Tanzania through Dar es Salaam Port, rather than Zanzibar. This also means that the problem would have to be addressed mainly at Dar es Salaam Port and JNIA.

Role of MDAs in Fighting the War against Counterfeiting and Counterfeit Goods

The respondents in Mbeya were asked to list the roles that MDAs should play in fighting against counterfeit goods. Their responses are outlined below in (i) – (viii).

- i) Formulation of appropriate Laws and Institutions to oversee the regime for the control of piracy and counterfeits
- ii) Setting aside sufficient budgets to fight counterfeit goods
- iii) Impounding and destroying counterfeits
- iv) Scrapping Business Licenses from irresponsible persons who involve themselves in counterfeits
- v) The issuing and collection of receipts for any sale; this will help in tracing the culprits
- vi) Handing down heavy fines and confiscating counterfeits
- vii) Learn from other countries that have greater success in fighting against counterfeits
- viii) Re-examine the laissez-affaire liberalisation of second-hand goods as the culture seems to encourage trade in counterfeit goods

Challenges in Fighting against Counterfeit Goods

The respondents were asked to identify any challenges they believe likely to be encountered by the authorities in the fight against counterfeit goods. Their responses include: lack of Regulations; insufficient Law Enforcement and inadequate penalties; difficulty/inability to detect counterfeits; lack of awareness by stakeholders including consumers; a dearth of modern inspection equipment and techniques; inadequate human and financial resources; multiple but uncoordinated enforcers; and the globalisation and advancement of technology that render international goods easy to imitate. It is seen that the challenges are very similar to those identified from the literature as well as from the in-depth interviews with the key informants. This implies that these similar challenges coming from multiple respondents are relevant and need to be addressed accordingly.

Effects of Counterfeit Goods on Consumers

The respondents were asked to enumerate actual and potential effects of counterfeit goods on the consumer. Their answers include destruction of consumers' health, loss of property and money, even deaths, for example, in cases of electrical faults from counterfeit products.

Effects of Counterfeit Goods on the Economy

The respondents indicated that counterfeits have various effects on the economy. These include: high loss of Tax Revenues; negative effects on innovation and growth; discouragement of foreign investments; large costs in combating counterfeits; loss of jobs and economic opportunities.

3.4.4 Selected Examples of Solutions Observed in Surveys

During the Surveys a number of observations were made regarding practical solutions for fighting the war against counterfeits. Some of these are outlined as follows.

The Case of a Pharmaceutical Company

In order to protect its consumers from counterfeit tablets, a pharmaceutical company that manufactures worming tablets amongst other items, places a sticker on top of the packet containing the tablet. On the sticker is written "Look for the product verification label inside the pack" with its Kiswahili equivalent "*Kagua label kuhakikisha dawa iliyoko ndani ya pakiti*". The inside cover has another sticker written "To verify this product scratch & SMS above code to and send it to 15629" with its Kiswahili equivalent "*kuhakikisha dawa hii kwangua na tuma mba ya Pin kwenda 15629*".

As part of experimental research, having bought the medicine, the author of this Report scratched and revealed the code (WZMY 8R33 8JLR HU3) and sent it to the number 15629 (toll free) on July 21st 2015 at 23:14 hours. Until 08:03 hours on July 22nd 2015 there was no response. The code was re-sent on 22nd July 2015 at 08:05am. After two minutes (at 08:07am) SMS response was received on the phone stating "OK. This is a product supplied by the Patent Owner. Code is WZMY8R338JLRHU3" with its Kiswahili equivalent "*Sawa. Hii dawa imetengenezwa na Patent Owner. Namba uliyeituma ni WZMY8R338JLRHU3*". This is an example of good practice for manufacturers to adopt in order to protect their products against counterfeits.

The Case of locally-manufactured Baby Diapers

A firm that manufactures baby diapers has been observed making television announcements/ advertisements that there are people who are imitating their product. They warn consumers to avoid being misled because it is only they who manufacture these products.

The Case of DVDs

On 15th July 2015 the author observed a towering billboard at the Iringa bus station displaying a warning about the counterfeiting of DVDs. The advertisement, by the genuine manufacturer, states in Kiswahili that buyers of fake DVDs should return them to the place of purchase and demand their money back. It encourages potential buyers to recognise counterfeit goods before purchasing them. It further advises consumers to avoid purchasing DVDs produced in 2014 and 2015 and bearing numbers beginning with “12” because they are counterfeits. An email address is provided for those requiring further information⁵. Whereas the advertisement is good, the requirement that those needing further information should contact the company via email only - as no telephone numbers are provided - is not the appropriate manner of dealing with the matter. Mobile phone numbers should be provided along with other contacts, as they offer immediate and wider communication from a broader public including those without e-mail facilities. The author of this Report emailed the Manufacturer requesting descriptions on sources of fake DVDs and their impact. The responses are shown in Box 2 below.

Box 2: Fake DVDs

Our company is taking very serious of these fake products in the market, and we also take the action to fight the fake products. However, quality of original and fake DVD players totally can't compare although the price of fake DVD will be cheaper. The fake DVD player only can use for only few month the problem will come out already. Pease make sure that you are purchasing original DVD player. The salary that workers earning is very hard, must buy the correct and original products that can use longer time like 2-3 years or more than --fake DVDs. Our products are always durable use and price cheaper compare other brands.

The case of Tanzania Communication Regulatory Authority (TCRA)

According to *Mwananchi* Newspaper (Tuesday, 30th June 2015, Page 12)⁶, TCRA Northern Zone (Arusha) put procedures in place for curbing importation of fake electronic goods. This includes ensuring that businessmen involved in the importation and sale of these products will be required to obtain a special licence from TCRA in addition to other licences. According to the TCRA's Northern Zone manager, the licence is important in curbing a multitude of imported fake electrical goods. According to the Newspaper, traders in the Northern Zone have received training on the importance of the licence. It was further stated that importation of fake electrical goods tends to kill the market for genuine electronic and communications equipment. TCRA, according to its Northern Zone Manager, will closely follow-up those traders who try to side-step the Law which requires them to obtain the said licence.

5 As part of experimental research, the author again emailed the company, on 21st July 2015, to request more information on the nature, sources and impact of fake DVDs. As at 24th July 2015, when this section of the report was written, there had been no response.

6 TCRA wapata dawa uagizaji wa vifaa feki (TCRA gets medicine for importers of fake products).

The Case of Microsoft

In The Citizen Newspaper (Thursday, 24th September 2015, page 3) Microsoft (with the Copyright Society of Tanzania – COSOTA logo) put an announcement warning against the use of “counterfeit” (technically it should have read “pirated”) software. In part, the announcement read “Using counterfeit software is a disaster waiting to happen. You’d not only be exposed to a range of security and privacy risks, but could also face unwanted enforcement actions from local authorities. Safeguard your business, increase productivity, do business anywhere”. The Company went further by advising prospective customers to obtain genuine software from Microsoft by emailing to talk2us@microsoft.com. This is yet another example of ways in which companies can inform their clients about the negative implications of using counterfeit goods, also advising as to how and where they can obtain genuine items.

3.3.5 In Depth Case Studies on Two Manufacturers Operating in Tanzania

3.3.5.1 Manufacturer of Alcoholic Beverages in Tanzania

Introduction

In the interest of a detailed investigation and understanding of key issues of counterfeiting in the Tanzanian manufacturing sector, an in-depth Case Study of a local Distillery was undertaken in the Field Study advising this report. The key informants in this case were Senior Officials of the Company. Under the ‘In Short’ section the major findings (facts and figures) of the in-depth case study are presented, while the overall results of further interviews with the senior officials of the Company are outlined below, providing further insights in different types of counterfeiting in the industry.



'In Short' About the Company

The company, a subsidiary of a Holding Company, is based in Dar es Salaam and has conducted its business for the past 23 years. It distributes wines and spirits and its Distillery produces a number of spirits, and its flagship brand has dominated the spirit category in Tanzania for years. The Company has experienced the counterfeiting of each of its nine Brands in the Tanzanian market over the past 18 years and in the past 3 years it has observed an increase in counterfeiting of its products by at least 30 per cent. It explains that, although counterfeits of their products are consumed widely throughout Tanzania, they are not found in the place where they are manufactured as the counterfeiters mainly target the rural areas where law enforcement is very lax.

The Company has experienced a loss of its market share by almost 20 per cent over the last three years. As a result of the counterfeiting of their products the approximate annual loss of turnover for the Company amounts to US\$ 10 million. This results in a loss of 40 – 50 per cent for the TRA, which is equivalent to an annual loss of Tax Revenue of US\$ 4 million.

The Company exports its products to Kenya and has endured further loss of its market share in the East African Community due to the counterfeit trade.

The counterfeiting of the company's products has affected the cash flow of the Company and it further encourages theft of raw materials from the Company, causing additional losses. The Company further points out that counterfeiters pay cash money, whereas legitimate companies give at least 30 days credit. The loss of turnover has negatively affected the growth and development of the Company. This is because the company has been forced to proceed with caution since one of their Brands has a large public equity.

The Company explains that, if their TM were to be better protected in Tanzania, it would enable the development and growth of the Company and its market; they could reinvest in their Brands, expand their portfolio to the population in general, and receive a higher allocation of local funds. One of the Brands, for instance, is sold in bulk by the counterfeiters thus preventing local manufacture.

The Company explains that, had they not experienced an annual loss of 20 per cent for the last five years due to the counterfeiting of their products, it would have been possible for them to build a new factory. This would have created direct employment for 200 workers, and the overall value structure could be increased five-fold thus creating at least a further 1,000 indirect jobs. If their TM was better protected, the Company could generate at least ten middle-to-higher managerial and technical positions: posts which require higher education levels. The same would create a good opportunity for the Company to impart managerial and technical skills.

In order to better protect their products from counterfeiters, the Company has continually incurred extra (production) costs amounting to at least US\$ 1 million per annum, which has negatively affected the Research & Development Department and the Company's growth as a whole.

The Company has actively investigated the counterfeiting of their products thus involving further additional costs. The Company has an average of 50 court cases each year, costing at least US\$ 5,000 per case per year in Legal fees.

When asked if the Company would consider further investing in Tanzania if their TM was better protected, the Company indicated that this decision does not depend solely on TM protection, but also on sources of revenue being better protected (Excise Duty, VAT and Tax Laws, for an equal market and in order to generate fair competition).

About the Counterfeit Product

The price difference between the genuine and the counterfeit product is variable; some counterfeiters sell their products at substantially cheaper prices while others are more expensive. The average life span of the counterfeit product is over 50 per cent less than that of the genuine product; the genuine product has a shelf life of more than one year.

The counterfeiting of the Company's products has definitely harmed the Brands and their good name resulting in loss of trust from their consumers. Field researchers deployed by the Company have shown that the "taste" profile has changed and that consumers are asking: 'What have you done to the product'? As a result, the amount of re-purchasing is often lower due to consumers having had bad experiences.

The counterfeit products have negatively affected the health and safety of the Tanzanian consumers as counterfeiters are not concerned about hygiene standards and they do not have the TFDA approval on the ingredients they use.

There have been incidents of beer bottles exploding, resulting in eye injuries to unsuspecting consumers; insects have been found inside counterfeit beer bottles. A number of these incidents have led to the Company being taken to Court, bringing it further costs.

About the Counterfeiter

Due to globalisation, the nature of counterfeiting has changed in the past five years, whereby raw materials are easily accessible. Further, the Company is not in a position to prevent incorrect packaging or to restrain other suppliers from accepting orders from counterfeiters. With the exception of raw materials, all the counterfeit products are manufactured in Tanzania. As far as the Company is aware, the estimated turnover for the counterfeiter results in a far higher conversion rate, as well as double the profits, because the counterfeiters do not comply with Labour Laws, have no overhead

costs, do not pay Taxes and Duties, do not abide by Health & Safety Regulations and they do not incur any Marketing, Sales and Research & Development costs.

The Company is of the opinion that the counterfeit trade is a detriment to the healthy and long-term development of the Tanzanian economy; neither does it benefit this country's people, as the illicit trade wears out the morale of those endeavouring to earn an honest living.

3.5.2 Results of further interviews with senior officials

We shall now present some results from further interviews with senior officials of the Manufacturer of Alcoholic Beverages in Tanzania on different types of counterfeiting in the industry.

General issues regarding Counterfeits in Tanzania

According to the key informants from the Company, approximately 60 per cent of consumer products in Tanzania are counterfeit. They include soaps and detergents, beverages especially spirits, electrical products and many other products, particularly consumables. Among the challenges and issues related to dealing with counterfeits is the fact that it is very problematic to identify fakes, due to the high level of sophistication of counterfeiters, therefore imitations of genuine products, by outside appearances, are almost 100 per cent perfect. Generally the market forces of supply and demand do drive counterfeits. The key informants were of the view that the goods being counterfeited are highly dutiable products and that Tax is the main driver behind counterfeiting. It was further reported that counterfeiting of Tax Receipts is a new form of counterfeiting, particularly in the alcohol industry.

The culprits are currently stealing raw materials of unfinished products such as spirits and beer to fabricate products using packaging materials of genuine brands. They also steal Revenue Stamps, which they affix to products to cheat purchasers into believing that appropriate Government Revenues have been paid. Hence the aim is not solely to gain huge profits from counterfeiting the actual genuine product, but the faking of Revenue Stamps further reduces the cost to the consumer, thereby outcompeting genuine Law-abiding producers.

According to the key informants, the cost of production of veritable goods is lower than the Tax applied to the products. For example, a Tax Receipt can be worth up to seven times the cost of 100 mls. of this Spirit. The same applies to cigarettes and other highly-taxed products. Therefore the faking of Tax Receipts pays great dividends to counterfeiters. Fake receipts are produced in China. Items are imported to Tanzania under fabricated classification. For instance, packaging materials for spirits are listed as "toilet paper", thereby greatly reducing the amount of Tax payable. Although the majority of products are imported from China, counterfeits are becoming ever-simpler to produce locally, due to advancements in technology, combined with easy accessibility. Thus counterfeits produced in Tanzania are readily available countrywide for lower outlay. Sophisticated production is known to be taking place in simple residential premises and backyards.

Although counterfeits have been described as having short lives, they are becoming increasingly more durable due to high production technology. Counterfeiting in spirits does not only apply to local brands, but also to big International Brands.

In Tanzania, counterfeits in general, and in the spirit sub-sector in particular, can be either imported or locally made. According to key informants to this Study, there are Mafia-type international players in this market, mainly producing fakes in China then exporting them to Tanzania and other countries.

Faking Volumes and Weights

In the spirits industry, apart from the faking of names there are also cases where weights and volumes are fabricated. In cases of fraudulent Stamp Duty receipts, the stated volume of toilet paper was far below the actual volume.

Domestically Produced Counterfeits

As narrated above, apart from imported counterfeits, in the spirits industry counterfeiting also exists in the domestic market. In the case of The Distillery Company described above, this involves counterfeiters producing their main Spirit produced locally and using the company's genuine packaging and raw materials counterfeiters. Where the counterfeiting occurs is in the illegal use of the Company's Brand and, further, dilute the product. This was found to be taking place with the collaboration of employees of the Distillery, who would steal the packaging and raw materials which were passed on to counterfeiters who own local manufacturing plants and, in some cases, these manufacturing plants belong to the Distillery employees themselves. However the local counterfeiting industry is carried out on a far smaller scale than that of imported fake goods. Hence the international counterfeit industry poses a bigger threat to the spirit industry than the locally-produced fakes.

The home-grown counterfeiting industry involving this Distillery commenced back in the 1980s where employees of the Company were the facilitators. The Company produced fine spirit, which could be used to manufacture any type of alcohol. The workers would steal the spirit from their employers in order to sell it on to people in the Tandika area, who would make fake spirit on the street by mixing the stolen company's spirit an illicit one. Apart from spirit, they also manufactured fake beer. As the price of their main spirit beverage increased, this type of counterfeiting spread to big business people, who produced huge quantities in local plants. When the Company ceased producing the fine spirit, the raw material that had previously been stolen by employees was no longer available.

Due to the non-availability of imported spirit as raw material for the fake spirit beverage, importation of spirit by big businesses began on a large scale. Now, the manufacture of the raw materials, laminates (packaging materials), stamps, etc., is undertaken in China. The laminates are also sold

on to other illegal producers of this spirit. The main entry point for the imports has been Tanga (Raskazoni) in which the laminates pass through borders listed as “toilet paper”.

Although the Distillery discontinued the manufacture of spirit, the raw material used in its production is still available in the country, being produced, for example, in the Moshi and Arusha areas.

Impact of Counterfeits on the Distillery

The Distillery in question has been at the receiving end of many far-reaching negative effects of counterfeiting. This impact includes but is not limited to reduced market share, due to the fact that - although the Company had ceased selling them - its faked products are still available on the market. This results in a negative effect on consumers, who abstain from purchasing the products, considering them to be of poor quality - thereby giving the Company a bad image. This, in turn, brings down volume of sales, revenues and profits.

The Company seized 914 cartons of counterfeit Spirit (144 pieces x 914 x 800 TZS), reflecting a potential loss of profit amounting to TZS 105,292,800. These cartons had been manufactured in China and discovered in a go-down in Vingunguti, ready to be sold. These fake cartons would displace genuine ones in the market, causing extensive negative impact on the Company as described in the paragraph above, even to the extent of laying-off staff. Added to this, the Government would lose out on the associated Tax Revenues. The cost to the economy would include increased direct and indirect unemployment as the various links all the way down the commodity value chain would be adversely affected. This indicates that the counterfeit trade in this country enriches a very small group of people but it does not benefit the country as a whole.

Thus the war against counterfeiting and the counterfeit trade in Tanzania is very much in the country’s public interest.

In order to appreciate the potential Tax Revenue loss to the Government, it should be noted that this Distillery currently pays up to 8 billion TZS in taxes annually. If counterfeiters should take over the Distillery’s popular spirit business through fake production, the Government obviously stands to lose huge sums in Tax Revenue.

3.3.6 Solutions to the Counterfeiting Scourge in Tanzania

The key informants have proposed a number of solutions to address counterfeits in the spirit industry. These include but are not limited to: educating the general public, especially consumers; making

frequent follow-up operations with Police, and ensuring better Police co-operation. It was claimed that the Police have let the Company down as no suspects have been prosecuted, giving rise to suspicion of significant corruption.

3.3.6.1 Challenges faced by the Distillery

In its efforts to fight against counterfeit spirits, the Distillery faces a number of challenges which include, but are not limited to, controlling of the spirit production and trade. According to the key informants, TRA is supposed to follow-up on spirit sales by obtaining reports from manufacturers listing the products sold, when/where they were manufactured, who purchased them and for what purpose. TRA is further required to monitor the production of spirit right through to the end user. This does not appear to be done due to the fact that spirit easily finds its way into the hands of counterfeiters. For example, a key informant reported to have witnessed a total of three lorry trucks carrying spirit in Rombo. Although the trucks were apprehended by Police, the culprits involved 'negotiated' with Police and were free to go uncharged.

Another challenge is that, although the Company conducts its own investigations and produces the required evidence to Police, no prosecutions have been forthcoming. This demoralises efforts to fight the war against counterfeiting, counterfeiters and their counterfeit products. Here it becomes quite apparent that there are vested interests of rich, well-connected people as well as lack of political will. No one seems to be willing to fight for either the country's economic interests or come to the support of the genuine law-abiding manufacturers. Furthermore, counterfeiting in the spirit industry is a very lucrative business with huge profit margins which gives huge incentive to those illegally benefitting to continue corrupting the system. But that also means huge losses to the Government and its revenue collector, the TRA.

Another substantial challenge is the lack of coordinated efforts amongst the key players in this war, such as the FCC, TBS, TFDA, the Manufacturers, consumers and stockists. The consumers, after receiving education, do appear to be collaborating with the Company to a greater extent. Other spheres in which there is significant lack of collaboration include the Chief Government Chemist, TRA, the law Courts and the Police in general. An exception to this is the Police Department in Moshi which, in contrast to their Dar es Salaam counterparts, has shown significant cooperation and has been very good in the follow-up of issues involving the counterfeit Spirit trade.

Another big challenge in fighting the war against counterfeiting and counterfeit spirit trade in Tanzania is the Chinese factor. According to the key informants, due to technological advancement, there are many Chinese factories which produce on a small scale and at a cheap price. These can be easily hidden from view, even in residential premises in places such as Manzese and Sinza where counterfeit spirit, is manufactured. Identification and seizure of such factories constitutes a formidable challenge.

Amongst instances of trade in counterfeited Spirit, there was the case of a fake Agreement/Contract between a counterfeiter in Tanzania and a manufacturer in China. The Agreement authorised the Chinese manufacturer to produce this Spirit via a South African company. A faked letter with a forged signature and Stamp were drawn up, together with a fabricated Power of Attorney from the genuine Dar es Salaam Distillery. The aim was to produce fake packaging materials for the Distillery's popular Spirit that were to be imported into Tanzania, as reflected to some extent in Box 3 below.

Box 3: Counterfeiting this Spirit from China

In 2014, a manufacturer in China was commissioned by a Tanzanian counterfeiter based in Dar es Salaam, to manufacture the Spirit in China. In an email dated Wednesday 27th August, 2014 at 3:07 PM, the Chinese manufacturer wrote to the counterfeiter in Tanzania as follows:

"Hi dear, the main problem is that alcohol price increasing and the workers want more salary for (the Spirit) especially if workers work more hours and weekend (Saturday and Sunday) but if the workers not hard work we cannot do (the Spirit) fast. So we concluded that each 40 HQ container we make \$800 for compensate of the labour and raw materials price charges²⁴"

According to the original Bill of Lading the Spirit was shipped from Shanghai China, to Mombasa Kenya, on 30th August 2014. To conceal the true nature of the consignment the counterfeiter described the shipment as "2,070 cartons of toilet paper". An important anomaly here is that this consignment weighed 26,210 kilograms, meaning a carton of toilet paper would weigh a totally unrealistic 12.7kg.

On 30th September 2014 the same counterfeiter shipped a further consignment from Shanghai China to Mombasa Kenya which was listed as "1,900 cartons of toilet paper" weighing 26,300 kilograms, an even greater weight than that of the previous shipment.

Source: Field data from the Distillery, May 2015

The case above shows a number of issues related to counterfeits. *Inter alia*, it provides evidence that counterfeiting is a highly organised international business. It shows that Tanzanian counterfeiters go to the extent of commissioning Chinese manufacturers to produce huge quantities of counterfeited products. It also shows that the identity of the counterfeited goods can be hidden through false shipment declarations. This indicates the need for diligent pre-shipment inspections at points of origin and destination.

The Tanzania-destined Spirit consignments were shipped to Mombasa, Kenya. This indicates that there are complex methods by which these goods enter the Tanzanian market from foreign manufacturers, including the use of a third party destination, in this case Mombasa. This raises further questions as to how the goods enter the Tanzanian market from Mombasa. Most likely the answer lies in the multiple porous borders in Tanzania, including unofficial ports such as Tanga.

Box 4: Counterfeited Stamp Duty Certificates

As described in the findings from key informants at the Distillery, counterfeiting of spirit in general also involves counterfeiting of Stamp Duty Certificates. The aim is to evade payment of Tax. According to the Distillery, a local counterfeiter commissioned a manufacturer in China to fabricate TRA Stamp Duty Certificates. These would be affixed to counterfeited Spirit, making it appear as if Tax had been paid on the product. The genuine owner of the trade mark obviously cannot compete against all this counterfeiting. Furthermore, the Government stands to lose substantial amounts in Tax Revenues and the many related negative implications of this, including reduced ability to provide public goods and services.

The evidence of the counterfeited TRA Stamp Duty Certificate is available in a courier (DHL) communication dated Monday 21st July 2014 at 17:01 hours. It is shown that the Stamp Duty Certificates were manufactured in China and shipped to Tanzania via United Arab Emirates – UAE – (Dubai)

Source: Field data at the Distillery, May 2015

3.3.6.2 Counterfeit Cases Filed by the Distillery

Field research at the Distillery in June 2015 revealed that the Company had filed with the law courts a number of cases involving the counterfeiting of their popular Spirit in various parts of Tanzania. In Box 5 below, examples of these cases are outlined. Specific names of culprits and Police Officers handling each of the cases are withheld on the grounds of research ethics.

Box 5: Selected Cases of Counterfeit Spirit**Case 1: Case No. MB/IR/7822/2013: Counterfeit case at Mbeya Police**

- 117 cartons and 9 inners for the Spirit 100mls in a store in Mbalizi Mbeya September 2013
- Sample sent to Government Chemist
- **Status of the case:** Results of tests from Government Chemist not yet received about a year later

Case 2: Case No. CHA/IR/8138/2013: Counterfeit case at Chang'ombe Police

- 54 cartons of the Spirit 100mls in Dar Es Salaam
- Two people were found with 54 cartons of counterfeit (Spirit) 100mls at their residence in Mtoni Kijichi on 24th October 2013.
- **Status of the case:** Results of tests from Government Chemist not yet received about a year later

Case 3: Case No. TKEA/IR/987/2013: Counterfeit case at Rombo Police Kilimanjaro

- 50 cartons of the Spirit 100mls
- Two culprits at Tarakea Rombo
- One culprit ran away but Hiace mini bus and driver arrested in October 2013
- **Status of the case:** No progress reported even after follow up and written correspondence

Case 4: Case No. KJN/RB/10396/2013

- 8 cartons of the Spirit 100mls in Dar Es Salaam
- Culprit caught in Sinza Palestina in December 2013
- Sample sent to Government Chemist
- **Status:** Results of tests from Government Chemist not yet received

Case 5: Case No. TAN/RB/8589/2013

- 10 cartons and 6 inners of (Spirit) 100mls in Tanga
- Owner of a pub and store found with 10 cartons and 6 inners of counterfeit Spirit 100mls in his store in December 2013
- **Status of the case:** No progress report, police have been phoning for additional information

Source: Field data at the Distillery, June 2015

It is obvious from the above - among other things - that all of the five cases occurred in 2013. As at June 2015 when the research informing this Report was conducted, no progress had been made in any of the cases. Although samples were taken to the Government Chemist no results had been received after a period of almost two years. This unfortunate state of affairs causes untold negative consequences for the Company, the Government and the National Economy in general. Whilst the causes for these delays cannot be speculated upon in the context of this work, it is obvious that the Company is suffering the financial burden, it poses a strain on human resources due to the time and

cost element involved in the follow up of these cases. This reflects adversely upon the Company's competitiveness.

3.3.6.3 Manufacturer of Electrical Products in Tanzania

The Company has conducted its business for the last 38 years, manufacturing its Electrical Products in Tanzania. The Company has experienced the counterfeiting of its products for (at least) the last 3 - 4 years and is experiencing a rise in the problem.

The Company has experienced a loss of market share of almost 30 per cent over the past three years, 15 per cent to substandard electrical goods entering the market and 15 per cent to the counterfeit trade. The majority of the substandard products do not have the TBS Mark.

As a result of the substandard goods and the counterfeiting of their products, the approximate annual loss of turnover for the Company is TZS 38 – 40 billion, which means a loss of 5 – 10 per cent for the TRA in Taxes, Duties, etc. The Company exports to Kenya, the DRC and Comoro Islands and has experienced an additional loss of 5 -10 per cent market share in the (East) African region due to the counterfeit trade.

The counterfeiting of its products and the importation of substandard goods into Tanzania has negatively affected the cash flow of the Company, creating a chain reaction. Retailers continue to bargain, as they say they have seen the Company's products in Kariakoo Market in Dar es Salaam at a cheaper price, rendering the Company unable to compete. The counterfeiting of their products has tarnished the good name of the Brand. The Company cannot fulfil its duties, or pay its taxes.

Unlike counterfeit traders, the Company has overhead costs and cash flow problems have resulted in it being unable to import the necessary raw materials to fulfil orders, consequently leading to a loss of clients and contractors. The Company found it necessary to apply for loans, meaning the interest accumulated resulted in loss of profit from the original business. The Company is earning a bad reputation and its employees fear the Company is not stable and might suffer from corruption, which demoralises workers and management.

In 2010 the Company had to lay off 34 employees due to importation challenges with the TRA, counterfeit and substandard goods and challenges related to the PPRA Public Procurement Act, resulting in electrical goods not being sourced locally.

The loss of turnover - due to the substandard and counterfeited products – has affected the Company's development/growth, as they cannot expand their market.

If their Trade Mark were to be better protected in Tanzania they would consider further investing in the country and let their Company grow. The Company, which is 49 per cent owned by the Government of Tanzania and 51 per cent Kenyan, could build a bigger factory, thus creating direct employment for 20 - 30 people, leading to indirect employment in at least another 125 positions. Some 5 – 10 per cent of the direct employment opportunities would involve middle/higher managerial and technical



positions for which higher education levels are required.

The Company has actively researched/investigated the counterfeiting of their products, which involved additional costs. Quality Inspectors were sent into the market and counterfeit products purchased were tested in their laboratory.

No enforcement was carried out with the FCC and/or the Police but the Company is aware of the existence of the FCC and TBS. Although the TBS is aware of the trouble the Company is experiencing with substandard products in the market, it has not reported back.

About the Counterfeit Product

The approximate price difference between the genuine and the counterfeit and substandard product is that the counterfeit/substandard items sell for 10-30 per cent less. The life span of the counterfeit product is 10 - 20 per cent less than that of the genuine product.

The counterfeiting of their products has harmed the good name of their Brand, resulting in the loss of consumer trust. A number of consumers have purchased counterfeit electrical goods which have caused the product to burn out, thus resulting in a loss of clients/consumers. Whilst various consumers who have been negatively affected by counterfeit products do visit the Company to complain, many do not. Competitors also use these negative stories to their advantage, saying, 'You see, this Brand is not good'.

About the Counterfeiter

The nature of counterfeiting has changed over the past five years: having started off in small quantities, which were locally manufactured, now the counterfeiters take the samples to China where fake copies are manufactured in bulk.

To the Company's knowledge and understanding the suspected turnover for the counterfeiter of their products in the past five years has been almost double as they do not carry overheads, Research & Development, employment costs and do not pay Taxes and Duties.

Based on the suspected turnover for the counterfeiter, the approximate percentage loss for the Tanzania Revenue Authority in Taxes and Duties is approximately 25 per cent. According to the Company, the counterfeit trade does not benefit the healthy and long term development of the Tanzanian economy and its consumers. Counterfeiters and those dealing in counterfeit goods conduct their business in the illicit/illegal spheres of the Tanzanian economy and as a result discourage genuine businesses. Not all the substandard and counterfeit products are manufactured in Tanzania; therefore they do not create the much needed employment.

4 Findings from Surveys on Consumers in Tanzania

4.1 Findings from Survey of Consumers⁷ in Tanga and Moshi

Apart from manufacturers, an in-depth survey of consumers was carried out to provide further information for this study. This survey was limited to Tanga, where a total of 12 consumers were involved, and Moshi - where 18 consumers were involved. The following sets out the findings of the survey on various counterfeit goods issues, from the consumers' perspective and perception.

1. UNDERSTANDING OF COUNTERFEIT GOODS

Of the 30 consumers surveyed, a total of 12 (40 per cent) responded that they understand what constitutes counterfeits. Most of these gave examples of - but not the definition of - counterfeits.

A total of 15 (50 per cent) were unaware of what counterfeit goods are. They confused substandard goods (goods with no TBS label) with counterfeits. This indicates the need to provide education and awareness intervention on what constitutes a counterfeit good. A total of 3 (10 per cent) consumers did not give any response to this matter.

2. PREVALENCE OF COUNTERFEITS IN THE MARKET

Out of the 30 respondents, a total of 18 (60 per cent) were of the opinion that there are very many counterfeit goods on the market. A total of 12 (40 per cent) indicated that there are many counterfeits, while none indicated that there are few or zero counterfeits in the market.

3. PLACES WHERE COUNTERFEITS ARE MANUFACTURED IN TANZANIA

Out of the 30 respondents, a total of 15 (50 per cent) responded that in Tanzania counterfeits are manufactured in larger cities such as Dar es Salaam, Mwanza and Arusha. An example of fake spirits (alcohol) production in Mabibo area in Dar es Salaam was cited, with no details. A total of 15 (50 per cent) do not know where counterfeits are manufactured in Tanzania.

4. COUNTRIES THAT MANUFACTURE COUNTERFEITS IMPORTED INTO TANZANIA

Of the 30 respondents, a total of 18 (60 per cent) replied that imported counterfeits are manufactured in China. The other countries that were mentioned include Thailand, South Africa, Congo, Kenya and Nigeria. A total of 12 (40 per cent) do not know where imported counterfeits are manufactured. It is clear, however, that China is once again emerging as the leading source of imported counterfeits. This is consistent with the literature, findings from key informants and the survey of manufacturers.

⁷ Although this report aims to give an overall picture of the nature and extent of counterfeits, it is important to show the extent to which consumers are aware of the problem. Awareness of the problem is one of the main starting points to solving the problem.

5. MDAs RESPONSIBLE FOR FIGHTING COUNTERFEITS IN TANZANIA

Of the 30 respondents, a total of 18 (60 per cent) stated that they did not know which MDAs are responsible for fighting counterfeits in Tanzania. A total of 12 (40 per cent) indicated that they did know which MDAs held that responsibility. In naming them, however, it was mainly TBS that was mentioned. The FCC was mentioned by only two (6.7 per cent) respondents. This indicates that there is a need for FCC to make itself better-known and to educate the public as to the difference between substandard and counterfeit goods.

6. IMPACT OF COUNTERFEITS

All 30 (100 per cent) respondents identified various types of effect and impact that counterfeit goods have. These include the following.

- i) Fake electrical gadgets can cause fires, thereby destroying properties and lives.
- ii) Fake cosmetics have negative health effects especially on the skin. This causes another effect, which is high cost of treatment and possibly death.
- iii) Many economic effects and impact, such as Government losing revenue, the Nation losing manpower due to negative health effects or impact.
- iv) Genuine goods and their manufacturers will lose their fair market share.
- v) May lead to the stagnation and collapse of local industries thus bringing about an associated negative impact.
- vi) It makes competition very difficult for those dealing with genuine goods because they cannot sell at the price charged by counterfeiters.
- vii) They may reduce the rate of economic growth.
- viii) Tanzania may be made unable to export its goods if the world perceives it to be a country of counterfeits, which will deny the Nation foreign currency and related benefits.
- ix) Loss of faith in and integrity of genuine manufacturers.
- x) Buyers lose a great deal of money by having to frequently repair fake products and by having to replace the fakes intermittently.

7. CONSUMER SUGGESTIONS FOR THE FIGHT AGAINST COUNTERFEIT GOODS IN TANZANIA

The surveyed consumers recommended a number of ways to fight the war against counterfeiting and counterfeit goods in Tanzania, including the following.

- i) Educating and sensitising consumers on how to differentiate between fake and genuine

products.

- ii) Educating the general public on various negative effects and impact of counterfeits.
- iii) Encouraging consumers to report suspected counterfeit goods and counterfeiters to the relevant Authorities, and the need to establish Awards and recognition for such contributions from the public.
- iv) It is important to have proper co-ordination of the efforts from the different Agencies involved in combating counterfeits.
- v) Ensuring effective enforcement of the Law, the role of the Police Department, including demanding stiffer sentencing for all apprehended counterfeiters and their collaborators.

4.2 Findings from Survey on Consumers in Dar es Salaam: Ilala and Kinondoni

4.2.1 Introduction

Interviews were conducted in Ilala and Kinondoni Districts in Dar es Salaam in June 2015 to gather information on various aspects of counterfeiting and counterfeit goods. The aim was to collect a general overview of some key issues related to counterfeiting and counterfeits. A total of 256 people were interviewed and below are the findings from the interviews from the consumer perspective and perception.

4.2.3 Awareness of and Encountering Counterfeits

It transpired that a total of 235 interviewees (92 per cent) were aware of the existence of counterfeit goods, while the remaining 8 per cent were not aware. A total of 207 interviewees (81 per cent) have encountered counterfeit goods whilst 19 per cent have not come across any.

4.2.4 Counterfeit Products Purchased

A total of 15 interviewees (6 per cent) had purchased fake handbags; 3 (1 per cent) had purchased fake shoes, 74 (29 per cent) had purchased fake pharmaceuticals, 98 (38 per cent) had purchased fake electrical equipment, 38 (15 per cent) had purchased other electrical goods, 10 (4 per cent) had purchased fake watches and 18 (7 per cent) had purchased fake cosmetics.

4.2.5 Recognition of the Law that Prohibits Counterfeit Goods

A total of 235 interviewees (92 per cent) are not familiar with the Merchandise Mark Regulations Act of 2008 amended in 2010 that prohibits counterfeit goods. This stresses the importance of creating an awareness campaign which will inform Tanzanians about counterfeiting and counterfeit goods, the FCC and the Act.



4.2.6 Checking whether Products are Fake

A total of 74 interviewees (29 per cent) did not check whether the products they purchased were genuine or counterfeit. The remaining 71 per cent did check.

4.2.7 Discovery of Counterfeits after Purchase

A total of 118 interviewees (46 per cent) had purchased counterfeit goods and later discovered them to be fake.

4.2.8 Reporting on Counterfeits

A total of 225 interviewees (87 per cent) did not report to any Authorities when they discovered they had purchased counterfeit products. A total of 18 interviewees (7 per cent) had reported to the sellers of the fake goods, while a total of 13 interviewees (5 per cent) reported to the respective companies responsible for manufacturing the goods. There is a need to educate the general public as to their obligation to report issues regarding counterfeit products; also advising them on the correct procedures to be followed and places to report.

4.2.9 Ability to Identify Counterfeit Goods

A total of 98 per cent of the interviewees admitted that they are not always able to identify fakes due to the high standard of fabrication. This implies that consumers cannot, and should not, be made responsible for establishing whether a product is genuine or counterfeit. This is the responsibility of Law Enforcement Agencies with the assistance of the TM owners.

4.2.10 Identifying Manufacturers of Counterfeits found in Tanzania

A total of 1 per cent of the interviewees said that they suspect certain producers of being manufacturers of counterfeits but they were not sure and have no evidence. With respect to countries where counterfeits originate, 95 per cent of respondents mentioned China.

4.2.11 Price as a Motivation for Purchasing Counterfeits

A total of 128 interviewees (50 per cent) said that they did purchase counterfeit goods when they were short of money. This indicates the need for consumer awareness campaign to let them know the high hidden costs of cheap products: 'Buying Fakes Costs More'.

4.2.12 Reasons for Purchasing Counterfeits

A total of 51 interviewees (20 per cent) said that the main reason for purchasing counterfeits can be put down to ignorance; 102 interviewees (40 per cent) were of the opinion that unawareness is the main reason for purchasing counterfeits; 51 interviewees (20 per cent) said shortage of money is the main reason for purchasing counterfeits; 38 interviewees (15 per cent) said cheap prices are

the main reason for purchasing counterfeits; and 12 interviewees (5 per cent) stated other reasons such as good designs of counterfeits as the main reason for purchasing counterfeits. The findings indicate that the majority (60 per cent) of the respondents were either ignorant or unaware. This calls for awareness and education/information interventions.

4.3 Findings from Anonymous Questionnaire on Multinational Trade Mark Owners

Separate from the Study conducted by CTI on manufacturers and companies in Tanzania, the researchers conducted an Anonymous Questionnaire amongst multinational Trade Mark owners, with the assistance of BASCAP. The companies were asked to provide specific information as to the effects of the counterfeit trade on their businesses, on consumers and the Tanzanian economy as a whole. The findings of the Survey are presented.

4.3.1 Case of a Pesticides Company

The Company has conducted business in Tanzania for over 10 years. It reported experiencing a 40 per cent increase of counterfeiting of its products in the Tanzanian market over the last three years, particularly in Mbeya, Njombe, Mtwara and Mwanza Regions. According to the Company, products that have been phased out, still exist on the market in the form of fakes. The average percentage loss of market share to the Company over the last three years due to counterfeits is estimated to be about 10 to 20 per cent. As a result of the counterfeiting of its products the approximate annual loss of turnover for the company over the last three years is approximately USD 1.5 - 2 million. Based on the annual loss of turnover, the approximate percentage loss for TRA in taxes, duties, etc., is in the region of 5 to 10 per cent i.e. approximately USD 0.015 - 0.02 million which is equivalent to TZS 33,000,000 – 44,000,000. According to the Company, counterfeits sell for approximately 30 – 40 per cent cheaper than the original products. The average life span of counterfeit products in comparison to the Company's genuine product is 5 – 10 per cent lower.

The counterfeiting of the Company's products has harmed the good name of its brand and resulted in a loss of trust from their consumers. According to the Company, counterfeiting of one of their brands resulted in approximately 50 per cent of previous customers refusing to purchase this brand due to the fact that they are unable to differentiate between the genuine and fabricated products. The Company was unable to provide further information as to the negative effects and impact of the counterfeiting of their products. However, they were of the opinion that, should their Trade Mark be adequately protected, they would consider further investment in Tanzania. In reply to a question, the Company stated that it did not know which Government Agency to contact in case of Intellectual Property Infringement in Tanzania. The Company has not worked with any of the Government Agencies in the fight against counterfeit goods.

To-date, the Company has not actively investigated IPR infringement of its TM in Tanzania, neither has enforcement action proved successful. This indicates the necessity for Companies to actively investigate infringement of their TM: this applies not only to the role of Authorities, but also the role of TM owners. With the aim of improving the Protection of Intellectual Property in Tanzania in order for it to recoup its market share, the Company recommended the following.

- i) Enhanced Government support in follow-up and Police action against counterfeiting and counterfeits
- ii) Provision of a strong local industry regulator (Crop Life) fully supported by Legislation and financing
- iii) A Government Institution fully-mandated to specifically handle counterfeiting and counterfeit products in crop protection products

Overall results of the findings indicate *inter alia* that: counterfeits are widespread with many negative implications on TM owners; the Government loses revenue due to fake products; the Company in question is oblivious of which key Institution is responsible for dealing with IPR; the Company has never consulted with any of the Authorities dealing with counterfeits. That notwithstanding, this Company has suffered from fake production of its commodities, clearly demonstrating the urgent need for relevant Institutions to advertise their roles more openly, also inviting Companies to engage with them on counterfeiting issues.

4.3.2 Case of a Sportswear Company

The Company is experiencing the counterfeiting of their products in the Tanzanian market and the counterfeit goods have been on the increase over the past three years. The respondent further explained that, whilst they have not experienced a substantial increase of counterfeit goods on the market, there has been no significant reduction of these counterfeits, which are easily available.

The counterfeit products sell for approximately 30 – 40 per cent less than the genuine articles, but the average life-span of the fake products is 50 per cent lower. To the knowledge of the Company the counterfeit products have not negatively affected the health and safety of the Tanzanian consumers. If the Company's Trade Mark were to be better protected in Tanzania the Company would consider investing further in the country. The Company is aware of which Government Enforcement Agency they should contact in case of IPR infringements and has worked with the Fair Competition Commission (FCC) and the Tanzania Police Force.

The Company has actively investigated IPR infringement of their TM in Tanzania in the past but enforcement action was unsuccessful. The Company has bad experiences with the Tanzanian Courts in relation to IPR infringement cases, and are of the opinion that the Courts are inexperienced in terms of counterfeit cases.

According to the Company, the Legislation for fighting IPR infringement in Tanzania is insufficient and the Company makes the following suggestions.

Customs, Police and the FCC should be more proactive, rather than reactive, in terms of enforcing IP rights, especially with regard to counterfeit goods. There must be better channels of communication between Customs and the Brand Holders; information should be shared when containers carrying counterfeit goods are imported into the Country. Brand Holders must be given the opportunity to inspect the contents whenever suspect counterfeit goods are imported. Customs must adopt a formal Record System.

In order to improve the protection of IPR in Tanzania, the Company suggests that Customs deal with Border measures effectively, also engaging with Brand Holders. The FCC and Police need to operate with unquestionable transparency. Enforcement action is costly, with the results seldom turning out to be worth the efforts made by the Brand Holders.

In order for the TM owners to regain their share of the Tanzania market which has been lost to the counterfeiters, Customs needs to engage more closely with Brand Holders. The Police and FCC need to be transparent with their enforcement actions and fees must be reduced. Courts should impose sanctions with deterrent measures.

4.3.3 Case of Pharmaceutical Company (1)

The Company has been operating in Tanzania for between 5 and 10 years and is experiencing counterfeiting of its products in the Tanzanian market. According to the Company, the degree of counterfeiting has been constant. In 2013, the Company reported one instance of counterfeit medicines to the TFDA. According to the respondent, no obvious loss was incurred due to counterfeiting.

Further, no proper records were kept of the negative impact on turnover sustained due to fake medicines on the Tanzanian market; however, the composition of the fake medicines could adversely affect the health of patients. Obviously, the impact on turnover is irrelevant compared to the possible impact on patients' health.

Insofar as impact on Tax Revenues is concerned, the Company advised that pharmaceuticals are not excisable goods in Tanzania; thereby counterfeit medicines are of no consequence to TRA revenue. However, there is a consolidated Import Tax of 2per cent TFDA fee plus 1.3 per cent IDF fee, which the Government would lose should the product be brought in via unapproved routes, e.g. parallel imports.

The Company has no information regarding price difference between genuine and counterfeit products, nor are they able to estimate the comparison between life-span of genuine and fake

medicines in Tanzania. According to the Company, its good name had not been harmed by the counterfeiting of its products; further, they are of the opinion that fake products have had no negative effect on the health and safety of Tanzanian consumers.

According to the Company, no complaints associated to counterfeit medicines have been received from patients. However, this is by no means an indication that problems do not exist: patients suffering from a disease are liable to blame the condition, rather than suspecting the quality of the medication.

The Company is aware of which Governmental Agency in Tanzania they should contact in case of Intellectual Property Infringement. It stated that, for counterfeit pharmaceutical products, the obvious Government Agency to contact is the TFDA. The Company has worked with the TRA and the TFDA and has also actively investigated IPR infringement of its TM in Tanzania in the past, but enforcement action was not forthcoming.

The Company reported to the TFDA a case of counterfeit pharmaceuticals discovered in the legitimate supply chain. The TFDA replied acknowledging the report, also indicating that investigations would be undertaken. Unfortunately, no further feedback was forthcoming concerning the actions taken by TFDA or by Law Enforcement. The Company has no experience with the Tanzanian Courts in relation to IPR infringement cases.

The Company suggested ways to improve the protection of IPR in Tanzania in order for it to attain its fair share of the market. These suggestions include the following.

- i) Bearing in mind the specific relevance of the pharmaceutical industry, where the aim is to safeguard patients' health and protection of Intellectual Property (IP) is one of the tools for ensuring trustworthy and quality medicines.
- ii) In cases of notification of suspect medicines, closer collaboration between TFDA and IP owners is essential. IP owners can give valuable input on the identification of suspect medicines, also regarding the normal supply chain route, tracking of batch numbers, etc.
- iii) Training Programmes should be set up for Customs personnel at Ports and Airports, where Customs Officers would be enabled to be fully-conversant with all aspects relating to proper inspection of goods at the borders.
- iv) Customs personnel must be conversant with the use of IPM in order to reach the IP owners in cases of suspect products.
- v) There is an urgent need to develop an easy reporting system (hotline or website) to permit the consumer to report suspected counterfeit goods.

4.3.4 Case of a Pharmaceutical Company (2)

The Company has conducted its business in Tanzania for more than 10 years and is experiencing the counterfeiting of its products in the market.

The Company has observed an increase in the number of counterfeit goods in the Tanzanian market over the past three years, resulting in an average percentage loss of its market share by 10 – 20 per cent. The Company is unable to estimate the annual loss of turnover during this period.

The Company does not know what resulting the approximate percentage loss would be to the Tanzanian Revenue Authority (TRA) in taxes, duties, etc.

The price of the counterfeit product is approximately 30 – 40 per cent lower than that of the genuine article. However, this difference only applies to the value chain: to the consumer, the price is the same, since the value chain takes up the margin. The Company does not know what the average lifespan of the counterfeit product is as compared to that of the genuine product. The counterfeiting of their products has harmed the good name of their Brand, which has resulted in the loss of trust from their consumers. The Company is unaware as to whether the counterfeit products have negatively affected the health and safety of the Tanzanian consumers.

If the company's Trade Mark were better protected in Tanzania, they would consider investing further in the Country. The Company also states that counterfeiting is not the only factor that affects investments but it does contribute, hence the Company cannot provide a categorical answer.

The Company does know which Government Enforcement Agency to contact in case of IPR infringements but has worked with the following Government (Enforcement) Agencies in the fight against counterfeit goods: Fair Competition Commission (FCC); Tanzania Revenue Authority (TRA Customs); Tanzania Food and Drug Authority (TFDA); Tanzania Bureau of Standards (TBS); The Weights and Measures Agency (WMA); Tanzania Police Force, and the Tanzania private sector.

The Company has actively investigated IPR infringements of their TM in Tanzania over the past years and enforcement actions have proved successful. It has no experience with the Tanzanian Law Courts in relation to IPR infringement cases; it is, however, of the opinion that the Legislation to fight IPR infringement in Tanzania is inadequate as the Laws and fines are not sufficiently punitive deterrents.

On ways of enhancing IPR protection in Tanzania, the company suggests the following: a) making the Laws more punitive; b) increasing funding and personnel of FCC; c) giving FCC powers to arrest; d) attaching Police Officers to FCC; e) spreading FCC presence to such towns as Arusha and Mbeya. In order for the TM owners to regain their share in the Tanzanian market, consumers need lessons in awareness and protection from FCC and Government against further infringements.

4.3.5 Case of a Computer/an IT Company (1)

The Company has conducted business in Tanzania for between 2-5 years. It reported experiencing counterfeiting of its products in the Tanzanian market over the past three years. However, the increase of fake products has been fairly low-level as the Company business has expanded in East Africa generally.

Over the past three years the average percentage loss of the Company's market share due to counterfeits is estimated to be 10 to 20 per cent. The Company is unable to provide figures on the approximate annual loss of turnover for the last three years due to low sales volumes.

The Company is unable to estimate with accuracy the approximate percentage loss for the TRA in taxes and duties, in relation to the loss of turnover due to low sales volumes.

According to the Company, the selling price of counterfeit products is approximately 30 – 40 per cent lower than that of genuine products. The average life-span of counterfeit products compared to the genuine product is 5-10 per cent lower.

The counterfeiting of the Company's products has harmed the good name of its Brand, resulting in a lack of consumer trust. The Company admitted that it had no statistics on the negative impact brought about by fake products; however, it has relevant information in respect of other countries. The Company stated that it would consider investing further in Tanzania if its TM were to be properly protected.

When questioned as to whether they were aware of the appropriate Governmental Agency to contact in Tanzania in case of Intellectual Property Infringement, the Company responded positively. The Company has worked with the Tanzania Revenue Authority (TRA) Customs, as well as the Tanzania Police Force. The Company has actively investigated IPR infringement of its TM in Tanzania over the past years and enforcement actions have been successful. Various raids were conducted by Police and seizures carried out by Customs of computer and printer supplies and accessories.

The Company is of the opinion that although Tanzanian Law Courts were slow in dealing with IPR infringement cases, they were adequate: however, to date, they have not been required to handle contested cases. Regarding enhancing the protection of Intellectual Property in Tanzania in order for it to regain its market share, the Company recommended further training for Police, Customs and other relevant Government agencies in order to create awareness. They also proposed that this should also apply to Judges and Prosecutors in the Law Court system.

4.3.6 Case of a Computer/an IT Company (2)

The Company has conducted its business in Tanzania between 5 - 10 years and is experiencing the counterfeiting of their products in the market. The Company has experienced an increase of

counterfeit computer and IT goods on the Tanzanian market in the last three years, and reports as follows.

Fabrication of certain items is on a decrease whilst others are increasing on the market. Manufacturers are continually working on launching new product series, at the same time developing fresh counteractions against the faking of their products. However the Chinese manufacturers are always successful in finding ways around these counteractions. Counterfeiting of cheaper products is more common, e.g. cables, chargers, flash drives, memory cards, etc.

The average percentage loss of this Company's market share over the past three years is estimated at 5 -10 per cent. Overall, the Company experiences less than 10 per cent loss to counterfeiting. However, comparatively, they have incurred significant losses due the fact that they specifically avoid dealing in products which are prone to counterfeiting. As a result of the counterfeiting of their products the approximate annual loss of turnover for the Company over the past three years is below \$ 10,000.

Based on the annual loss of turnover, the approximate percentage loss to the Tanzania Revenue Authority (TRA) in Taxes, Duties, etc., is 30 – 40 per cent. The Company further explains that it is extremely difficult to come up with a precise estimate bearing in mind that most of the larger Companies dealing in genuine products do pay their Taxes - unlike street-sellers and small, largely Asian-owned shops handling fake electronics, who fiddle their accounts in order to avoid paying Tax.

Further, fake products are frequently imported via Airports/Seaports using illegal procedures, meaning little or no Taxes are paid. Tax evasion is very common in Tanzania.

The cost of a counterfeit product is approximately 10 – 20 per cent lower than the price of the genuine article. The average life-span of counterfeit products is usually less than 50 per cent of the genuine items. Whilst an original product may last for a number of years, a counterfeit is liable to fail within 4 - 8 weeks. The problem is that Tanzania consumers always go for the cheaper option. Counterfeiting of the Company's products has harmed the good name of their Brand, which has resulted in a loss of trust from consumers. The Company states that the counterfeit products have negatively affected the health and safety of Tanzanian consumers. They stated that if the Trade Mark were to be better protected in Tanzania it would consider further investment in the country.

The Company is aware of which Government Enforcement Agency they should contact in case of IPR infringements, and has worked with the following Government (Enforcement) Agencies in the fight against counterfeit goods: Fair Competition Commission (FCC) and the Tanzania Revenue Authority (TRA) Customs.

The Company has actively investigated IPR infringement of their TM in Tanzania over the past years but enforcement action has remained unsuccessful. The Company has no experience with the

Tanzanian Law Courts in relation to IPR infringement cases, as the cases never reached that stage in proceedings.

The Company is of the opinion that, although the Legislation for fighting IPR infringement in Tanzania is sufficient, the system is too corrupt to actually enforce the Law and the bureaucracy involved is too complicated to deal with. As this does not overly affect their business, the Company took the option of dealing mainly in those products where counterfeiting is rare. However, there are more significant issues within the IT industry than that of counterfeit products. These include Tax evasion, which creates unfair competition. Another issue is the import of substandard products which, although not fake, are of vastly inferior quality.

To enhance the protection of IPR in Tanzania, the Company suggests that they carry out their own surveys; they should not accept the statistics provided by the Tanzanian Government as being totally reliable. They further suggest that a system should be put in place, where reliable feedback is collected from manufacturers and the distributors of products. In order for this TM owner to regain its market share in Tanzania which was lost to counterfeiting, Foreign Governments need to pressurise the Tanzanian Government to take action on these issues.

4.3.7 Case of Foodstuffs Company

The Company has conducted its business in Tanzania for between 2-5 years and reports experiencing the counterfeiting of its products in the Tanzanian market. Over the past three years the Company has encountered an increase in the number of counterfeit goods in the market. Due to the counterfeiting of its products, the quality of the product is compromised. The Company is not aware of the average percentage loss of market share over the past three years. However, the demand for the Company's products is exceptionally high due to its superior quality.

The key difference between genuine and counterfeit products is that counterfeits sell for approximately half the price of the original. The Company explained that the price varies considerably depending on whether the counterfeits are of locally produced or international products. The life-span of the counterfeit products is the same; the counterfeit products sell well.

4.3.8 Case of an Alcoholic and Non-Alcoholic Beverages Company

The Company has conducted business in Tanzania between 5 and 10 years and is experiencing counterfeiting of its products in the market. For the past two years the Company has seen an increase of counterfeit goods by approximately 30 per cent, mainly in Dar es Salaam on the coast and in Moshi/Arusha.

The average percentage loss of market share over the past three years for the Company is 20 – 30 per cent. As a result of the counterfeiting of their products the approximate annual loss of turnover

for the Company over the past three years was US\$ 2 million. Based on the annual loss of turnover the approximate percentage loss for the TRA in taxes, duties, etc., is 50 per cent or more.

The approximate price difference between the genuine and counterfeit products, according to the Company, is that counterfeits sell for approximately 30 - 40 per cent less than the genuine products. The Company is unaware of the average life-span of the counterfeit product in comparison to the genuine product.

The counterfeiting of the Company's products has harmed the good name of its Brand and resulted in a loss of trust from their consumers, in that the Company has received complaints regarding health and origin of the products. Further, the Company has received complaints in relation to sickness, also an accident in a local place, indicating that the counterfeit products have negatively affected the health and safety of Tanzanian consumers.

The Company informed that, if its Trade Mark were to be better protected in Tanzania, it would consider further investment in the Country. When asked whether the Company knew which Governmental Agency to contact in Tanzania in case of Intellectual Property Infringement, the Company stated that it did not know. The Company has actively investigated IPR infringement of its TM in Tanzania over the past years but enforcement actions have been unsuccessful. The Company has worked with: Fair Competition Commission (FCC), Tanzania Revenue Authority (TRA) Customs, and Tanzania Food and Drug Authority (TFDA).

The company has no experience with the Tanzanian Courts of Law in relation to IPR infringement cases, but is of the opinion that the Legislation to fight IPR infringement in Tanzania is not sufficiently deterrent. On improving the protection of Intellectual Property in Tanzania, the Company suggests to FIRST put an end to corruption within the TFDA and TRA. In order for it to regain its market share, the Company recommended investigations with follow up by INTERPOL and the media.

4.3.9 Case of Cosmetics Company

The Company has conducted business in Tanzania for more than 10 years and reports experiencing the counterfeiting of its products in the Tanzanian market. The Company has observed an increase of counterfeit goods in the Tanzanian market over the past three years. The Company does not know the average percentage loss of market share during the last three years and is unable to accurately quantify the losses. The Company is therefore unable to calculate with accuracy the approximate percentage loss for the TRA in taxes and duties.

The approximate price difference between the genuine and counterfeit product, according to the Company, is that counterfeits sell for approximately 20 – 30 per cent cheaper than the genuine article. The average lifespan of the counterfeit product in comparison to that of the genuine product is over 50 per cent less. The Company explained that counterfeits allegedly have longer expiry dates



to boost profitability for the infringers. In truth the counterfeits are hollow versions of the original and certainly do not deliver the quality of protection or care offered by the genuine products.

The counterfeiting of the Company's products has harmed the good name of its Brand and resulted in a loss of trust from their consumers. The Company has received numerous complaints from consumers, who have bought fakes believing them to be genuine and thereafter refusing to purchase the genuine product, believing it to be of sub-standard quality. Thus counterfeits undermine consumer confidence in the Brand and thereby affect sales from genuine retail outlets. To the knowledge of the Company, the counterfeit products have not negatively affected the health and safety of Tanzanian consumers.

The Company informed that, if its Trade Mark were to be better protected in Tanzania it would consider further investment in the Country. When asked whether it knew which Governmental Agency to contact in Tanzania in case of Intellectual Property Infringement, the Company stated that it did not know. However, the Company has worked with Fair Competition Commission (FCC), Tanzania Revenue Authority (TRA Customs), Tanzania Food and Drug Authority (TFDA), Tanzania Bureau of Standards (TBS) and the Tanzania Police Force.

The Company has actively investigated IPR infringement of its TM in Tanzania over the past years and some enforcement actions were successful whilst others were not. The Company has both good and bad experiences with the Tanzanian Law Courts in relation to IPR infringement cases. The Company is of the opinion that the Legislation to fight IPR infringement in Tanzania is not sufficient. According to the Company, the cost of enforcement is very high and not enough has been done to penalise the counterfeit traders in Tanzania. As a result, illicit trade in counterfeits continues to grow, whilst genuine trade shrinks.

On improving the protection of Intellectual Property in Tanzania the Company suggests taking firmer action and arranging to put one Agency in charge. In order for it to regain its market share, the Company recommended better enforcement and heavier fines/sentencing as a deterrent.

4.3.10 Case of Food, Detergents and Cosmetics Company

The Company has been conducting its business in Tanzania for more than 10 years and is experiencing the counterfeiting of its products in the Tanzanian market. The Company is witnessing an increase of counterfeit goods in the Tanzanian market by about 20 per cent over the past three years, resulting in an average percentage loss of 5 – 10 per cent market share for this Company. The counterfeit product sells for approximately 5 – 10 per cent cheaper than the genuine product; however, occasionally there is no price difference. The average life-span of the counterfeit product is, by comparison to the genuine one, 10 - 20 per cent less.

Based on the annual loss of turnover, the approximate percentage loss for the Tanzanian Revenue Authority (TRA) in taxes, duties, etc., is 20 – 30 per cent. The Company does not know if the counterfeiting of their products has harmed the good name of their brand or whether this has resulted in a loss of trust from their consumers. The Company further reports that the counterfeit products have negatively affected the health and safety of the Tanzanian consumers.

The Company informed that, if its TM were to be better protected in Tanzania, it would consider further investment in the country. The Company knows which Government Enforcement Agency to contact in case of IPR infringements and has worked with the following Government (Enforcement) Agencies in the fight against counterfeit goods: Fair Competition Commission (FCC) and Tanzania Food and Drug Authority (TFDA).

The Company has actively investigated IPR infringement of their TM in Tanzania over the past years and its enforcement actions have been both successful and unsuccessful. The Company has no experience with the Tanzanian Courts of Law in relation to IPR infringement cases and is of the opinion that the Legislation to fight IPR infringement in Tanzania is sufficient. To improve the protection of IPR in Tanzania the Company suggests strengthening enforcement institutions by funding them adequately and issuing them with clear-cut KPIs for calculating the extent of their performance. For the TM owner to regain their market share in Tanzania, which they have lost to the counterfeiters, a level playground is needed, where all play by the same set of rules, meaning the Government should make the anti-counterfeiting drive a priority in its policy.

4.3.11 Case of Electronic/Electrical Company (1)

The Company has conducted business in Tanzania for more than 10 years and is experiencing counterfeiting of its products in the Tanzanian market. It furthermore states that there has been an increase of counterfeit goods in the Tanzanian market over the past three years. The Company noted that their sales have dropped slightly YOY during the last three years although installations of their products continue to grow. Therefore, the counterfeit market share and sales are increasing a great deal, by about 50 per cent growth YOY.

The Company is experiencing an average percentage loss of 20 – 30 per cent of market share over the last three years as a result of the counterfeiting of their products, which relates to an approximate annual loss of turnover for their Company for the last three years of \$1,000,000 - 2,000,000. Based on the annual loss of turnover, the approximate percentage loss for the Tanzania Revenue Authority (TRA) in taxes, duties, etc., is 30 – 40 per cent.

According to the Company, the counterfeit product costs approximately 50 per cent less than the genuine article they produce. The Company further states that the sale price difference of the counterfeit product is approximately 10 – 20 per cent lower. The Company does not know what the average life-span of the counterfeit product is in comparison to their genuine product.



The Company does not know if the counterfeiting of their products has harmed the good name of its brand and if this has resulted in a loss of trust by their consumers.

The Company further informs us that the counterfeit products have negatively affected the health and safety of the Tanzanian consumers as they cause fire hazards due to poor components used, for example, flammable plastic, whereas genuine producers use flame retardant plastic.

The Company informed that, if its TM were to be better protected in Tanzania, it would consider further investment in the country. When asked whether it knew which Governmental Agency to contact in Tanzania in case of Intellectual Property Infringement, the Company stated that it did know, having worked with Fair Competition Commission (FCC), Tanzania Bureau of Standards (TBS) and Tanzania Police Force.

The Company has actively investigated IPR infringement of its TM in Tanzania over the past years and enforcement actions have been sometimes successful and at times unsuccessful. The Company has carried out successful raids but the cost is very high, and there are so many parties importing counterfeits that the Company cannot on its own afford to raid them all.

The Company has no experience with the Tanzanian Courts of Law in relation to IPR infringement cases. It is of the opinion that the Legislation for fighting IPR infringement in Tanzania is not sufficient. The Company further notes that the Tanzania Bureau of Standards appears to be disinterested in preventing substandard or counterfeit products into the market. The Fair Competition Commission conducts worthwhile operations but, as an Agency, their capacity for ensuring enforcement is limited in terms of time and money.

On improving the protection of Intellectual Property in Tanzania, the Company suggests organising TBS enforce standards at inspection level without allowing counterfeits through the flaws in the Port of Dar es Salaam. The Port of Zanzibar is also a thoroughfare for allowing fake goods into mainland Tanzania with very limited control.

In order for the Company to regain its market share, it recommended clear identification of their products on all invoices/COCs, following which the Company must be notified should another entity imports these products, in order that they may approve/deny entry of the goods into the Tanzanian market.

4.3.12 Case of an Electronic/Electrical Company (2)

The Company has conducted its business in Tanzania for more than 10 years and is experiencing the counterfeiting of their products in the Tanzanian market. The Company has experienced a decrease of counterfeit goods over the past three years as a direct result of successful joint actions between

their industry and the Fair Competition Commission. However, key brands have seen a shift away from counterfeits to “Passing Off “.

The Company has experienced a 20 – 30 percentage loss of market share over the past three years. As a result of the counterfeiting of their products the approximate annual loss of turnover for this Company in this period was approximately US\$ 1 million to US\$ 5 million per annum. Based on the annual loss of turnover, the approximate percentage loss for the Tanzanian Revenue Authority (TRA) in taxes, duties, etc., is 30 – 40 per cent. The counterfeit product is approximately 50 per cent cheaper than the price of the genuine article, while the average life-span of the counterfeit product in comparison to the genuine product is more than 50 per cent less.

The Company states that the counterfeiting of their products has harmed the good name of their brand, which has resulted in a loss of trust from their consumers. The Company further mentions that in the initial stages of action against counterfeits, reputable Brand names were affected, but over time and with constant media awareness campaigns, the market understood what was happening and brand acceptance recovered.

The Company informed that the counterfeit products have negatively affected the health and safety of Tanzanian consumers, explaining that counterfeits are by definition also sub-standard. For example, in the case of a circuit breaker not tripping when there is a power surge in the home, the surge follows the cabling in the house and finding the weakest point which is usually a socket, the socket pops out or melts, setting fire to curtains, wooden floors, etc. Counterfeit cables of incorrect size can overheat, thus causing fires.

The Company informed that, if its TM were to be better protected in Tanzania, it would consider further investment in the Country. It knows which Government Enforcement Agency to contact in case of IPR infringements and has worked with the following Government (Enforcement) Agencies in the fight against counterfeit goods: The Fair Competition Commission (FCC), Tanzania Revenue Authority (TRA) Customs, Tanzania Bureau of Standards (TBS) and Ministry of Trade & Industry.

The Company has actively investigated IPR infringement of their TM in Tanzania over the past years and the enforcement actions have been successful. It has experienced satisfactory results with the Tanzanian Law Courts in relation to IPR infringement cases and is of the opinion that the Legislation to fight IPR infringement in Tanzania is sufficient. Regarding improving the protection of Intellectual Property in Tanzania the Company suggests empowering the Fair Competition Commission by expanding their investigative capability and establishing an IPR Court which deals solely with IPR issues. In order to regain its market share, the Company recommended tighter controls at the Ports of entry, i.e. Dar es Salaam, Tanga and Zanzibar.

4.3.13 Case of an Electronic/Electrical Company (3)

The Company has conducted its business in Tanzania for more than 10 years and is experiencing the counterfeiting of its products in the Tanzanian market. The Company has observed a decrease in the number of counterfeit goods over the past three years due to the action taken with the Fair Competition Commission approximately 12 years ago; they have since seen a shift from direct counterfeits to “Passing Off” of their products.

The average percentage loss of market share for the Company over the past three years is 10 – 20 per cent. This results in an approximate annual loss of turnover in the last three years of \$500,000 to \$1,000,000. Based on the annual loss of turnover, the approximate percentage loss for the Tanzania Revenue Authority (TRA) in taxes, duties, etc., is 20 – 30 per cent.

The approximate price difference between the genuine and the counterfeit product is 50 per cent or cheaper. The average life-span of the counterfeit product is more than 50 per cent lower as compared to the genuine product. Counterfeiting of the Company’s products has harmed the good name of their brand which has thus resulted in the loss of trust from their consumers.

In the initial phase of action against counterfeits, the reputation of the Company’s Brand had suffered significantly; however, over time this has been corrected as a result of persistent awareness creation and education of the general public through the media as to what was happening. The Company stated that, if its TM were to be better protected in Tanzania, it would consider further investment in the Country.

4.3.14 Case of a Watch Company

The Company has conducted its business in Tanzania for 0 - 2 years and is experiencing the counterfeiting of its products in the Tanzanian market. The Company has noticed an increase of counterfeit goods on the Tanzanian market over the past three years, which has resulted in an average percentage loss of their market share of 5 – 10 per cent and a loss of turnover for the last three years.

Based on the annual loss of turnover, the approximate percentage loss for the Tanzania Revenue Authority (TRA) in taxes, duties, etc., is 50 per cent or above. The approximate price difference between the genuine and the counterfeit product is 50 per cent or cheaper while the average life-span of the counterfeit product in comparison to their genuine product is more than 50 per cent less.

The counterfeiting of the Company’s products has harmed the good name of their brand, which has resulted in the loss of trust from their consumers and the counterfeit products have negatively affected the health and safety of the Tanzanian consumers. If the Company’s Trade Mark were to be better protected in Tanzania, they would consider further investment in the country.

5 Input from the World Customs Organisation and INTERPOL

5.1 World Customs Organisation (WCO)

In the process of obtaining input from the various stakeholders, the researchers also consulted the World Customs Organisation (WCO) and INTERPOL, which have assisted Tanzania in the fight against the counterfeiting trade over the years through several Training Programmes and Operations.

Tanzania – through the Tanzania Revenue Authority - has participated in several operational Workshops “to Combat Counterfeiting and Piracy – Consumer Health and Safety” coordinated by the World Customs Organisation (WCO), during which the TRA received specific and operational training and assistance in the fight against the counterfeiting menace. Tanzania has participated in, amongst others, the following IPR Operations (Workshop and Operational activities) organised by the WCO (Table 7).

Table 7: Operations Organised by the WCO in which Tanzania Participated

S/n	Operations	Dates
1	Vice Grips2	16-20 July 2012
2	Eastern Gate	3-7 December 2012
3	Biyela1	29 March- 10 April 2013
4	Biyela2	21 April- 4 May 2014
5	Channel Gate	3-12 December 2014

According to the WCO it would appear evident that Capacity Building in the fight against infringements of Intellectual Property Rights (IPR) is a necessity for Customs Administrations faced with the double burden of ensuring trade facilitation, whilst simultaneously working to protect the health and safety of consumers by fighting trade in counterfeit goods.

The Workshops aims have been two-fold: to be a driving force in the reinforcement of capacities in the area of IPR and to strengthen the potential of the different actors in the fight against counterfeiting and piracy. The workshops have been firmly embedded in a framework designed to aid Customs Administrations in facing this dual task, by proposing modern control and combat methods that are commensurate with new strategies adopted by those involved with fraud organisations.

The Operational Workshops were organised for the benefit of operational Customs Officers and their administrations; in addition TM owners were actively involved in the operation. The objective of the Workshops was to provide the relevant stakeholders with an overview of the most beneficial

practices in the domain and to create a favourable environment for sharing experiences on a variety of topics, for example, those listed below.

- How to distinguish between an authentic and 'fake' product with the assistance of Trade Mark owners.
- Risk analysis criteria applied by operational units of Customs Administrations for the purpose of targeting high-risk consignments which resulted in previous seizures.

Participants also had the opportunity to learn first-hand and exclusively about the latest ploys used by counterfeiters, such as: new techniques and vectors of fraud (changes in routes and a huge surge in transshipments; transiting via certain countries where the risk of detection is minimal; fake invoices; complicity with intermediaries, etc.); use of multiple means of transport; splitting consignments and shipping in smaller batches thereby reducing the risk of interception; concealing the true origin and place of departure of the goods, and repackaging of products, etc.

5.2 INTERPOL

Over the years, Tanzanian Law Enforcement Agencies have participated in the Training and Operational Workshops summarised below, organised by INTERPOL to combat the trade in counterfeit goods (Source: INTERPOL website).

1.1.1 September 2008 - Dar es Salaam, Tanzania

INTERPOL, supported by the World Health Organisation's International Medical Products Anti-Counterfeiting Task Force (IMPACT) has initiated a series of training sessions in Uganda and Tanzania to support cross-agency efforts to combat trans-national organised criminals who systematically manufacture and distribute counterfeit medical products throughout Africa.

The first session was held in Kampala, Uganda from 18-19 September. The second training session held in Dar-es-Salaam, Tanzania from 22 - 23 September was opened by Mr Robert Manumba, Head of Criminal Investigation of the Tanzania Police and Ms Charrys Ugullum, Acting Head of Tanzania Food and Drug Authority. It was attended by 50 students from the Police Department, National Food and Drug Authority, the President's Office, Fair Competition Commission, the Bureau of Standards, and the Office of Attorney General.

The training sessions marked the beginning of an INTERPOL-led enforcement operation under the umbrella of the World Health Organisation's IMPACT Programme. INTERPOL carries this out by acting as a catalyst for collective action against the counterfeiters and then coordinating Law Enforcement interventions into their activities. Uganda and Tanzania are at the fore-front of these efforts in East Africa and attendance at the training sessions is indicative of the collective desire of all participating Agencies to work together and to co-operate in bringing about a difference in the region.

1.1.2 November 2008, Nairobi, Kenya

The Intellectual Property (IP) Crime Training and Operational Workshops, co-hosted by INTERPOL and the Kenya Police, is a significant milestone for INTERPOL. It marks the inclusion of Africa in a public and private sector partnership effort to combat counterfeiting and piracy on a global scale. The event was attended by more than 150 representatives from Police, Customs, various drug regulatory bodies, National intellectual property offices, International Organisations and the private sector from 26 Eastern and Southern African countries. It delivered training and prepared participants on ways in which to lead pro-active trans-national investigations against organised crime.

“The flow of counterfeit medical products and other commodities such as fake agrochemicals which destroy crops, the livelihood of farmers, and poisoning the food chain, can no longer be tolerated,” said INTERPOL’s Executive Director of Police Services, Jean-Michel Louboutin. “The worldwide spread of hazardous products used every day by often unknowing victims requires a robust and coordinated global response.”

The launch of the INTERPOL Intellectual Property Rights (IPR) Programme in Africa is an extension of existing Law Enforcement initiatives, deployed with the World Customs Organisation (WCO), targeting criminals who manufacture and distribute counterfeit products on an industrial scale in Europe, South America, Southeast Asia and North America. Operation Mamba, the first combined INTERPOL- WHO (World Health Organisation) IMPACT operation in Africa, targeting over 230 outlets suspected of selling counterfeit pharmaceutical products throughout Tanzania and Uganda, took place between 29 September and 5 October 2008.

5.2.3 August 2010 - East Africa

A combined International operation targeting counterfeit medical products and pharmaceutical crimes across East Africa has resulted in the seizure of at least 10 tons of counterfeit and illicit medical products and more than 80 arrests of individuals suspected of involvement in the illegal manufacture, trafficking or sale of counterfeit and diverted medical products.

Involving Police, Customs and drug regulatory authorities across Burundi, Kenya, Rwanda, Tanzania, Uganda and Zanzibar, “Operation Mamba III” (July-August 2010) was coordinated by INTERPOL and undertaken under the umbrella of the World Health Organisation’s (WHO) International Medical Products Anti-Counterfeiting Taskforce (IMPACT). Forensic assistance was provided by the laboratories of the Singaporean Health Science Authority, and the Operation also included support from the World Customs Organisation. It was the third such Operation in as many years aiming to curb the manufacture and distribution of counterfeit medical products within and into East Africa.

Representatives of the participating countries met in Zanzibar the following month in order to review and draw on the results of Operation Mamba III, and to further harmonise the region’s approach to combating counterfeit and unregulated medical products.

1.1.4 September 2010, Zanzibar

A meeting involving East African countries which participated in Operation Mamba III targeting counterfeit medical products and pharmaceutical offences unanimously endorsed a declaration to further harmonise the region's approach to combating such crimes through closer co-operation with International Law Enforcement.

Under the Zanzibar Declaration, National and Regional Authorities will work closely with INTERPOL and other stakeholders such as the World Customs Organisation (WCO) to establish National joint taskforces to fight counterfeit medical products and other pharmaceutical crimes. The Declaration also calls for better use of existing networks to obtain and share information on suspects and suspected companies, in particular the INTERPOL I-24/7 global Police communications system; for more targeted and intelligence-led operations; and for greater public awareness as to the dangers posed by counterfeit medical products.

Participating countries at the two-day meeting (1 - 2 September) also expressed their support for the World Health Organisation's (WHO) International Medical Products Anti-Counterfeiting Taskforce (IMPACT), especially its enforcement component. Officials at the Zanzibar meeting included the heads of INTERPOL's National Central Bureaus in Burundi, Kenya, Rwanda, Tanzania and Uganda, as well as senior national Criminal Investigation Department Police officials, heads of regulatory authorities, heads of customs from those countries and Zanzibar, and representatives from the East Africa Community Secretariat, WHO national representatives and the WCO Regional Liaison Office Bureau.

1.1.5 2012 Dar es Salaam, Tanzania

In October 2012, INTERPOL organised a Training Workshop on 'Trafficking in Illicit Goods' in Dar es Salaam, followed up by the INTERPOL TONSE II Operation in which TM owners worked closely with the Tanzania Police, Fair Competition Commission (FCC), Tanzanian Food & Drug Authority (TFDA), Tanzania Revenue Authority (TRA) and Tanzanian Bureau of Standards (TBS).

5.2.6 July 2014 – Operation Wipe-out, East and Southern Africa

Baby food, cosmetics, television sets, mobile phones and toys were among goods worth USD 5.6 million seized during an INTERPOL-coordinated operation targeting organised crime groups trading fake and illicit products across Eastern and Southern Africa. "Operation Wipe-out" was conducted across seven countries – Botswana, Kenya, Namibia, Rwanda, Tanzania, Uganda and Zambia – between April and June 2014. It resulted in some 644,000 goods being seized and more than 260 individuals arrested or placed under investigation.

Fake clothing and accessories worth USD 3.27 million were seized in Botswana and Namibia, where counterfeit clothes were discovered being sold alongside the genuine articles at the same prices, in

a number of shops. A significant number of night-time interventions were also carried out, resulting in the identification of traffickers attempting to smuggle containers of cigarettes and alcohol across the Zambian border, and counterfeit cigarettes and energy-saving bulbs into South Sudan and Uganda.

“One of the key aspects of this operation is to raise awareness of the dangers of counterfeit and illicit goods amongst Law Enforcement, regulatory bodies and, most importantly, the public,” said Michael Ellis, head of the INTERPOL Trafficking in Illicit Goods and Counterfeiting unit.

“The success of this Operation, conducted over such a long period of time and across two diverse regions, is testimony to the dedication of the Agencies involved and the commitment of the countries in ensuring the necessary resources were deployed,” said Mr Ellis. “Criminals only care about profits, not the fact that the fake and illicit goods they are dealing in could have potentially devastating effects on people and also the environment, and we would encourage everyone to play their part in helping Police turn back these crimes,” concluded Mr Ellis.

In addition to a three-day Training Course and Operational Planning Meeting in Rwanda, participating countries also benefited from online training through the online IP Crime Investigators College supported by **INTERPOL** and Underwriters Laboratories (UL) University.

1.2 OSINT: Links between Counterfeit Trade and Organised Crime, Terrorism and Conflict Zone Funding

5.3.1 Funding the Rebels - 2009

Tribert Rujugiro pleaded guilty to tax evasion at a court in Eastern Cape Province, South Africa, on 5 June 2009. A Rwandan national, Rujugiro was originally arrested at Heathrow airport in London, after which he was extradited to South Africa. Rujugiro had several businesses in South Africa. He imported tobacco and produced cigarettes for both export and domestic sale. He admitted that, thanks to unpaid taxes and duty, he had received a financial benefit of ZAR 60 million (USD 5.41 million). He was sentenced to pay this back at the rate of ZAR 1 million (USD 90,000) per month.

On 12 December 2008 the United Nations Security Council had published a report by its Group of Experts on the Democratic Republic of Congo (DRC). The report accused Rujugiro of channelling money from his companies to a Congolese rebel group called Congress National Pour la Defence du Peuple (CNDP). The CNDP is one of the rebel groups fighting to control the mineral rich territory in DRC and has been implicated in human rights violations including murders, the recruitment of child soldiers, mass rape, slavery and torture. One email from Rujugiro claimed that he had sent USD 120,000 to pay soldiers of the CNDP. *(Source, “Against Organised Crime” - INTERPOL Trafficking and Counterfeiting Casebook 2014)*

5.3.2 MR MARLBORO - 2013

Traditional trading routes across the Sahara desert to the Mediterranean Sea have, in recent years, become extraordinarily profitable. More trafficked humans, drugs, diamonds and cigarettes all accompany traditional goods. Kidnapping of aid workers or unwary travelers for ransom has also been good business for the local warlords. One person involved in this lucrative business became known as Mr. Marlboro because of his links to the trafficking in counterfeit cigarettes.

Mokhtar Belmokhtar earned his nickname because of his involvement in tobacco smuggling – but he had previously been convicted in his absence in Algeria on three occasions and sentenced to death on two others. The first was in 2007 for forming an armed terrorist group, carrying out armed attacks, kidnapping foreigners, and importing and trafficking in illegal weapons; the second in 2008 for involvement in the murder of 13 customs officers in Algeria.

It is not just people who get in the way of his smuggling business that die. He has long been a member of Algeria's Islamic Armed Group (GIA), then becoming joint founder of the Groupe Salafiste de la Predication et le Combat (GSPC). This meant he was added to the US Treasury Department's list of Specially Designated Global Terrorists in October 2003. Subsequently the GSPC evolved into Al-Qaeda in the Islamic Maghreb (AQIM).

Mr. Marlboro has been linked to the 2003 kidnapping of 32 European tourists, the 2008 negotiations for the release of two Austrian captives, and 2009 negotiations for the release of two Canadian hostages. Hostage-taking and smuggling of everything from cigarettes to guns, people and drugs, form part of a multi-million dollar import, export and extortion business.

The world noticed Belmokhtar on 13 January 2013. The raid on the Ansemag gas field installations by more than 50 heavily armed insurgents, who killed more than 35 of the workers at the plant and took another 41 hostage, was blamed by the insurgents on the French invasion of neighbouring Mali to evict Islamic militants from that country. On the other hand it was a well-planned attack, and only two days had passed since the French forces commenced operations. In March 2013 Belmokhtar was reported as killed in Mali by the Chadian authorities. In May 2013 Mr Marlboro came back to life: he claimed responsibility for a further attack in Niger. And on 19 July 2013 the US Department of Justice announced that charges had been filed in Manhattan Federal Court against Mokhtar Belmokhtar in connection with the terrorist attack on the Amenas gas facility: three of the victims in the 16 January attack were US citizens. (Source, "Against Organized Crime" INTERPOL Trafficking and Counterfeiting Casebook 2014).

5.3.3 16 July 2003 - INTERPOL Media release warning

In Washington an INTERPOL media warning was released. The INTERPOL Secretary General, Ronald K. Noble, warned governments and law enforcement agencies that there is growing evidence of a link between intellectual property crime and terrorist financing.

In documents prepared for his testimony on 16 July before the U.S. House of Representatives Committee on International Relations, Mr Noble said the problem may become more serious in future and he called for enhanced efforts, including a new partnership between industry and police, to combat it. “The link between organised crime groups and counterfeit goods is well established. But INTERPOL is sounding the alarm that intellectual property crime is becoming the preferred method of funding for a number of terrorist groups,” Mr Noble said. “There are enough examples now of the funding of terrorist groups in this way for us to worry about the threat to public safety. We must take preventative measures now.”

Mr Noble noted that law enforcement agencies do not generally treat intellectual property crime as a priority area, and there is less funding for such investigations than for counter-terrorism or illicit narcotics. “Law enforcement agencies have to recognise that intellectual property crime is not a victimless crime,” he said. “Because of the growing evidence that terrorist groups sometimes fund their activities using the proceeds, it must be seen as a very serious crime with important implications for public safety and security.”

The INTERPOL document presented to the Congressional Committee indicated that a wide range of groups - including Al-Qaeda, Hezbollah, Chechen separatists, ethnic Albanian extremists in Kosovo, and paramilitaries in Northern Ireland - have been found to profit from the production or sale of counterfeit goods. A range of products is involved, including pirated CDs and DVDs, and counterfeit clothing, computer software, and cigarettes.

“INTERPOL does not believe an investigation into intellectual property crime is over when there is a seizure of counterfeit or pirated goods,” Mr Noble said. “We think further work needs to be done to trace the proceeds, and to establish links if possible with groups benefiting from these funds.” The Secretary General called for the establishment of police contact points in each country for the exchange of information about such crime and a partnership between the private sector and INTERPOL to raise awareness of the problem and to facilitate cross-border investigations. INTERPOL has already established an Intellectual Property Crime Action Group involving industry representatives. Mr Noble said the work of this group should be substantially expanded through a new partnership agreement with the industries affected.

5.3.4 Hezbollah Network: By ARIEL BEN SOLOMON, BENJAMIN WEINTHAL 08/01/2013 02:19

The three named above released the following message: ‘Hezbollah maintains complex network of front companies trading in counterfeit medicine’. Hezbollah runs a complex network of front companies in Lebanon, the Gulf States and Europe that trade in counterfeit medicine, Kuwaiti daily Al-Seyassah reported on Tuesday. This international business in counterfeit medicine “facilitates the group’s terrorist operations,” the report stated, and includes Iranian citizens. The group exploits

the free trade zone in the Gulf and in Europe to run its business. Hezbollah also steals drugs from shipments of drugs donated to African countries, sources quoted by the paper said.

The Lebanese movement had these criminal actions justified by a fatwa from the head of its religion committee, Sheikh Muhammad Yazbek, who allows the sale of illicit drugs to anyone who is not a Shi'ite follower of Iranian Supreme Leader Ali Khamenei. Joel Parker, a PhD candidate at Tel Aviv University who is closely following developments in Syria and Lebanon, told The Jerusalem Post that in time, many Lebanese might not take kindly to the efforts to target Hezbollah assets and allies in the Gulf. "This is because such attempts cause unintentional collateral damage" by making life difficult for non-Hezbollah Shi'ites, said Parker. In addition, measures against Lebanese Shi'ites in the Gulf may also hurt the Lebanese economy, which is already under strain.

"This may ultimately exacerbate the political situation in Lebanon, because the leading coalition, which includes both Hezbollah and other Shia and Christian parties, will have more reasons to disparage the Gulf-backed Future Movement and its allies in the opposition's March 14 coalition," he said. "It may also undermine some of the efforts to help the several hundred thousand Syrian refugees in Lebanon," said Parker, adding that their lives depend on basic political cooperation in Lebanon.

Further reflecting the Shi'ite-Sunni tensions in the region, al-Qaida leader Ayman al-Zawahiri said the Shi'ite Hezbollah's intervention in the conflict in Syria was an attempt to promote Iranian hegemony over the country, according to an audio recording posted on the Internet on Wednesday. "It has become clear to the Muslim nation that he [Hezbollah chief Hassan Nasrallah] is but a tool in the Safavid, rejectionist project which seeks to impose the authority of Shi'ite jurisprudence... on the nation of Islam through slaughter, repression, torture and by supporting one of the most corrupt, tyrannical and criminal regimes," the al-Qaida leader said.

And in Nigeria, federal prosecutors expanded the charges on Monday in an indictment against three Lebanese-Nigerian dual nationals who are alleged to be Hezbollah members. The Nigerian authorities accused the trio – and a fourth suspect who fled – of planning to attack Israeli, US and Western targets in the most populated country in Africa. The Nigerian prosecutor's office added charges of money laundering and the importation of firearms and ammunition. There are now 16 terrorism-related charges. The suspected Hezbollah members, Mustapha Fawaz, Abdallah Thahini and Talal Ahmad Roda, were arrested in May with a massive cache of weapons. The arsenal included anti-tank weapons, rocket-propelled grenades, anti-tank/antipersonnel mines, 17 AK-47 assault rifles with more than 11,000 bullets, and dynamite.

The defendants pleaded not guilty. The trial is being conducted in the capital city of Abuja, where Federal Judge Adeniyi Adetokunbo Ademola is overseeing the judicial process. Prosecutor Simon

Egede said, “We want to be sure that all elements of every offense disclosed by the investigation is properly before the court,” *AFP* reported. Ademola restricted access to the hearing, permitting journalists and a small number of the defendants’ relatives to be present.

The judge granted the prosecution’s wish to shield the identities of the state’s witnesses for security purposes. During the course of their testimony, security agents from the Department of State Services, Nigeria’s intelligence agency, covered their faces with hoods. The prosecutor submitted \$61,170 in illicit cash and weapons as part of the newly widened indictment. The confiscated funds were found on the defendant Thanini at Aminu Kano Airport in the northern city of Kano. The illicit importation of firearms by the defendants covers the period from 1998 to 2008 in Kano.

“Trafficking in cigarettes is, next to trafficking in drugs, assumed to be one of main sources to fund terrorist activities in the sub-Saharan region where criminals involved in this trafficking closely cooperate with regional terrorist groups.” Illicit Trade Report 2012 - World Customs Organization 2013.

6 Conclusions and Recommendations

6.1 Conclusions

Based on the findings of this Study, it is concluded that counterfeit goods are widely prevalent and are on the increase in Tanzania. They involve a variety of goods, both imported and domestically produced. The effects of the counterfeit trade on consumers, manufacturers, TM owners and the Government are outlined below, clearly indicating the adverse effects of the illicit trade. Therefore counterfeiting and counterfeit goods trade should be fought against with an appropriate amount of force.

6.1.1 The Effects of the Counterfeit Trade on Citizens and Consumers

- Loss of employment
- False Economy: 'Buying Fakes Costs More'
- Loss of property due to fires
- Loss of life, welfare, health and safety

6.1.2 The Effects of the Counterfeit Trade for Manufacturers, Farmers and TM owners

- Loss of foreign currency
- Cash flow challenges resulting in a loss of profit
- Inability to compete
- Loss of consumer trust
- Loss of market share and turnover negatively affecting growth and development
- Loss of income due to failed harvests

6.1.3 The Effects of the Counterfeit Trade on the Government of Tanzania

- Loss of Tax Revenue
- Loss of employment
- Loss of manpower due to ill health and welfare
- Loss of Foreign Direct Investment
- Loss of food security
- Risk of the country becoming a shadow economy
- The counterfeit trade negatively affects the Industrialisation of Tanzania
- Reduced ability to protect the welfare and property of its citizens, and to create an environment where its people can thrive economically and socially
- Links have been established between the Counterfeit Trade and Organised Crime, Money Laundering, Terrorism and the Funding of Conflict Zones all of which further destabilise the economy and negatively affect the security and development.

6.2 Recommendations

Below are the recommendations for successfully fighting counterfeiting and counterfeit trade in Tanzania. These were received from the key informants of our research and are collated with other recommendations based on the overall study findings.

6.2.1 Short term (one year)

- **Consumer Education** through a nationwide awareness creating/raising campaign, explaining the following.
 - 1) The difference between a counterfeit and a substandard products
 - 2) The effects counterfeit trade has on consumers (false economy) and the Tanzanian economy
 - 3) Which MDA's to contact - and how - after purchasing a counterfeit/substandard goods
- Establish a Consumer Protection Policy through a **Consumer Agency** under the Ministry of Industries Trade and Investments
- **Enhance resources, budget and capacity of the FCC Counterfeit Division** in order to broaden its presence in the country, through the three strategies below.
 - 1) Zonal Offices staffed with permanent inspectors in Tanga, Mbeya, Arusha, Mwanza
 - 2) FCC inspectors be based at the Port of Dar es Salaam 24/7
 - 3) FCC staff be well remunerated in order to give them incentive and motivation
- The **Anti-Counterfeiting Chief Inspector/FCC** needs to address the following two areas.
 - 1) Put procedures in place to arrange for **tighter controls and close cooperation at all Ports of Entry** between the TRA, FCC, TFDA, TBS and other MDA's (Dar es Salaam, Tanga, Mbeya, Namanga).
 - 2) **EAC Close cross border cooperation** is required between **MDA's** from Tanzania, Uganda, Kenya, Rwanda, Burundi; should be broadened to include SADC neighbours: Zambia, DRC, Malawi and Mozambique, by sharing intelligence leading to cross border enforcement operations.
- **Enhance resources, budget and capacity of the TFDA, interagency cooperation and address corruption** through attention to the six areas listed below.
 - 1) More inspectors are required; preferably at every port of entry
 - 2) Improvement of detection (through technology) so inspectors can quickly refer to the genuine product
 - 3) The Anti-Counterfeit Task Force only meets during joint operations and needs to meet more frequently

- 4) Terms of Reference needed for proper and more effective coordination between the different MDA's
 - 5) Lack of cooperation between MDA's results in the TFDA not always receiving the necessary cooperation
 - 6) Corruption within the Police and the Law Courts has led to cases being dismissed. This challenge needs to be addressed through the PPACC
- Creation of a **Public Private Advisory Committee on Counterfeits (PPACC)** involving the local and international private sector, MDA's (Anti Counterfeit Task Force) and Diplomatic Missions in order to create a close and continuous working relationship between all parties involved, in which the following needs to be addressed.
 - 1) Education of private sector by all MDAs involved on procedures, which legislation is available, cost and how to file/lodge a complaint, compounding
 - 2) Establish realistic expectations concerning responsibilities and capabilities of MDAs
 - 3) Brand owners will assist MDAs by better protecting their products from being counterfeited
 - 4) IPR owners need to work closely with and educate MDAs on how to distinguish a counterfeit product from a genuine one
 - 5) Lack of feedback/follow-up from MDA's after complaints have been filed i.e. transparency and accountability.
 - 6) Prevalence of corruption within MDA's and other agencies: which procedures are in place/ how to report?
 - 7) How to increase the percentage of successful enforcement actions
 - 8) The continuation of relationships with stakeholders like INTERPOL and the WCO is necessary for further investigative training on fighting IPR infringement; the newly gained knowledge needs to be implemented/put to use and evaluated by MDAs.
 - **Destruction/Recycling of seized counterfeit goods:** Formation of a **Working Group**, in close cooperation with the National Environment Management Council (NEMC), who should address the three things below.
 - 1) Challenges of storage and destruction – FCC to have its own storage facility?
 - 2) Legal possibilities to recycle counterfeit goods
 - 3) Guarantees and proof that seized goods do not re-enter the market (IPR owners to be present during destruction/recycling seized goods)

6.2.2 Mid-term (two years)

- As part of raising awareness on the counterfeit trade issue for the current and future generations we suggest the formation of **'Guest Lessons on Counterfeiting'** in Primary and Secondary Schools and even in Colleges and Universities in cooperation with TM owners and MDAs. An increase in budget is needed for the Tanzania Institute of Education (TIE) to prepare Syllabuses for that.
- **Evaluation** of the achievements of the **Public Private Advisory Committee on Counterfeiting (PPACC)** including all manufacturers, businesses and IPR owners who assisted us with this Study in order to establish the following two things.
 - 1) The success rate of law enforcement actions with MDAs
 - 2) The success of the working relationship between the private and public sector
- **Evaluation of Awareness Campaigns** through nationwide Consumer field surveys in order to establish if and to what extent the campaigns have been successful, i.e. a better understanding of what a counterfeit/substandard product, where to report and feedback received.
- **Evaluation of Awareness Campaigns** with MDA's in order to establish (1) and (2) below.
 - 1) The number of complaints received from consumers, manufacturers and IPR owners
 - 2) The results of the follow up actions taken by MDAs as a result of complaints received

6.2.3 Long term (two - three years)

Creation of a **Legal Advisory Committee** involving the Attorney General's Chambers, the Judiciary, the Directorate of Public Prosecutions (DPP) and Legal departments of all respective MDAs in order to coordinate and **streamline legislation** and have **clear definitions** on counterfeiting and counterfeit goods (Reference: 'Review of Laws and Regulations Relating to counterfeit Goods, CTI 2012').

- The Legal Advisory Committee needs to **review the current legislation** regarding IPR protection in relation to the following Acts and/or Regulations.

The Fair Competition Act 2003

The Tanzania Food, Drugs and Cosmetics Act 2003

The Merchandize Marks Act, Cap 85

The Trade and Service Marks Act, Cap 326

The Industrial and Consumer Chemicals (Management and Control) Act 2003

Environmental Management Act 2004

The Standards Act, 2009

The Penal Code Cap 16



Copyright and Neighbouring Rights Act, Cap 218

The Patents Act Cap 217

Tanzania Revenue Authority Act, Cap 399

East African Customs Management Act, 2004

The Criminal Procedure Act, Cap 20 [R.E.2002]

- The Legal Advisory Committee should furthermore address the following considerations received from the private sector. The fight against the counterfeit trade should remain within the Criminal Law. The laws and fines are not sufficiently punitive; courts should be able to impose sanctions with strong deterrent measures. Look into the establishment of a dedicated IPR Court.

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