

Promoting manufacturing competitiveness in COMESA

*Towards the establishment of
A Framework
for combating
Illicit Trade
in COMESA*

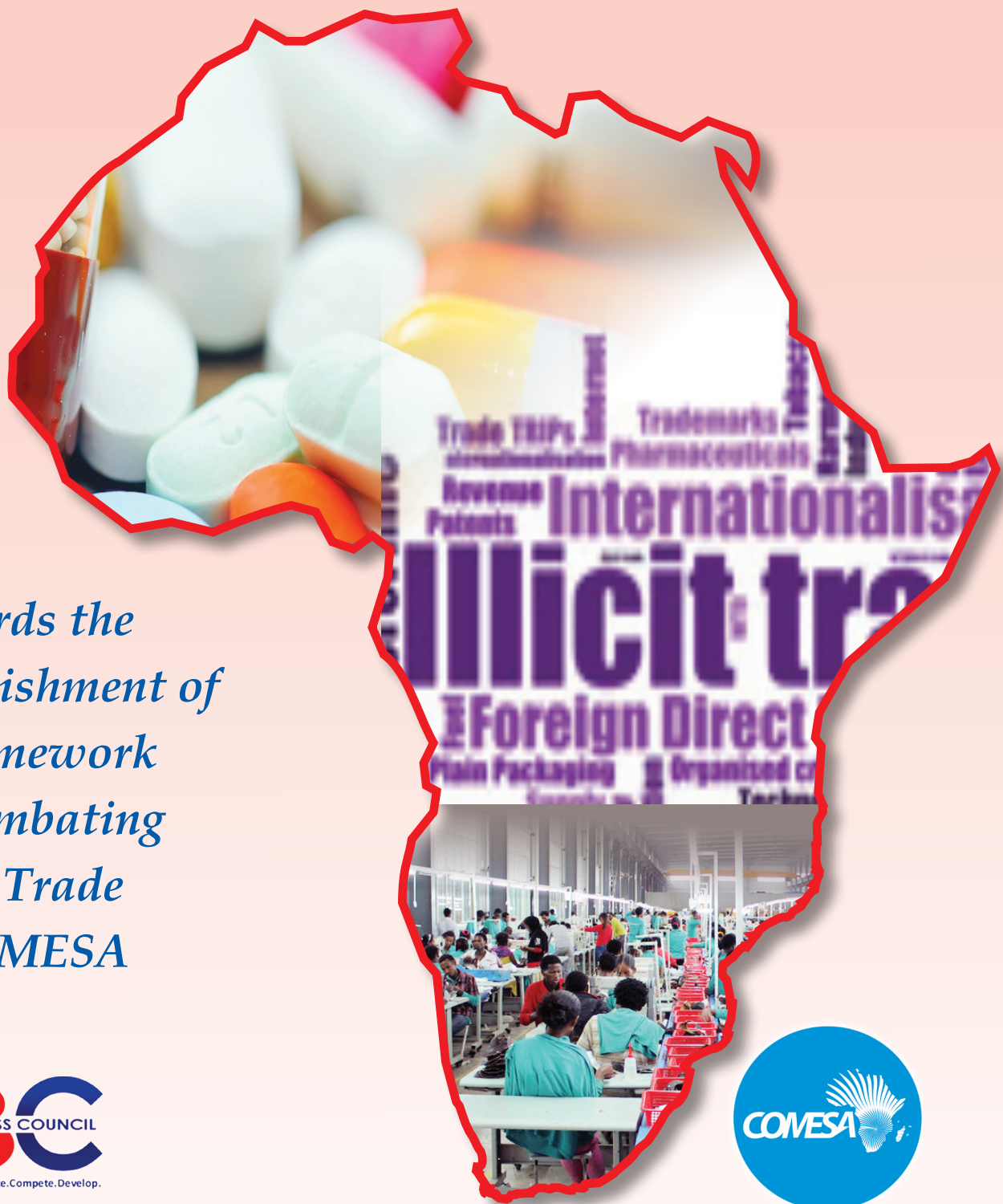




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Foreword by the COMESA Secretary General



Mr. Sindiso Ngwenya; COMESA Secretary General

The COMESA market offers great potential for trade and industrial development with intra-trade value of US\$ 22.4 billion as of 2014. However, whilst tremendous efforts and resources are put in place each year to promote trade, investment and competitiveness across the region, one cannot ignore the various practices that defy the common vision of improving the business competitiveness in Africa. The growth of illicit trade in the region has had a diverse effect on the industries and economies in the region. According to the United Nations Commission for Trade and Development- UNCTAD, manufactured goods only account for less than 13% of Africa trade with the rest of the whole world. COMESA's imports mainly comprise of manufactured goods where we are principal importers. Manufactured goods account for at least 58% of the total imports, to the tune of US\$90 billion. Industrialization and pro industrial development policies are at the center of fostering regional integration and local competitiveness of our industries. In pursuance of such a vision the 18th COMESA Summit carried the theme of "Inclusive and sustainable industrialization", and COMESA has finalized the development of its Industrial Policy. It is only through appropriate pro industrial development

policy and a strengthened private sector that COMESA can effectively develop its industries and reduce the manufacturing gap.

It is imperative to note, illicit trade continues to hamper the development of our industries; and at the same time contribute to huge financial losses for government revenue. The estimates of global retail value for illicit trade are varied, with the Global Financial Integrity suggesting an approximate value of US\$650 Billion for goods. In the East African region alone, it is estimated that Manufacturers lose over US\$330 million annually due to counterfeit products, and the government loses US\$67 million in potential tax revenue. Further information shows that a number of manufacturing companies lose up to 70% of their market share to counterfeit or substandard products. The losses are significant and it is commendable that the 10th COMESA Business Dialogue specifically focused on the theme of 'Taking Action on Illicit Trade- An industrial Competitiveness Agenda' and adopted the Illicit Trade Framework. Indeed, the development of a regional Anti-illicit trade law is key to tackling illicit trade in COMESA. This should be complemented by the development of institutional frameworks or anti-Illicit trade units at national and regional level to ensure the enforcement of the laws. Weak enforcement mechanisms and lack of consumer awareness facilitate illicit trade. Therefore, enhanced enforcement and public private cooperation is necessary in taking effective steps to combat illicit trade.

This Report sheds lights on some of the key forms of illicit trade; and shares regional and international best practices in combating illicit trade in COMESA. It sets the pace for taking action against illicit trade from a regional and national perspective, calling for a public and private approach to tackling illicit trade as a fundamental step to the boosting industrial competitiveness for the region.

Foreword by the COMESA Business Council, Chairperson



Dr. Amany Asfour: COMESA Business Council Chairperson

According to the World Bank's Africa Private Sector Development Strategy 2013-2017, the future of African growth is closely tied to the private sector. It cites that private sector generates two-thirds of Africa's investment, three-quarters of its economic output, and nine-tenths of its formal and informal employment. However, private sector growth has faced a number of obstacles including; policy, infrastructure, anti-competitive business practices, key amongst them is Illicit Trade.

The World Customs Organization (WCO) Illicit Trade report 2013- the Intellectual property rights and health and safety programme states that illicit trade covers a diverse line of commodities, including clothing, accessories, foodstuffs, pharmaceuticals, pesticides, spare parts, construction materials, electronics with the pharmaceutical products being the lead in Africa. The harm to businesses, government and potential public health and safety risks due to illicit trade cannot be understated. The scale of illicit trade is enormous and complex with estimates of trade valued at billions of dollars globally. The World Trade Organization estimates that the value of counterfeit and pirated

goods is equivalent to about 7% of world merchandise trade; 280US billions of dollars. According to the WHO, a significant fraction of the world's drug supply is counterfeit. Estimates of counterfeit drugs range from 10 to 15 percent for the world drug supply, to more than 30 percent of all medicine sold in Africa. Illicit trade deprives the public sector of significant revenue, but, more so, stifles the growth of legitimate industry and undermines the bedrock of private sector development, free trade and regional integration.

Indeed sustainable industrialization is fundamental to boosting intra-regional trade and development in COMESA. The private sector has a key role to play in terms of securing the integrity of their supply chains, and proactively collaborating with the public sector in terms of brand awareness, enforcement and implementation of anti-illicit trade regulations and alienating corrupt tendencies that fuel illicit trade. The public sector has a role to ensure the strengthening of regulations and institutions in charge of combating illicit trade. It is our combined role, and by providing Public Private Solutions on the constraints to business in the region; we can ensure that our industries become sustainable and our economies more competitive in regional and international markets.

The COMESA Business Council is committed to spearheading Public Private Efforts at regional level to combat illicit trade and promote the development of COMESA industries. This Report is an initial step and underscores such commitment to turn the tide of illicit trade through practical and informed solutions based on regional and international practices.

Acknowledgements

This report was commissioned by the COMESA Business Council (CBC) and was done in light of promoting manufacturing competitiveness in COMESA taking into account the creation of a regulatory framework to combat Illicit Trade and the guidelines to develop of a “Made in COMESA” Label. The information used was obtained from various sources, including relevant regional reports, policy and regulatory documents and instruments of COMESA member states as well as relevant international reports and legal instruments. In addition, interviews were carried out with key stakeholders from various participating institutions and organizations within the COMESA region who shared valuable insights that enabled the analysis to be carried out meaningfully.

In this light and on behalf of the Team that worked on this paper, I gratefully acknowledge the inputs of all those who served as interviewees and respondents to the questions put forward to them. I am indeed greatly indebted to all the institutions and organizations that volunteered to provide the information that created a basis on which this paper was done.

Specifically, I am thankful to the entire team at the COMESA Business Council (CBC) for all the support throughout the duration of this assignment. It is my sincere hope that this paper and the proposals herein will help COMESA member states to agree on an effective regulatory framework to combat illicit trade in the region in a sustainable manner, while ensuring the preservation of COMESA’s competitiveness potential.

Linda MULENGA
Lead Consultant

Acronyms and Abbreviations

| | |
|---------|---|
| ARSO | African Organisation for Standardisation |
| CEN | Customs Enforcement Network |
| CET | Common External Tariff |
| COMESA | Common Market for Eastern and Southern Africa |
| CBC | COMESA Business Council |
| EAC | East African Community |
| EU | European Union |
| FDI | Foreign Direct Investment |
| FEZ | Free Economic Zone |
| GDP | Gross Domestic Product |
| GoR | Government of Rwanda |
| ICT | Information Communication Technology |
| ITC | International Trade Centre |
| KAM | Kenya Association of Manufacturers |
| KEBS | Kenya Bureau of Standards |
| KRA | Kenya Revenue Authority |
| MINICOM | Ministry of Trade and Industry |
| PPD | Public Private Dialogue |
| PPP | Public Private Partnership |
| PSF | Private Sector Federation |
| RDB | Rwanda Development Board |
| RILO | Regional Intelligence Liaison Office |
| RRA | Rwanda Revenue Authority |
| SCCI | Seed Control and Certification Institute |
| ToR | Terms of Reference |
| WCO | World Customs Organization |
| WEF | World Economic Forum |
| WHO | World Health Organization |
| WTO | World Trade Organization |

Executive Summary

Illicit trade is a global menace that seriously affects both the public and private sectors within the COMESA region and all other parts of the world. It undermines the concept of a free and open market place which is fundamental to improving competitiveness, increasing investment, generating jobs and ultimately contributing to economic growth of COMESA member states.

Illicit trade, in its varying forms poses number of adverse effects which include among others:- revenue losses, unfair competition, health risks, and huge financial losses for companies, industries and governments.

The industry in the region recognizes the fact that some COMESA Member State governments are doing their best to combat illicit trade but without a regionally coordinated mechanism. The fragmented nature of the enacted laws makes it difficult to prosecute illicit trade cases effectively. Institutions working to combat illicit trade have failed to collaborate in combining their efforts when discharging similar mandates and corruption has taken root affecting the prevention and prosecution of the vice. In addition, challenges of accessing up to date and reliable data on illicit trade continues to make it impossible to fully understand and articulate ways of resolving the problem.

As COMESA continues to ensure free movement of goods as a key feature of the Customs Union, it makes no sense to have national efforts that are in isolation of the regional realities, mainly because, COMESA member States without anti illicit trade laws will serve as entry points and conduits of illicit goods into the whole region.

In light of this fact, many stakeholders argue that, without concerted regional collaboration approach, national efforts alone will not achieve much. What remains to be done, therefore is to enact a COMESA regional anti- illicit trade protocol to be adopted and implemented by COMESA member states.

The commissioning of this study by COMESA Business Council (CBC) stems from an understanding and strong consensus from key stakeholders, that illicit trade, due to its far reaching negative impacts cannot be ignored. This report highlights the challenge of illicit trade at a national, regional and international level. It showcases the existing regulatory frameworks on combating illicit trade and demonstrates best practices. Drawing from experiences of key stakeholders, the report provides positions of selected industries on illicit trade. Above all, the study presents a sustainable approach to curbing illicit trade within the COMESA region which includes among others drafting a COMESA anti illicit trade protocol. Finally, the report concludes by highlighting recommendations to be considered and adopted by key stakeholders.

CHAPTER 1: Introduction and Background

The Common Market for Eastern and Southern Africa (COMESA) is the largest regional economic community/trade bloc in Africa, with membership of 19 Countries, a geographical area of 12 Million (sq km), a population of about 490 million people, an annual import and export bill of approximately US\$170 billion and US\$ 113 billion respectively¹. COMESA membership comprises of the following countries:- Burundi, Comoros, D.R. Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.

COMESA has slowly progressed from a Preferential Trade Area with lower duties charged on goods originating from member countries to a Free Trade Area (FTA) in 2000 and finally a Customs Union in 2009, with the ultimate goal of establishing a Common Market. The Customs Union provides a framework for coordination and harmonisation of policies in a broader range of areas, and strengthens COMESA into a coherent group that has clout in international relations and in its engagement with the rest of the world.²

Illicit trade is an international phenomenon that seriously affects both the public and private sectors within the COMESA region and all other parts of the world. Illicit trade leads to various adverse economic and social impacts; including revenue losses, unfair competition, health risks, and huge financial losses for companies, industries and governments. In light of these challenges, the manufacturing sector in the COMESA region continues to call upon COMESA to strengthen the means and mechanisms of combating illicit trade in a sustainable manner.

Recognizing the need to address illicit trade and building on the general observations from key players (public and private), a number of COMESA's key stakeholder institutions in the respective member states, COMESA Business Council (CBC) and the COMESA Secretariat, have with serious determination responded to the call of the private sector through commissioning a study to propose guidelines for developing:- a COMESA anti-illicit trade regulatory framework, consumer, enforcement action and a "Made in COMESA" Label

1 <http://about.comesa.int/>

2 http://programmes.comesa.int/index.php?option=com_content&view=article&id=90&Itemid=142

that will facilitate and promote the movement and purchase of COMESA goods that meet the required Origin standards.

1.1 Definition

Literature on illicit trade does not contain one fixed definition of illicit trade. By definition, Illicit trade comprises both the trade in illegal goods and services, as well as instances where normally legal goods are traded illegally, affecting all aspects of social and economic lives³. According to the World Health Organization (WHO), illicit trade is any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase including any practice or conduct intended to facilitate such activity⁴.

According to the World Economic Forum (WEF) Global Agenda Council on Illicit Trade, illicit trade involves money, goods or value gained from illegal and generally unethical activity. It is trade that infringes the rules - the laws, regulations, licenses, taxation system, embargoes and all the procedures that countries use to organize trade, protect their citizens, raise the standard of living and enforce codes of ethics. This all-encompassing effect poses challenges in the evaluation of illicit trade and its effects, considering that illicit trade operates outside of the law and therefore data on the same is difficult to access.

For purposes of this report, illicit trade is categorized under the following five broad areas;

- a) **Smuggling:** This Refers to illegal trading of goods and persons across borders. It is the movement of products (either genuine or counterfeit) from one jurisdiction or excise regime to another in circumstances where it is unlawful to do so because it is done without payment of applicable taxes and or duties in the

3 National Council on the Administration of Justice (NCAJ): *Enforcement Manual to combat illicit trade in Kenya*; 2014

4 Jostens and Raw "From cigarette smuggling to illicit tobacco trade" *Tobacco control* 2012 21 230-4 at 231. The definition utilized by Jostens and Raw is found in the World Health Organization "Framework Convention on Tobacco". Geneva: World Health Organization, 2013.

relevant jurisdiction, or in breach of laws prohibiting its import or export.

- b) **Counterfeiting:** Piracy and substandard goods: Unauthorized manufacturing of products which imitate the characteristics of genuine goods. Piracy is the reproduction without the authorization of the owner. This includes illegal duplication of products like copyrighted software, music, movies and selling of products that bear similar brand names with well established brands which can often fool the consumer into thinking they are buying the known brand.
- c) **Transit fraud:** Transit fraud involves evasion of customs duties and taxes. Diversion may occur when goods that should have been exported from the country are illegally entered into the commerce of the country.
- d) **Trade in prohibited or restricted goods or products:** These are goods and services that are unlawful or traded unlawfully. Prohibited goods are the goods that cannot be imported into the territories of trading countries whereas restricted goods are those which must meet certain conditions before clearance through Customs.
- e) **Undeclared Local Production:** A product which is manufactured and sold for consumption in the same country, and which is not declared to the local excise authorities and therefore excise tax is not paid. These products may be manufactured in approved factories, or they may be manufactured in illegal covert operations.

1.2 Effects of illicit Trade

Illicit trade has adverse consequences, ranging from transacting illegal merchandise like drugs and prohibited products, harming consumers who are supplied with fake products, unfairly competing against genuine products traded legitimately and directly hurting legitimate manufacturers or authentic products. The financial losses it causes to the private sector

may lead to closure of some businesses due to increased business costs, reduce profits and eventually discourage inflows of more investments. In regard to the public sector, the impact is also felt in terms of decreased revenue collection which severely affects public spending.

Indeed, illicit trade in its varying forms poses a huge problem. It undermines the concept of a free and open marketplace which is fundamental to improving competitiveness, increasing investment, generating jobs and improving economic growth in the region.

According to the Digital Coding and Tracking Association (DCTA), the following is observed; “Be it smuggling, counterfeit or tax evasion, governments are losing billions of dollars in tax revenues, legitimate businesses are being undermined and consumers are being exposed to poorly made and unregulated products.”⁵

1.3 A global concern

According to the International Chamber of Commerce, the cost to the international economy of counterfeiting and piracy alone was US\$1 trillion in 2011. Based on these calculations, the World Trade Organization estimates that the value of counterfeit and pirated goods is equivalent to some 7% of the world’s merchandise⁶.

It is estimated that around 12% of the global cigarette market is illicit, equivalent to some \$660 billion cigarettes each year, costing national governments more than US\$40 billion a year in lost tax revenues. The illicit alcohol trade is also substantial, with the World Health Organization estimating that around 30% of all alcohol consumed globally is illegally produced, or ‘unrecorded’⁷. While, global financial integrity report 2014 estimates \$ 660 billion in illicit financial outflows in Developing countries.

Note; As stated by the Digital Coding and Tracking Association (DCTA), “Illicit trade is not just the work of small operators. Organized crime is

⁵ Digital Coding and Tracking Association (DCTA); <http://www.dcta-global.com/illicit-trade.html>

⁶ The World Customs Organization (WCO): *Illicit Trade report*; 2013

⁷ Id.

increasingly dominant, exploiting differences between national regulatory regimes, advances in technology and global financial and transportation links to traffic illicit goods.”

Africa too has not been an exception in regard to the adverse consequences of illicit trade. According to the Africa investor Magazine of July- August 2010, the value of counterfeits in Kenya in 2009 was US\$ 642 million compared with South Africa where the value was US\$ 402 million and Nigeria where it was US\$ 219 million⁸. Moreover, the same Magazine reports that the EAC Partner States lost US\$ 500 million in annual tax revenues because of counterfeit products.

1.4 Contributors of illicit trade

Globalization and trade liberalization policies adopted by many developing countries in the 1980's, at the prescription of the Breton Woods Institutions made it possible for illicit trade products to reach hitherto unknown markets including COMESA region because of increased demand for imported goods and raw materials. Countries in the COMESA region, did not put in place mechanism to protect the local industry from flooding the local markets with sub-standard goods from Asia and Far East Countries.

Illicit Trade is also facilitated by weak border controls (especially contributing to smuggling); inadequate sanctions (which are insufficient as deterrent because the balance of risk and reward is not weighed more against the offenders); and corruption, which weakens enforcement of existing regulations and undermines any controls put in place.

Another facilitator is consumer behavior - in many markets, consumers are aware (from appearance, price and place of sale) that they are purchasing smuggled or counterfeit goods,

but they are happy to buy, because of the lower price - without demand, there would be no supply.

In light of the above, a number of regional players have highlighted the following to be contributory factors to illicit trade;

- a) Unbalanced fiscal policies;
- b) Disparities in tax-driven prices between neighboring jurisdictions;
- c) Corruption:- This weakens the enforcement of existing regulations and undermines any controls put in place;
- d) Weak enforcement (this includes low detection rates and low levels of prosecution, easy payment of fines);
- e) Porous borders and weak border controls leading to a rise in smuggling;
- f) Strong networks that deal trading of prohibited goods and services;
- g) The advancement of information and communication technologies (ICT), which have dramatically blurred geographical barriers and aided trade on massive scale;
- h) Inadequate sanctions:- Sanctions do not sufficiently act as a deterrent because the balance of risk and reward is not weighed against the offenders;
- i) Inadequate or out of date legislation; and
- j) Public tolerance and consumer behavior.

⁸ Africa investor magazine: *Africa is richer than you think*; July – August 2010 Issue

CHAPTER 2: Regional Situational Analysis

Just like it is the case globally, illicit trade and especially trade in counterfeits, substandard goods and piracy of products undermine the viability of manufacturing firms in the COMESA region. A free and open marketplace is fundamental to improving competitiveness, increasing investment, generating jobs and improving the economies of the COMESA Region. Illicit trade undermines each of these goals, and is a growing menace within the COMESA market. Illicit trade is a multifaceted problem and includes, among others: Counterfeit, Parallel Imports, Smuggling, transit fraud Undeclared Local Production and Pirated Products.

Manufacturers in the region are gradually feeling the impact of counterfeits through brand erosion, loss of sales and market share, the closure of factories and unfair competition. A number of companies in Kenya and other COMESA countries have been forced to close their Factories as a result. According to Digital Coding & Tracking Association, It is estimated that around 12% of the global cigarette market is illicit, equivalent to some 660 billion cigarettes each year, costing national governments more than US\$40 billion a year in lost tax revenues⁹. According to the “East African,” newspaper, October, 2014, it is estimated that Manufacturers in the EAC region lose over \$330 million annually due to counterfeit products, and the government loses \$67 million in potential tax revenue.

⁹ COMESA Business Council (CBC) Business Digest Quarterly Newsletter, Issue 1 (February, 2014)

In the COMESA region, counterfeit products are posing serious concerns for local economies and brands who have worked hard to build reputation and consumer confidence in their markets. This is adversely affecting the competitiveness of the concerned companies and at the same time putting the wellbeing of consumers at stake. The most affected products in the region include batteries, detergent products, ball point pens, electrical and electronic appliances, perfumes, cosmetics, pharmaceuticals, agrochemicals, building appliances, computer software and hardware, audio and visual disks, automotive spare parts, as well as alcohol and tobacco.¹⁰ Various factors contribute to illicit trade within COMESA, including; porous borders, corruption, high tax regimes, poor transit controls, illegal distribution networks and a high demand for cheap goods.

2.1 Existing frameworks to combat illicit trade in COMESA Countries

Within the COMESA region, the existing regulatory frameworks are based on some relevant national laws, regional protocols and international conventions. Some of the relevant international conventions have been ratified by some COMESA Member States. For instance, the United Nations convention against transnational organized crime whose purpose is to promote cooperation to prevent and combat transnational organized crime more effectively. These Agreements, Protocols and Conventions have influenced and continuing to be a source of benchmarks in articulating and putting in place appropriate legal frameworks to combat illicit trade.

¹⁰ Id.

The table below illustrates briefly some these major legal instruments;

| No. | Legal Instrument | Main purpose and elements covered |
|-----|--|--|
| 1. | United Nations Convention against Transnational Organized Crime | The purpose of this convention is to promote cooperation to prevent and combat transnational organized crime. |
| 2. | Agreement on Trade - Related Aspects of Intellectual Property Rights (TRIPS) | TRIPS is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for almost all forms of intellectual property regulation |

| | | |
|-----|--|--|
| 3. | Anti-counterfeiting Trade Agreement | Imposes an obligation on parties to ensure that enforcement procedures are available under their laws so as to permit effective action against any act of infringement of intellectual property rights covered by the agreement, including expedition's remedies to prevent infringements and remedies which constitute a deterrent to further infringements. |
| 4. | Patent Cooperation Treaty of 19 June 1970 | This treaty aims to facilitate co-operation among nations for the perfection and simplification of the legal protection of inventions in economically viable ways, facilitating and accelerating access by the public to the technical information contained in the documents describing new inventions, providing easily accessible information on the availability of technological solutions, and facilitating access to the ever expanding volume of modern technology |
| 5. | WIPO Copyright Treaty (20 December 1996) | Seeks to effectively and uniformly develop and maintain the protection of the rights of the authors in their literary and artistic works; providing rules for providing solutions to the questions raised by new economic, social, cultural and technological developments; and providing a balance between the rights of authors and the larger public interest, particularly education, research and access to information |
| 6. | Patent Law Treaty (01 June 2000) | Provides a unified procedure for formalities in patent applications to protect inventions in each contracting state streamlining and harmonizing formal requirements set by national or regional patent offices with respect to the filing of national or regional applications and the maintenance of patents and additional requirements related to patents or patent applications |
| 7. | Madrid Agreement for the repression of false or deceptive indications of source on goods (14 April 1891) | Provides specific rules for the repression of false or deceptive indications of source on goods |
| 8. | Berne Convention for the protection of literary and artistic works (24 July 1971) | Aims to effectively and uniformly protect the rights of authors in their literary and artistic works |
| 9. | East African community customs management act, 2004 | Provides for measures to combat counterfeits and other forms of illicit trade |
| 10. | National Legislations (Kenya) | <ul style="list-style-type: none"> - Anti-counterfeit act, No. 13 of 2008 - The standards Act Cap. 496 - Trademarks Act, Cap 506 - Copyright Act, No. 12 of 2001 - Narcotic drugs and psychotropic substances control Act, No. 4 of 1994 - Customs and excise Act, Cap 472 - Competition Act, Cap 504 - Consumer protection Act, No. 46 of 2012 |

| | | |
|-----|--------------------------------|---|
| 11. | National Legislations (Rwanda) | <ul style="list-style-type: none"> - Law relating to competition and consumer protection N° 36/2012 - The standards act No 43/2006 - Pharmaceutical art Law No12/99 - Penal code No. 01/2012/OL - Copyrights No. 27/1983 - Protection of intellectual property Law No. 31/2009 - Tobacco control Legislation NO. 08/2013 |
|-----|--------------------------------|---|

2.2 Overview of the gaps

Illicit trade continues to be a disturbing menace within the COMESA region and respective Member States have attempted to undertake various measures to combat it both at national and regional level. All in all, there is much that needs to be done. The finding of this study showed challenges of accessing up to date and reliable data on illicit trade which has made it impossible for some member states to fully understand the nature of the trade in order to articulate effective means to resolve the problem.

Further to this, illicit trade is only of great concern in countries where there is a manufacturing base and less prevalent as an issue in other countries which are net importers. Secondly, there is no framework guiding the public and private sector on how to curb illicit trade in COMESA and regional cooperation on the matter is still at a minimum. Based on the current state of play, there are still some gaps that need to be filled. These gaps are visible in a number of areas and include though not limited to the following:

- a) Lack of specific anti-illicit national legislations in some Member States;
- b) Absence of a common regional legal and policy framework on anti-illicit trade leaving a vacuum that is being exploited by illicit traders;
- c) Consumer ignorance on the risks involved in the use and consumption of illicit goods which is manipulated by deceitful advertisements by illicit traders;
- d) Widespread poverty resulting in low purchasing power;
- e) Weak or non-existent institutional capacity and capabilities for legal enforcement;
- f) Corruption, particularly at the entry points;
- g) Limited (or lack of) cooperation and coordination between and within the private and public sectors at both national and regional levels;
- h) Lack of appreciation by the judiciary of the enormity of the problem and its negative impact leading to low levels of enforcement of the existing laws;
- i) Neglect by brand owners to protect their brands by registration; and
- j) Restricted and ineffective border controls.

2.3 Experiences of selected sectors affected by illicit trade

Just like the rest of Africa, COMESA Member States are faced with various challenges including company shutdowns due to the trade of cheap substandard products that are effectively detrimental to the local industries. In COMESA, there is prevalence in counterfeits and imports of sub-standard products that poses high risks in losses of revenue in the local industry due to unfair competition, damage to human health and safety, loss of government revenue, stifling of creativity and innovation and loss of trade and investment competitiveness¹¹.

The most affected area is the manufacturing sector. Manufacturing in the COMESA region is

¹¹ Concept Note: *The 10th COMESA Business Dialogue on Taking Action on Illicit Trade – An Industrial Competitiveness Agenda*

primarily centered along the following; food and beverages, tobacco, wood, paper, refined petroleum and coke, cement, rubber and plastics, glass and other non-metallic metals, basic metals. In resource based Manufactures, there are textiles and apparel, leather, publishing and printing, fabricated metal products and furniture. In low technology manufacturing there are in chemicals, machinery and equipment, office machinery, electrical machinery, Radio, TV and communication equipment, medical , precision and optical instruments, motor vehicles.

In addition, the other affected products include; batteries, detergent products, ball point pens, electrical and electronic appliances, perfumes, cosmetics, pharmaceuticals, agrochemicals, building appliances, computer software and hardware, audio and visual disks, automotive spare parts, as well as alcohol and tobacco. Many customs administrations also reported counterfeit and piracy cases in toys, games and school supplies drawing much attention because of the potential health risk for children caused by substandard quality.

The table below shows the list of most affected products in some countries in COMESA, namely Kenya, Ethiopia, Zambia, Zimbabwe and Rwanda¹²;

| No. | Country | Products |
|-----|----------|--|
| 1. | Kenya | <ul style="list-style-type: none"> - Food stuffs; juices, soft drinks; - Spices; - Alcoholic beverages; - Cigarettes; - Common medicines and drugs (pharmaceuticals); - Soap and detergents; - Dry cell batteries; - Pens and pencils; - Electrical and electrical equipment; - Motor vehicle and motor cycle; - Tyres, tubes and spare parts; - Seeds and fertilizers; - Shoe polish; - Artistic and musical works; and - Cosmetics, perfumes and hair extensions. |
| 2. | Ethiopia | <ul style="list-style-type: none"> - Electronic and electrical goods, - Garments of various kinds, - Perfumes, - cosmetics, - Habit forming drugs, - armaments - Coffee; - Livestock, - Cereals of various types, - Animal skins, - Fuel |

12 This list is based on one on one and online questionnaire interviews carried out in Zambia, Zimbabwe, Ethiopia, Rwanda and Kenya respectively with relevant key public and private stakeholders within the most affected sectors and industries

| | | |
|----|----------|---|
| 3. | Rwanda | <ul style="list-style-type: none"> - Electronics; - Health/ pharmaceutical products; - Animal feeds; - Construction materials (electrical, plumbing, bars, etc); - Beverage - liquors; - Cosmetics; - Cement; - Rice; and - Fabrics. |
| 4. | Zambia | <ul style="list-style-type: none"> - Hybrid seed maize - Food - Detergents, soap - Cosmetics - Steel - Soft drinks - Alcoholic beverages - Candles, - Cosmetics - Animal feeds - Cement |
| 5. | Zimbabwe | <ul style="list-style-type: none"> - Clothing; - Footwear; - Batteries; - Cooking oil; - Electrical goods, - construction materials; - Spare parts; - Production equipment |

2.4 Positions of industries on illicit trade

This study was carried out from the approach that illicit trade affects some selected sectors in the manufacturing industry. It should be noted that there is limited data on illicit trade based on its nature as an underground business. For this reason, the study captures data assessments from most affected industries at a national and regional level. These are Agro-processing-namely dairy and dairy products, seed production and distribution, Electronics and electrical products, steel and metal fabricators, Tobacco industry, Food and beverages. Other stakeholders who contributed to the study include the Manufacturers Associations, Bureaus of Standards and Regional Standards bodies as well as Revenue Authorities.

The objective of the study was to ascertain industry positions on the subject of illicit trade and its related effects in the region. Among those who were captains of industries in the private sector, who revealed that illicit trade is prevalent and severely affecting their competitiveness. In the interviews, many called on the need for the respective governments jointly advocate for joint regional efforts to combat illicit trade, including in the area of regional cooperation to ensure that illicit trade is checked and eliminated within the region.

- a) **Food and Beverages sector:-** The food-processing sector remains the largest component of the manufacturing industry. The goods manufactured and traded under this sector are broadly categorized as:-

- o Dairy products;
- o Vegetable oil;
- o Alcoholic beverages and spirits;
- o Juice, mineral water and carbonated soft drinks,
- o Sugar confectionaries.

The sector is heavily regulated and all the products in this sector are under threat of counterfeits and parallel importers. Players in this sector estimate that 10-15% of the total market is counterfeit.

Illicit trade in this sector exposes consumers to consuming counterfeits which are usually fake products that are produced without complying with standards. Note that, the main driving force of illicit traders in this sector is making profits rather than safeguarding the consumer. Secondly, the issue of storage conditions of legal goods (parallel imports) brought in illegally by parallel traders causes added health and safety risks to consumers. In this regard, legitimate businesses stand a high risk of being sued by consumers of the fake products bearing their brand name, secondly, their brand reputation declines, thirdly their market share is reduced which leads to threatening their overall expansion and growth.

b) **Seed Industry:-** This falls within the agricultural sector which is a very significant sector within the COMESA region. The seed industry (SEEDCO Zambia case study) invests millions of dollars in breeding/research prior to producing, processing and marketing the hybrid seed. The whole process is regulated by the Seed Control and Certification Institute (SCCI) which guarantees the yields and ultimately contributes to food security. It was highlighted that illicit traders in this sector has serious impacts not only to industry but to the farmers who is robbed by investing in a fake seeds, fertilizers, pesticides and as a result fails to harvest. In addition, the governments are heavily affected due to food insecurity. According to SEEDCO, a number of very expensive interventions have been made which

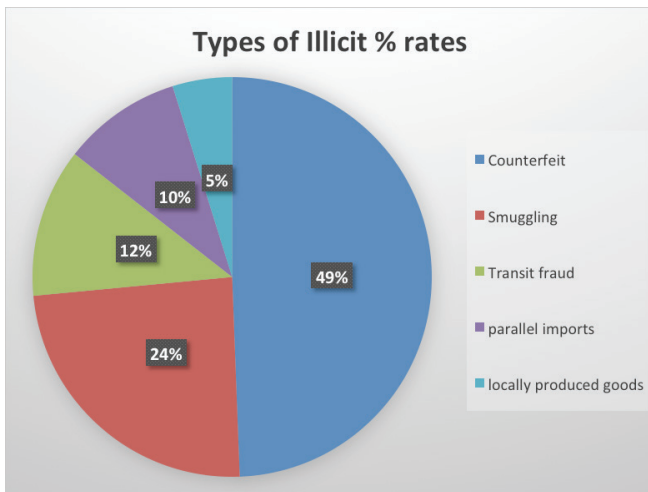
include: Sensitizing farmers to buy seeds from authorized distributors, running radio programmes to educate farmers by specifying how the genuine seed looks like, invested in equipment and chemicals that distinguish the genuine product from the counterfeit seed. These interventions have protected the integrity of the SEEDCO brand and also protected the small farmers and the nation.

c) **Tobacco industry:-** Illicit trade in cigarettes and other tobacco products exists in these broad forms:- smuggling, counterfeits and locally produced cigarettes consumed within but not declared to tax authorities. Illicit trade in cigarette based on the Zambia as a case study is estimated to be 25% of the Zambian Market, while Kenya counterfeits in this sector are estimated at 54%, smuggled goods met for export 38% and tax evasion on locally produced products 8%.

d) **Electronic & Electrical sector:-** Although the regions electronic industry is still at its infancy, there are a number of companies in this sector based on the growing demands. Products in this sector identified as being counterfeited include:- Computer components, lighting appliances, kitchen appliances, wiring accessories, shavers and hair dryers etc. A major issue in this sector is the influx of counterfeits and substandard products said to originate from Far East Countries, China being the main source of counterfeits. Companies interviewed estimated about 30% of the products are counterfeits; further the technical people in this sector are exposed to using substandard products and counterfeits, thus compromising quality of work.

Other key stakeholders interviewed include: the Manufacturers Associations, Bureau of Standards, Revenue Authorities, World Customs Organisation and Africa Regional Standards Organisation highlighted counterfeits, smuggling and transit fraud as the most prevalent form of illicit trade.

According to the study analysis, the above chart shows the percentage rate of types of illicit trade that are prevalent within the COMESA region.



2.5 Common recommendations from public and private stakeholders

The study gathered the following recommendations as common requests from the public and private stakeholders on key approaches to curbing illicit trade in the region;

- a) **A holistic approach to curbing illicit trade:** The complicated and severe effect of illicit trade touches on economic, social and even political aspects. For example, counterfeits lead to the contribution of dirty money, corruption and discourages Research and Development (R&D) efforts. It also touches on the health and safety of consumers in cases of fake vehicle spare parts, pharmaceuticals, cosmetics and electrical appliances. In addition, the economic effects are severe in situations involving counterfeits that lead to trade deficits as a result of relying heavily on imported products rather than investing in industries. The further complexity of illicit trade may also involve economic and environmental costs when faced with situations of having to dump or destroy dangerous products, like cocaine and toxic products that could harm the environment. Evaluation of the main facilitators, including manufacturing and export control, free zones and transit operations to understand the nature of the problem was recommended and the need for the COMESA region to embark on a harmonization process on all illicit trade related laws with the objective of having one law governing the region was emphasized for the battle of illicit trade
- b) **Strengthening the enforcement measures:** The respective governments of COMESA member states should be urged to put in place measures to combat illicit trade, including strengthening controls at border points, ensuring the judiciary is aware of the seriousness of the crime, enforcing existing national and regional laws; introducing punitive measures against the culprits, including seizing and destroying illicit goods and machinery.
- c) **Empowering institutional frameworks:** It has been observed that some countries in the region lack a lead Agency mandated to curb illicit trade in terms of checking, investigating, sanctioning and generally responding to all implementation related matters. Whereas other countries where they exist they cater only for counterfeits and they lack direct and centralized powers to exercise full enforcement. **It is recommended that all member states establish lead agencies with sufficient financial resources for adequate law enforcement and provide the authorities in charge to be given full powers to act.**
- d) **Enhancing regional and international cooperation:** The industry in the region recognizes the fact that some Member States' governments are doing their best to combat illicit trade but without a regionally coordinated mechanism. In light of this fact, many argue that, without concerted regional collaboration approach, national efforts alone will not achieve much. The stakeholders recommended cooperation and collaboration between legitimate industry players, intra-regional, international institutions to ensure information sharing, best use of combined intelligence and resources so as to enable taking proactive efforts to prevent illicit trade from the source rather than acting in a reactive manner.

CHAPTER 3: International and Regional Frameworks

3.1. International Realities

Globally, illicit trade contributes to creating a hostile environment for legitimate business thereby discouraging local and foreign investment. Investment is also discouraged by costs of doing business especially in corrupted states that are characterized by their inability to assert the rule of law.¹³ Illicit trade, especially counterfeiting undermines value of authentic products and the investment in the form of time and money that legitimate business put into their brands.¹⁴ Counterfeit goods are manufactured cheaper in order to permit them to be sold at a price lower than the market price. This is mainly because counterfeits don't incur costs such as advertisement. They also undermine company reputations when legitimate companies are associated with products of inferior quality. *Source: Report on the Trans-Pacific Workshop on combating corruption and illicit trade;*

INTERNATIONAL REALITIES

Increasingly sophisticated and organized criminal entrepreneurs and transnational illicit networks are fuelling greater insecurity and instability across our economies, threatening our communities, and endangering the health and safety of our people. Over the past two decades, criminal entrepreneurs and transnational illicit networks have expanded in size, scope, and impact. Transnational criminal organizations exploit illicit financial hubs and trade routes to penetrate licit markets, leveraging the technological, financial, and communications advances of globalization to further their illicit activities.

This results in billions of dollars of lost revenue for governments. The convergence of these networks is of particular concern today, as their confluence threatens commercial, transportation, and other systems that facilitate free trade and the movement of people throughout the global economy. These converging threats jeopardize governance, development, security, and the integrity of markets and supply chains.

Phuket, Thailand 27-29 October, 2011

13 Global Agenda Council on illicit Trade & Organized Crime 2012 - 2014, *Out of the Shadows: Why Illicit Trade and Organized crime Matter to All*, January 2013

14 United Nations office on Drugs and Crime, *Focus On – The illicit trafficking of counterfeit goods and transnational organized crime*, 2013

3.2. Best practices to Curbing Illicit Trade

To a large extent, the responsible enforcement Agencies mandated to combat trade fail to be proactive which should be the most appropriate approach in the first place. All too often, the response of revenue authorities, customs departments and other enforcement agencies is reactive, serving only to eliminate a small number of 'foot soldiers'. In such cases, the masterminds who are usually organized criminals tend to respond by recruiting replacements, changing the methods as well as routes or means of transport. In such instances, the criminals tend to kind of be a step ahead and do not have to worry about legislative compliance, seeking departmental expenditure approval or behaving in accordance with the requirements of publicly accountable bodies.

All in all, the world today is coming to realization to do more in strategizing and mobilizing efforts to combat illicit trade. Some countries, for example, UK (HM Revenue and Customs and UK Border Agency 2011) and Hungary (ITIC, Nagy 2012) have reduced levels of illicit trade by adopting a strategic and comprehensive approach.¹⁵ Such an approach requires acknowledgment and understanding of the nature and extent of illicit trade combined with strong political will to tackle the multi-faceted threat. In addition, adequate financial resources need to be made available, joint outcome-based targets set, and progress monitored and reported.¹⁶

In light of the above, the best practices which should be considered include the following;

- a) **Understanding the problem:** As in any war, 'knowing your enemy' is to a large extent the right beginning of the victory. In the case of illicit trade, this means understanding the size and changing nature of this trade, the methods used, the sources of supply, possibly the entire supply chain, the people involved and their networks and any other related information. This would require coordinated intelligence gathering and proactively taking measures that can

15 Elizabeth Allen, *World Customs Journal: The Illicit Trade in Tobacco Products and How to Tackle it*; International Tax and Investment Center (ITIC)

16 Id.

discourage illicit trade even before its starts.

- b) **Tackling demand as well as supply:** The demand for illicit products is a catalyst for illicit trade and an element of motivation for the suppliers of such products. As long as there are willing customers for illicit products, criminals will continue their trade. Revenue, enforcement, health and trade authorities must deliver joined-up, consistent and continuing education and awareness targeting areas and social groups where this kind of illicit trade is rampant. The demand should be discouraged by exposing the risks and dangers of illicit products through sensitization and awareness campaigns that would include; public awareness advertisements, talk shows involving prominent and famous personalities as well as jingles on radios and televisions.
- c) **Supply chain controls:** This would require relevant Agencies to understand supply chains that are legitimate and the estimated amounts of products that are out in the markets so that any suspected “discrepancies” would raise a red flag to call for investigations. In this light, the first step would be to:-
- o secure the legitimate supply chain which for some countries require paper tax stamps and
 - o others covert fiscal markers to help enforcement officials detect tax unpaid goods.

All in all, paper stamps are vulnerable to theft and re-use by criminals. This therefore poses another challenge to officials who have to control both the paper tax stamps as well as the product. In such situations, that is where the need for appropriate technology to enhance the security becomes a necessity.

- d) **Utilization of appropriate technology and coding:** A more robust approach to supply chain security is digital tax verification using advanced unique digital coding technology printed directly onto packs. It is more secure than paper tax stamps and

the codes are easily readable by officials and consumers. This technology helps the officials and consumers to be assured of the authenticity of the products. Digital coding technology makes it easier and quicker for enforcement officials to detect copied codes. There are a number of digital coding systems in development and in use in different industries to secure the supply chain of their products.

- e) **Effective legislation:** For all those involved in combating illicit trade, they will need to execute their mandate based on an effective legal framework. To be effective, legislation must be clear, simple and easy for industry to understand and implement as well as cost-effective for revenue authorities. It must provide law enforcement with sufficient authority to act.

Best Practice elements of the legislation

- o Clear offences and appropriate penalties;
- o Systematic destruction of all seized illicit goods;
- o Means to recover tax revenue losses and costs for destruction of seized goods, for example, through asset confiscation;
- o Effective authentication, tax payment validation and supply chain controls (that is, including manufacturing, wholesale and retail licensing and security markings);
- o Information exchange about ‘suspect’ movements with other appropriate national and international authorities; and
- o Strong protection measures for brand owners against International Property Rights violations.

Note: The legislation should stop governments from selling seized items related directly to the manufacture or sale of illicit products to avoid any unnecessary controversies or any abuse by the officials.

- f) **Effective judicial processes:** There are reported instances where the judicial processes tend to delay in handling relevant cases which discourages anyone who would look in that direction for a solution. So, effective judicial processes must deal with cases quickly, effectively, cheaply and in a transparent manner.

- g) **Working with legitimate industry networks:** As it has been observed, illicit trade adversely affects both public and private players. In this light, even industries have direct interests to combat illicit trade and as such can be great partners in the needed efforts. In some countries, there are legally binding cooperation agreements with major affected or interested companies. These cooperation agreements can serve as effective tools to coordinate legitimate industry networks against illicit trade and can contain information sharing and assistance in the following, among others:
- o Assessing and measuring levels and sources of illicit trade;
 - o Exchange of data;
 - o Proactively responding;
 - o Monitoring movements of (suspected) ingredients, equipment and finished illicit tobacco products; and
 - o Analysis and destruction of seized goods.

In some countries, revenue authorities, now work with legitimate trade to counter illicit trade providing channels for communication of intelligence and making use of industry resources for counterfeit product awareness training.

- h) **Regional and international cooperation:** There are a number of regional and international measures and mechanisms to combat illicit trade which should be tapped into and strengthened. This is important because highly sophisticated international criminal networks use complex routes and ingenious methods to move illicit goods, making international cooperation in the investigation, arrest and prosecution of offenders essential. Some regional and international organizations (for example, EAC, COMESA, WCO, WHO and Interpol) have liaison resources across the world and are always ready to work with local enforcement authorities and genuine manufacturers to detect related criminal activities.

3.3 Actions taken so far

3.3.1 National, Regional & International actions

From the respective national levels to regional initiatives up to global efforts to

combat illicit trade, a number of actions have been taken so far. Global organizations such as the World Customs Organization (WCO) and the World Health Organization (WHO) worked with relevant regional and national agencies to ensure the following actions;

- a) Increased awareness and understanding of how illicit trade adversely affects the social, economic and political progress of countries if unchecked.
- b) Capacity building by assisting members and the regions to develop strong policies and appropriate legal frameworks to combat illicit trade;
- c) Coordinating and ensuring access to Customs Enforcement Network (CEN) database;
- d) Supporting the Regional Intelligence Liaison Office (RILO);
- e) A number of States have enacted new, or have revised existing legislations to combat illicit trade;
- f) Some countries have integrated anti illicit trade action plans into national development strategies; and
- g) Cooperation and assistance among Countries, regional organizations and international agencies have increased.

3.4 Private sector actions

As already mentioned, the private sector also plays a significant role in contributing to the efforts against illicit trade. Private companies have been encouraged to adopt internal measures that are deliberately aimed at curbing illicit trade. For instance, some private companies in the region have implemented the following;

- a) Adopting social media mechanisms to advise consumers on whether products are genuine;
- b) Training customers and enforcement officers;
- c) Strengthening security features for their products;
- d) Providing media briefs; and
- e) Registering their Trademarks.

CHAPTER 4: The Way Forward

4.1 The Proposed COMESA Anti-Illicit Trade Protocol

Introduction

Each COMESA Member State is currently at different stages of development in efforts to address the problem of illicit trade¹⁷. These efforts have been made only at the national level and have been taken without any consideration for harmonized controls across the region yet the problem is regional in character. A coherent regional response is therefore critical given the reality of the problem as strongly expressed by majority of the key stakeholders interviewed during this study.

While the initiatives so far undertaken by some COMESA members are commendable, more needs to be done to deal with the menace of illicit trade specifically enacting a regional law to be implemented across the COMESA region to specifically and effectively impose civil and criminal sanctions that make illicit trade an unattractive business model. As COMESA continues to ensure free movement of goods as a key feature of the Customs Union, it makes no sense to have national efforts that are in isolation of the regional realities, mainly because, COMESA member States without anti illicit trade laws will serve as entry points and conduits of illicit goods into the whole region.

This therefore means that failure to enact a regional anti- illicit trade law across the region is not an option. The entire COMESA region must have a uniform, effective, consistent and business-friendly legal framework that protects legal trade and fosters the emergence of an attractive business/investment climate.

SECTION A: - Contents of the Protocol

The protocol should be formulated, adopted and implemented by all COMESA Member States. The protocol should aim at eliminating all forms of illicit trade within COMESA region. It should provide

¹⁷ For example, Kenya has so far enacted Anti Counterfeit Act (Act No. 13 of 2008) at a national level. In addition the four EAC Partner States that are also COMESA Member States (Burundi, Kenya, Rwanda and Uganda) are in the process of implementing the EAC Anti Counterfeit Bill at the regional level.

tools for preventing and counteracting illicit trade through a package of national measures and regional cooperation.

In light of the above, the proposed regulatory framework will be referred to as; THE COMESA ANTI-ILLICIT TRADE PROTOCOL.

The following key elements should be covered within the COMESA anti- illicit trade Protocol:-

- a) Stating the purpose of the regulatory framework;
- b) Clear definition of illicit trade;
- c) Establishment/identification of enforcement institutions;
- d) Setting up a co-ordination mechanism between the enforcement institutions across the region;
- e) Initiatives and mechanisms for Data and Intelligence gathering;
- f) Regional tracking and tracing system for all “made in COMESA” products;
- g) Information sharing mechanisms among member states;
- h) Establishment of relevant focal points within COMESA member states;
- i) Establishment of a regional facility that enables access of relevant information and data - for the purpose of investigating illicit trade within COMESA;
- j) Other measures to control the supply chain including; due diligence requirements, sales by Internet, telecommunication and evolving technology, as well as duty free sales and implementing control measures in Free Economic Zones (FEZ) and international transit;
- k) Establishment of a number of conducts deemed unlawful, including the illicit manufacture, sell or smuggling of products;
- l) Introducing effective, proportionate and dissuasive sanctions;
- m) A framework of cooperation that facilitates information sharing;
- n) Punitive measures dealing with criminalization

and combating fraud (e.g. determining crimes, prosecutions and penalties, destroying confiscated products); and

- o) Measures for international cooperation (e.g, information transfer, cooperation on technical matters).

SECTION B: - Institutional Framework

The COMESA Anti-Illicit trade regulatory framework should provide a requirement for all COMESA member states to establish (or strengthen existing institutions) operational enforcement institutions to combat illicit trade within their respective national territories. The National institutions shall have full legal mandate to attend to the challenges posed by illicit trade.

The COMESA Anti-illicit trade unit

To ensure coherence and effectiveness of combating illicit trade at the regional level, COMESA Secretariat should play a coordinating role. In this respect, there should be a COMESA Anti-illicit Trade Unit. The Unit should be mandated to coordinate/facilitate the operations of the National Enforcement Agencies to ensure the full implementation of the law in the spirit of the proposed areas of this regulatory framework.

Where present, the respective national anti-illicit trade units/ agencies/ institutions should be primarily responsible for fighting illicit trade, receiving complaints and coordinating the relevant departments across government and the private sector. Where absent, national anti-illicit trade units/ agencies/ institutions should be formed. These structures should be specialized autonomous bodies mandated by law to:

- a) Monitor the implementation of anti-illicit trade measures in Member States;
- b) Receive and record complaints from the public on all issues relating to Illicit Trade;
- c) Undertake thorough investigations into the entire supply chain, including; importation, distribution, manufacture and sell of illicit products;
- d) Seize and detain illicit goods pending investigations/ prosecution by offenders;
- e) Arrest, detain and prosecute illicit traders and all persons in their networks;
- f) Co-ordinate and harmonize the activities of the various organizations involved in the war against illicit trade;

- g) Make recommendations for the improvement of anti-illicit trade legislation to bring it into line with international best practices from time to time;
- h) Devise and promote training programs on combating illicit trade;
- i) Act as liaison center in the cooperation with relevant regional and international agencies mandated to combat illicit trade globally; and
- j) Prepare and publish annual reports on progress towards eradicating illicit trade.

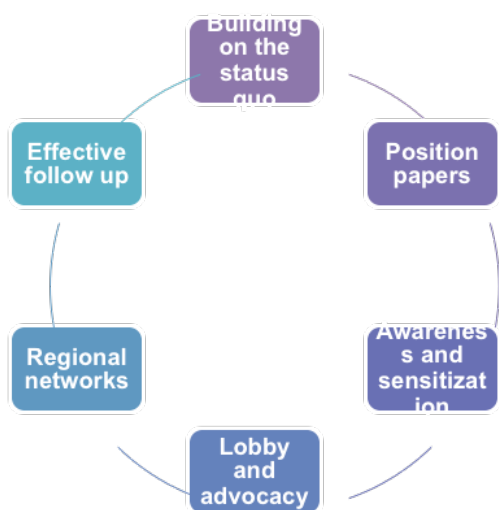
SECTION C: - Private Sector Participation in Enforcement

It is important to note that, collaboration initiatives between the private sector and governments are crucial if the fight against illicit trade is to be won. The best approach to ensure effective private sector participation in the enforcement efforts is to put in place focal points dedicated to handle related matters in the respective national enforcement institutions. In light of this, national enforcement agencies shall be required to put in place adequate measures to encourage individuals and firms to lodge complaints, provide information and take punitive measures against illicit products.

4.2 Proposed consumer action for combating illicit trade

The fight against illicit trade must be part of COMESA's regional efforts to ensure an appropriate comprehensive control policy. It is indeed true that, illicit trade and especially trade in counterfeits, substandard goods and piracy of products not only undermines the viability of manufacturing firms in the COMESA region but is also harmful to the consumers. One can only imagine a painful and unfortunate experience of a sick person being given pirated "fake" medicine and waiting in vain to recover, not mentioning the possible side effects that can aggravate the situation. In this regard therefore, consumers within COMESA must stand up against any form of illicit trade in the region through organizing themselves and voicing their concerns for appropriate actions to be taken.

The proposed consumer action approach should be based on six (6) pillars:



- a) **Building on the status quo:** Through existing consumer protection associations in the respective COMESA Member States;
- b) **Regional Networks:** Ensuring a regional networks coordinated at the regional level to ensure wider buy in and effectiveness;
- c) **Position papers:** Researching and preparing position papers on adverse effects, case studies and relevant information on illicit trade in the region to have informed dialogue on related issues with relevant stakeholders;
- d) **Lobby and advocacy:** Lobbying and advocating for any change can take time and various forms to make an impact. In this regard, consumers will have to be creative in their approaches and methodologies to ensure social change within COMESA in order to achieve the intended objective of combating illicit trade. This will involve preparing the right message and channelling it through public fora as well as through personalities of influences, such as; opinion leaders, celebrities, among others;
- e) **Awareness and sensitization campaign:** The campaign will be the primary tool used to engage with consumers both nationally and regionally. The campaign will focus on the following;

- o A call to action to put a stop to the purchase of illicit goods;
 - o Information on the adverse effects of purchasing illicit products (such as the seizure and destruction of goods, fines or imprisonment);
 - o Promotion of the purchase of genuine goods; and
 - o Encouraging the competitive manufacturing of goods within the COMESA region.
- f) **Follow up:** Follow up on the progress in addressing issues. This will be done through regular reports, updates, newsletters and bulletins as well as conferences and workshops on related matters.

Note: In order to successfully run this campaign, Consumer Protection Associations within COMESA will need to mobilize private sector and other key stakeholders to join forces to combat and promote the campaign against illicit trade. This may take some time to register tangible results and attain the desired goal as the process will involve social change that may not happen overnight. In addition, the region's market dynamics have shown that most consumers do encourage illicit products due to the low prices that tend to determine their consumer behaviours.

4.3 Establishment of the “Made in COMESA” label- a public -private initiative.

Background

Study findings also noted that there is discrimination by consumers on African products or brands, based on perception rather than product standards. Businesses most affected are small and medium enterprises (SMEs) that have failed to penetrate cross border supply chains within the region.

In this regard, this study proposes as a solution a “Made in COMESA” label for such products, to be used voluntarily, as long as products meet the set Rules of Origin Standards. This would guarantee authenticity of COMESA Originating Products and increase confidence across borders. In addition, the consumers are assured

of accessing and purchasing genuine products, mainly because labelling of products is done after thorough verification based on detailed information regarding the production processes.

Proposed guidelines for the establishment of the “Made in COMESA” label- criteria, action plan for implementation

The following are proposed considerations that should be taken into account as criteria of developing the “Made in COMESA” Label:

4.3.1. Proposed Made in COMESA demo



While deciding on the kind of “Made in COMESA” Label that is appropriate, the following are proposed details that should be taken into account:

- a) The starting point should be building on the COMESA Symbols;
- b) Appearance of the COMESA’s Logo;
- c) The words; “MADE IN COMESA” should appear;
- d) There should be security features (inserted seal) to avoid duplication;
- e) It should be in a form that is user friendly; and
- f) Incorporate a coding and serial number scheme for tracking purposes.

Note: The COMESA Member State will decide on whether there is a need to use all the COMESA official languages on the Label or have the Labels issued in one.

The COMESA Member States should agree and decide on whether the Label will be applied on a voluntary basis.

Again, the COMESA member states will agree on the lead Agency (ies) that will be responsible in issuing the Labels.

As highlighted in this study, the issue of illicit trade is a disturbing menace that is prevalent and severely affecting competitiveness of industries and needs to be tackled seriously and related effects addressed accordingly. Indeed, the complicated and severe effects of illicit trade touch on economic, social and even political aspects as well as health and safety of consumers. The economic effects are severe in situations involving counterfeits that lead to trade deficits as a result of relying heavily on imported products rather than investing in industries. In this light, the study proposes the following recommendations;

- a) Adopting the COMESA Regulatory Framework on anti-illicit trade; which focuses on drafting the COMESA Anti-illicit Trade Protocol and the related implementing regulations.
- b) Establishing a regional COMESA Anti-illicit trade Unit , to facilitate the implementation of the proposed Regional Regulatory Framework on Illicit trade.
- c) Establish national anti-illicit trade units/ agencies/institutions to act as focal points in the respective COMESA Member States to ensure effective implementation of the regulatory framework on combating illicit trade.
- d) Strengthened cooperation and collaboration between legitimate industry players, intra-regional, international institutions to ensure information sharing, best use of combined intelligence and resources so as to enable taking proactive efforts to prevent illicit trade from the source rather than acting in a reactive manner.
- e) Development and implementation of the Made in COMESA label as a business facilitation tool for enterprises that that seek to promote consumer confidence for their products across regional and global supply chains.

Chapter 5: Conclusion

5.1 The recommendations as adopted by the 10th COMESA Business Dialogue, held on 25-26th March 2015, Addis Ababa, Ethiopia

The findings and recommendations of this report, herein named, **Promoting manufacturing competitiveness in COMESA: Towards the establishment of A Framework for combating Illicit Trade in COMESA**” were presented to the 10th COMESA Business Dialogue, “**Taking Action on Illicit Trade- An industrial competitiveness Agenda**” , held on 25-25 March, 2015.

The Public Private Dialogue brought together over 150 policy drivers and industries from the COMESA region to review and adopt the recommendations presented as common positions of industry. The recommendations were further adopted by the Eighteenth Summit of the COMESA Heads of State, held on 30 , March, 2015.

As highlighted, the issue of illicit trade is a disturbing menace which undermines the development of the local industry and competitiveness of local businesses and investors. It also threatens fiscal revenue, public health and adversely impacts the economies of our people. COMESA Member states are called upon to establish holistic approaches and measures to curb illicit trade. The adopted recommendations are as follows;

- i. **Regional Regulatory Framework:-** The Development of an Anti -Illicit Trade Regulatory framework at a regional level. Such a regulatory framework shall include; inter alia: interagency coordination mechanism, information sharing platforms, punitive measures for offenders, stronger enforcement measures and regional cooperation.
- ii. **National Regulatory Framework:-** To strengthen national regulatory mechanism on Illicit trade, and, where nonexistent to

establish them. Such frameworks should be holistic, capturing all forms of illicit trade, containing punitive measures and strengthened enforcement.

- iii. **Enforcement mechanism:-** To note that enforcement of existing legislations and intellectual property rights with regard to illicit trade remains ineffectual at national level. Member states are called upon to strengthen key enforcement agencies including customs, standards bodies, investigators, prosecutors and judges/ magistrates. This includes strengthening their legislative powers and establishing an inter-agency information sharing and coordination platform to ensure effective regulatory recourse for the affected businesses.
- iv. **Public Private Partnerships:-** Member states are called upon to put in place binding platforms for public and private engagement on issues of Illicit Trade in terms of reporting, awareness, and enforcement of regulations. In terms of reporting mechanism; this can be adapted from NTB Monitoring and Reporting mechanism; thereby allowing the private sector to report cases or instances of illicit trade violations.
- v. **Consumer Action. Furthermore:-** Member states are called upon to initiate Public and Private Partnerships on engaging consumers on illicit trade through consumer awareness campaigns, training and other initiatives to communicate the impact on Illicit Trade. The private sector commits itself to the above actions and partnerships with government and Consumer organization in promoting the above.
- vi. **Regional Integration and Cooperation:-** Regional integration and cooperation is essential in the fight against illicit

trade. Member states are called upon to accelerate the region integration agenda; fully implement the FTA and move towards the Customs Union. This includes harmonization of customs administrative documents, standard regime, tax and excise regimes and, also, customs cooperation. Regional efforts to combat illicit trade are more effective where integration is enhanced and policies are harmonized.

vii. **Corruption:-** Corruption is one of the enablers of illicit trade. Hence, the need for effective measures to tackle corruption that is often associated with tax evasion, smuggling or other forms of illicit trade. Member states are called upon to put in place Anti- Corruption monitoring and reporting platforms and to increase awareness on this matter. At private sector level, the private sector re-affirms their commitment to say No to Corruption and commit to increase their voice against Corruption.

viii. **Intellectual Property:-** Member states are called upon to note the importance of intellectual property rights as enablers of competitiveness, essential for the development of African brands and protection of locally produced products. In this regard, Member states are requested to accelerate regional intellectual property measures including regional enforcement, and, to promote the participation of local industries in intellectual property protection initiatives. This includes, partnering with the private sector in increasing awareness and facilitating access to finance for the registration and maintenance of intellectual property rights.

ix. **Standards:-** Strong standards institutions are important for boosting the quality and competitiveness of locally produced products. There are also essential in the regional harmonization initiatives and are essential in the identification of illicitly

traded substandard goods. Member states are requested to set up or strengthen Quality Management and Standards institutions at national and regional level. This should be complemented by programs that promote standards development for SMEs and locally produced goods.

x. **Role of private sector:-** Member states are called upon to note the role of the Private sector in combating illicit trade. The private sector commits to the development of systems within their supply chains; including track and trace systems, brand awareness campaigns, to source from legitimate suppliers and to partner with public sector and consumers in taking action to combat illicit trade and improve the competitiveness of the local manufacturing industry.

xi. **On Promoting Industrialization and SMEs inclusiveness:-** Member states are called upon to note the Kinshasa Declaration of the 9th COMESA Business Forum in 2014 that requested the need for SMEs inclusiveness in the industrialization processes and preferential public procurement. Following, on that Member states are called to put in place policy and regulatory mechanisms that ensure public authorities procure at least 30% of their procurement from SMEs, including women and youth.

xii. **On Pharmaceutical Manufacturing:-** Member states are called upon to partner with the private sector and promote the much needed investment for local pharmaceutical manufacturing; particular in drugs where Africa has a strategic advantage such as for AIDS and malaria drugs. This includes; putting in place investor friendly policies and regulatory frameworks, contributing to scientific research and development in terms of budgeting and also facilitating avenues for access to finance for local pharmaceutical manufacturers.

- xiii. **On Industrialization:-** The private sector commends the development of the COMESA Industrialization policy as key to the development of local manufacturing competitiveness. Following this, Member states are called upon to put in place national strategies and business plans with clear policy and institutional support frameworks in key strategic sectors such as leather, agro processing and others. Furthermore, to put in place policies and actions that support value addition and deter importation of raw materials.
- xiv. **Made In COMESA label:-** Member states are requested to recall the commitment made under the 9th COMESA Business Declaration on working towards the development of the “Made in COMESA” voluntary label to ease market access and encourage consumer preference for products that originate from the COMESA region. The private sector reiterates the need for the development of the “Made in COMESA” as essential to promote the local manufacturing industries. In light of the above, Member States, COMESA Secretariat working within the COMESA Business Council are requested to develop the most appropriate framework for the above, by the next Summit and ensure its operationalization by then.
- xv. **On Public Private Dialogue:-** Member states are called upon to note that effective regional integration initiatives can only be achieved with the full participation of the private sector. Therefore, Member states are called upon to ensure an inclusive approach for the participation of the private sector in policy making processes at national level, at regional level- through the COMESA Business Council. This also extends to negotiations for the TFTA. Member states are requested to ensure and facilitate the participation of the private sector within the national delegation and REC Business Councils as part of the Technical Committee negotiations for the TFTA to ensure the inclusiveness of the private sector in the Draft Agreements and related Annexes.

Annex 1: Materials/ Sources of information

Studies, Reports, Policies and related Documents

1. Government of Rwanda - Ministry of Finance and Economic Planning: *The National Vision 2020*
2. Ministry of Finance and Economic Planning: *The Second Economic Development and Poverty Reduction Strategy "EDPRS II"*
3. Ministry of Trade and Industry: *The Rwanda Private Sector Development Strategy (PSDS) 2012*
4. The World Economic Forum Global Agenda Council on Illicit Trade
5. The World Customs Organization (WCO): *Illicit Trade report*; 2013
6. COMESA Business Council (CBC) Business Digest *Quarterly Newsletter, Issue 1 (February, 2014)*
7. A private sector position paper on addressing the Constraints to Manufacturing Industry in COMESA region: *Unlocking the potential of the manufacturing sector in the COMESA region*
8. Symposium Report: Trans-Pacific Workshop on combating corruption and illicit trade; Phuket, Thailand 27-29 October, 2011
9. The Republic of Kenya: *Trading in Prohibited Goods Act, Revised Edition, 2012*
7. The East African Community (EAC): *East African Community Policy on Anti-counterfeiting, 2011*
8. The East African Community (EAC): *The East African Community Anti-counterfeit Bill, 2011*
9. Elizabeth Allen, World Customs Journal: *The Illicit Trade in Tobacco Products and How to Tackle it*; International Tax and Investment Center (ITIC)
10. National Council on the Administration of Justice (NCAJ): *Enforcement Manual to combat illicit trade in Kenya*; 2014
11. Kenya Association of Manufacturers (KAM): *The study to determine severity of the counterfeit problem in Kenya*; 2012
12. Africa investor magazine: *Africa is richer than you think*; July - August 2010 Issue

Others and online sources

13. Digital Coding and Tracking Association (DCTA) on <http://www.dcta-global.com/illicit-trade.html>
14. <http://www.state.gov/documents/organization/177034.pdf>
15. http://programmes.comesa.int/index.php?option=com_content&view=article&id=90&Itemid=142
16. <http://about.comesa.int/>





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