

- **Inadequate enforcement and lack of consumer awareness boost counterfeiting in India,**
- **Online marketplaces have become a preferred hub for illicit operators**
- **There is need for a separate e-Commerce law in the country to tackle counterfeiting menace**

**New Delhi, 15 January 2016:** The activities of counterfeiting and smuggling are presenting a bigger challenge for enforcement authorities and governments globally. Moreover, the perpetrators of illicit trade are becoming increasingly sophisticated, well-connected and funded. The direct link of these activities with terrorists is a cause of concern. According to the United Nations millions of dollars from the trade of illicit tobacco reach to terror outfits such as the Taliban and the Al-Qaeda.

In addition to this, visible consequences of illicit trade such as adverse impact on innovation, investment and brand reputation are well-known to most stakeholders. However, the bigger concern is the manner in which counterfeiting and smuggling is impacting the social fabric of nations. This in turn is weakening their economic processes - an impact that seems too severe to tackle.

Euro Monitor International predicts that counterfeiting accounts for around 5-7 percent of world trade estimating to be around US\$ 600 billion annually. There have been incessant efforts by global organisations, governments and corporates to check illicit trade. But there seems to be a long way to go in this direction.

World Customs Organisation (WCO) estimated that approximately 3 billion pieces of counterfeit and pirated products were seized in 2013. Of these, more than half of the reported goods were illicit pharmaceutical products (2.3 billion pieces), followed by electronic appliances (470 million pieces), other taxable products (95 million) and foodstuff (50 million), amongst other commodities. For other industries such as tobacco, a significant rise in illicit trade have been reported. It indicated that in 2012 the illicit trade, rose to 40 percent making tobacco trafficking a serious issue for customs organisations.

Smuggling and counterfeiting is now hurdle for growth for almost every sector in India. The presence of counterfeit specifically being highest in FMCG packaged foods, personal goods, mobile phones, alcoholic beverages, bottled water, pharmaceuticals, etc., causing billions of losses to industry and the government. ASPA estimated the direct and indirect loss to the government from counterfeit goods at INR 392 billion in 2014 compared to INR 130 billion in 2012. Findings from the report by FICCI CASCADE suggests that illicit market in seven select manufacturing sectors including fast moving consumer goods (FMCG), tobacco, alcohol and mobile phones led to a loss of INR 39,239 crore during 2014.

Further, a detailed study of seven sectors in India conducted by FICCI CASCADE has shown some interesting results with respect to the size of illicit market and losses to industries. The

estimated loss to these seven sectors increased by 44.4 percent in two years, from INR 72,969 crore in 2011-12 to 1,05,381 crore in 2013-14.

### **eCommerce, a preferred place for illicit operators:**

Online marketplaces have become a preferred hub for illicit operators owing to their wider reach and ease of access. e-Commerce in India is growing substantially with increased traction of mobile telephony, rising internet penetration and disposable income levels.

While these factors underline the ongoing growth and huge potential in e-Commerce, at the same time, the challenges during logistics, cash on the delivery (COD) model and poor cyber laws act as a deterrent to the industry. In this regard, global e-retailer Alibaba.com is a good example. To mitigate the challenges, the Company by way of investment in to their processes, technology and imposition of heavy penalties for culprits have set up a notable example for other operators - a model that Indian firms can apply to their businesses.

However, in the absence of a specific e-Commerce legislation in India and other laws including the Information Technology Act, Indian Contract Act, Companies Act, 2013, intellectual property, laws in copyrights and trademark etc. there are certain grey areas. Thus, there is need for a separate e-Commerce law in the country. In this regards, **Dr. A. Didar Singh**, Secretary General, FICCI said, "...given the emphasis on the current 'Make in India' campaign bringing in economic development and the much anticipated growth; an effort therefore needs to be made to examine how illegal trading activities can be curbed".

The most critical aspect that needs to be addressed in this area is the liability of sellers and the marketplace in case of counterfeit or smuggled products.

As the problem of counterfeiting and smuggling becomes global, there has been, in parallel, sufficient evidence to demonstrate that the global community has woken up to fight this menace. Agreements signed under agencies such as the World Customs Organisation (WCO) and Europol and measures such as custom controls, training and several joint operations being carried out in the direction have been highlighted in the relevant section of the report.

The launch of "Make in India" initiative by the Indian government intends to transform the country into a manufacturing hub. The plan has witnessed early success and has attracted foreign investments. The campaign, needless to mention, requires authentication of products to protect it from the perils of counterfeiting and ensure making it a complete success in the times to come.

### **Countering counterfeiting & smuggling:**

Based on the ongoing trends and global endeavours undertaken worldwide to address smuggling and counterfeiting, certain key recommendations proposed in this regard include:

- Stringent enforcement and strengthening of the legal system
- Set up a nodal governance agency
- Increase consumer awareness
- Adopt of anti-counterfeit technologies
- Invest in research and development
- Collaboration

The impacts of illicit trade and the associated activities of smuggling, piracy and counterfeiting can be long lasting. Nevertheless, with the measures proposed above and increased collaboration between enforcement agencies, consumers and other associated stakeholders at a broader level, adverse impacts of this menace can undoubtedly be restrained and tackled.

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