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Importation of counterfeit products: What should be done?

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Introduction:

The main objective of the TAKNET exchanges was to explore how the government and other stakeholders can control the quality of imported goods. Specifically the discussion aimed at finding a solution to curb the importation of counterfeit products which are detrimental to our health and the economy in general.

Theoretical Context

Tanzania's large population is dominated by poor people. The high cost of genuine products they face in the market has created an insatiable demand for cheap products. No wonder the country has become a boom market for imported used goods (*mitumba*) which mingle with and often overwhelm the market for new goods. This has generated a fertile ground under which counterfeits and substandard new goods have gained popularity. The non-suspecting buyers who rush for cheap prices can rarely distinguish between genuine and counterfeit goods. But before going too far in this Brief, what is the definition of counterfeit goods? The vocabulary of trading

in such goods can sometimes be confusing. For the goods mostly affected like foods, drugs and pesticides, the vocabulary flares with different descriptions such as: counterfeit, substandard, contaminated or poisoned imports, outdated drugs, bogus drugs, fake, smuggled or contraband, expired smuggled medicines, medicine or canned foods with updated new expiry dates, of dubious quality and origin, capsule drugs stuffed with non-medicine concoctions or simply useless elements (e.g. cassava flour) instead of the necessary pharmaceuticals.

We limit the span of the definitions to exclude non-trade related areas such as faith-based articles (e.g. *gri-gri/juju* or talisman's trinkets), black magic, bank notes or knowledge grading indicators (e.g. fake education certificates) so as not to cloud the agenda of what government can do to stop importation. Some TAKNET contributors even suggested that Tanzania had entered contracts for water (DAWASA) and power (TANESCO) supply with fake companies from overseas. A strict interpretation of the word

counterfeit is found in the Oxford English Dictionary, i.e. to 'make an imitation of something with intent to deceive'. Thus, a manufacturer (or seller) of a counterfeit cheats intentionally by selling fake goods to the customer. Some estimates put the market of counterfeit products in Tanzania at about US\$ 525,000,000 per annum. Worldwide trade in counterfeits and pirated goods runs to around US\$250 billion per annum (2007– Source: internet Doug Palmer in China daily 8/10/2010).

According to The Confederation of Tanzanian Industries (CTI), government revenue loss due to counterfeits is possibly 15% to 25% of total domestic revenue, close to Tshs. 900 billion p.a. on account of tax evasion due to counterfeits and substandard goods. The reason why smuggled goods (which are not always counterfeits) are lumped together with counterfeits is because they deprive government the expected tax revenue.

Objective of the discussion

The objective of the topic on Importation of Counterfeit

Products was to provide a virtual platform to the public to share their views on how to overcome the problem of counterfeit goods in Tanzania markets. Specifically the topic intended to determine the extent of demand and supply of counterfeit goods in the country; to investigate the existing laws, law enforcement and measures to curb the trend; to explore the control mechanism in existence and their effectiveness among the deterrent mechanism in existence and to draw up conclusion and policy recommendations that will help to curb the existence of counterfeit goods in Tanzania.

TAKNET Contributions

Participation in the TAKNET discussion on this topic of counterfeits was lively. As many as 24 people took part, with 43 entries. They fittingly expanded the topic beyond imported goods (food) to include local manufacturing. Here is a summary of the contributions:

Demand and Supply of Counterfeit Goods

One contributor stated that “so long as the demand for goods outstrips supply, the consumers will tend to accommodate all types of qualities found in the market”. People are also driven by cheap prices because their purchase power is too low (TAKNET contributors *Kelly Wanda*, *Paul John Salia*, *Wenceslaus Aloyce*, *Deo Mutalemwa*). In Tanzania the counterfeit goods that are popular include cloths, mobile phones, building materials, shoes (*Paul John Salia* - in TAKNET). This supplements the list indicated by *Farnoosh Torabi* (internet) on the top five worldwide counterfeit products that can do a lot harm, namely: 1.pharmaceuticals; 2.electrical items; 3) tech components; 4. perfumes; 5.

sunglasses. Other sources insist it is pharmaceuticals, foods and electronics. Fake DVDs are the most popular counterfeit in UK.

Adam Harcourt-Webster (internet) UK list includes faked films, fashion, spare parts, drugs, tea bags, cigarettes, even toothpaste. Worst popular fakes are possibly batteries and chargers that have the potential to kill instantly upon initial use or when stumbled upon accidentally (*Japhet Makongo*). *Wenceslaus Aloyce* warns that we should not spend too much time pointing an accusing figure at China when a lot of counterfeits are produced by foreigners or by our own people here in Tanzania. A new type of counterfeiting “invented” in Tanzania mentioned in the TAKNET exchanges involves adulteration (*kuchakachua*) of motor fuel with its debilitating effects on motorists (*Japhet Makongo*). According to a 2009ⁱ study, most counterfeit products in Tanzania originate from Asian countries such as China, India, U.A.E. (Dubai) and Indonesia, Taiwan and Thailand and some African countries like Kenya, South Africa, Mozambique, Malawi and Nigeria (without forgetting homemade fakes). It is also said that in some of the countries in Asia genuine manufacturers can along side establish parallel lines for producing counterfeits or substandard goods targeted to specific poor countries.

This may be called market differentiation (e.g. for Tanzania) as inferred by TAKNET contributors *Timothy Kitundu* and *John Magoha*. The volume of demand for goods would spur such initiatives. In Nigeria more enterprising Nigerians who assess the demand for fake imports as very lucrative, arrange for the

same to be manufactured purposely overseas, possibly with flashy brand names, for importation to the Nigerian market. Similar daring initiatives were not mentioned in the TAKNET with regard to Tanzanians. The crave for whatever is imported is what fuels the growth of counterfeits (says *Deo Mutalemwa*). *Angelo Lunyungu* adds “we do all know that some of the products imported ... are also available in our local/home market,”; for lack of nationalism we opt for “ imports, and thereby ignore our own products”.

The law , Law enforcement and Punitive measures

Appropriate laws and institutions to oversee the regime for control of piracy and counterfeits have been put in place in Tanzania. The country has also signed and ratified a number of international treaties on the protection of Intellectual Property Rights (IPRs) so as to bring its posture to international standards. The IPR laws include for instance the Paris Convention for the Protection of Industrial Property (1883), the Trade Mark Law Treaty (1981), Lusaka Agreement establishing ARIPO, The Harare Protocol, WIPO Treaty (1970) and UPOV. IP laws which (apart from copyright) are administered by the Business Registration and Licensing Agency (BRELA) established since 1997.

Specifically, Tanzania has promulgated laws to deal with piracy and counterfeits, such as: (i) The Trade and Service Marks Act of 1986, (ii) The Copyright and Neighbouring Rights Act of 1999 which prominently includes provision against the manufacture or modification or importation for sale or renting of any device whose copyright is already established

(without explicit permit from the original copyright owner). The law lays down specific punitive actions to met out to the culprit. If this Act were effectively enforced, it could possibly have been able to reduce piracy to a considerable degree in this country. But this has not been the case. There are also other relevant Acts like The Merchandise Marks Act of 1963 (operationalised only since in 2005) that specifically prohibits importation of counterfeits and empowers appropriate officers to seize, detain, forfeit or dispose the counterfeits with fines imposed on the culprit. It empowers the Fair Competition Commission (FCC) to investigate go-downs and premises suspected to hold illicit goods.

The FCC joins other institutions in the forefront engaged in efforts to deal with challenges of counterfeits, pirated and substandard products like the Tanzania Food and Drugs Authority (TFDA), Tanzania Bureau of Standards (TBS), BRELA, Tanzania Revenue Authority (TRA), EWURA, the Attorney General's Chambers and the Police Force.

Apart from some of these institutions being weakened for lack of funds or manpower, there is in the country general lack of good governance related to fragrant disregard of established laws by citizens. This matter was cited by many contributors: *Timothy Kitundu, Ricky Renson, Omar Mwinyi Khamis and Senorina Kimambo. Khamis* goes on to assert that "A lawless country is bound to fail in everything!". "We can give our opinions day and night nothing will make the different without Good governance from the top" says *Ricky Renson*.

Many ways of circumventing the law have been invented. One

version of ingenuity mentioned by *Senorina Kimario* lies in updating the expiry date of a product while it has already expired. It makes it very difficult for inspectors (from TBS or TFDA) using visual methods of checking to find out that the contents are unsuitable for consumption. According to *Khamis* "The importers of foreign goods to Tanzania are well known to the TFDA and TBS and these authorities can put more pressure and punish the culprits" but because of corruption elements they fail. And the fines and jail terms, for those who are caught, are often token (*Makongo, Kabuje Furaha*), so that in the final analysis counterfeiters are not deterred to repeating the sins.

Flagrant disregard of laws is becoming ingrained in national culture to the detriment of the nation, according to *Ricky Renson*. He warns: a "country without law and order is a dead walking country, imagine police cars, military cars, ... government cars are driven on the wrong side of the road (oncoming cars side). if a country cannot see this (*and remedy it –editor*) how do you expect to solve the counterfeit problem?". It all boils down to good governance, he concludes. But *Leevan Spanish Maro* retorts that: "because ethic is dead and mourners are few, that's why illegal business penetrate to our country." In this respect, somebody evoked the shoddy agreements of TANESCO, DAWASA and TRL (*Wenceslaus Aloyce*).

Control Mechanisms , Institutions and Their Effectiveness

The TAKNET discussions recited in chorus the merits of Public Education to combat the vice of counterfeits. Eleven (11) times this aspect was mentioned, while

others, 8 in number, called it consumer awareness. *Abdalla Hassan* explained that awareness among Tanzanians on this issue is a problem, and it will take generations to make the whole population aware. He thus advocated for comprehensive and incessant measures to build up awareness. *Timothy Kitundu* adds that awareness and public education are important in enabling consumers to able to distinguish between fake/counterfeits imports and genuine ones. This could include public awareness sessions by TFDA, TBS, TFNC and others through exhibitions and fairs.

Other measures advocated were for companies and MDAs to set aside enough budgets for advocacy of nationalism among Tanzanian consumers and setting out internal marketing strategies to leverage consumption of the home made/local products. But *Costa John Kanaysu* warns that this requires that we should first establish "our own standards to use as references, in order to verify the standard." of imports, lest we use " machine made in Europe to evaluate the product made in Asia" and will end up rejecting the product based on a wrong yard stick. *Costa Kanaysu* asks if UK, US and Japan would accept the Nyumbu (a Tanzania conceived vehicle). *Lunyungu Angelo* also insists on consuming home made products and thus avoiding the crave for imports. Tanzania is in fact lauded for having established counterfeit fighting institutions that have potential to deal with the vice decisively. These institutions, already mentioned above, certainly require strengthening through more funding and manpower as well as toughening the legal instruments. For example the relevant Act should be

amended to install stringent border controls and allowing each implementing authority to establish own law enforcement arm for implementing respective border measures, so as to curb illicit imports and even the exports.

Conclusion and Recommendations

Among the deterrent measures mentioned by TAKNET participants for curbing the growth of counterfeits, the following were outstanding:

- Destroying the counterfeits when found (*Kabuje Furaha, Ricky Renson*), though *Mutalemwa* says some of these goods are actually not harmful to health; they should be spared and given to very needy groups or used to legally produce new prototypes;
- Scrapping the business licenses from the irresponsible persons because the involvement in counterfeits is actually corruption *par excellence*, retorted *Japhet Makongo*;
- Collection of receipts for any sales; this will help in tracing the culprits (*James Ndege*);
- Combine deterrent measures for achieving strong impact: including fines, confiscation of the products and long sentences (*Wenceslaus Aloyce and Cornelius Kariwa*).
- Learn from other countries (*Deogratias Kishombo*) on how to enforce stronger control measures with modern technology.
- Re-examine the laissez-affaire liberalization of second-hand

goods (*mitumba*) as the *mitumba* culture seems to encourage trading in counterfeit goods as well.

This policy brief has been synthesized from the contributions of the following participants: Deogratias Kishombo; Costa John Kanaysu; Abdallah Hassan; Timothy Kitundu; Lunyungu, Angelo; Senorina Kimario; Omari Mwinyi Khamis ; Ricky Renson; Japjet Makongo; Deo Mutalemwa; David Masambe Sando; Kabuje Furaha; Kelly Wanda; Leevan Spanish Maro; William Joel Mkubwa Mdundo; Paul John Salia; Wenceslaus Aloyce; Cornelius Kariwa; James Ndege; John Magoha; Ram Iyer; Martha Khungwa Chalera; Steven Tula; Aloyce Florian Lengesia;

ⁱ Study on Anti-counterfeiting, Anti-Piracy And Other IPRs Violations By Iseme Kamau & Maema Mohammed Muigai for The EAC of Sept 2009

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