



## Combating Counterfeit Goods *Compromising Development?*

### Introduction

Counterfeiting is widely referred to a series of illicit activities that are associated with intellectual property rights (IPRs) infringement and is now becoming a common incident affecting a variety of industries and products. What adds to this growing concern is, other than the concern of intellectual property (IP) theft and consumer safety, there are apprehensions that the counterfeit sales directly fund terrorist organisations.

In spite of taking strong steps forward by the concerned stakeholders, including the governments and industry on a variety of fronts to curb this illegal activity, the scope and scale of the counterfeiting problem remains critical. In fact, available data suggest that the problem has only worsened in the recent times. Currently, it is hard to find a single market in almost all economies where counterfeit products are not easily available. Though this proportion tends to be greatest in poor and developing economies, developed countries too are not far behind.

### Scale of the Problem

It is largely estimated that international trade in counterfeit products exceeds seven percent of the global trade. Besides, such figures are speculative and the percentage may be higher than what appears to be, since providing precise figure or data on this growing problem is extremely difficult due to the illicit nature of this trade.

This growing menace does point out a fact that this practice is not only pervasive but also highly networked, causing damage not only to the business and investment opportunities but also creating a downbeat impact on the society and global economy. Below are some estimates related to trade in counterfeit goods that are quoted in various literatures:

The Organisation for Economic Cooperation and Development (OECD) insists that up to US\$200bn of international trade in 2005 could have been in counterfeit

or pirated products. This excludes domestically produced and consumed counterfeit products and the large volume of pirated digital products that are distributed via the internet. According to the OECD, if these were taken into consideration, then the figure would be several hundred billion dollars higher.

The World Intellectual Property Organisation (WIPO), which is responsible for the promotion of the protection of intellectual property throughout the world, estimates counterfeiting is costing the global economy more than US\$100bn a year.

According to the World Customs Organisation (WCO), whose mission is to improve the administration of customs, pirated and counterfeit goods account for roughly seven to nine percent of global trade. It estimates that the value of counterfeit trade exceeds US\$540bn.

### In India

Even as the Federation of Indian Chambers of Commerce and Industry's (FICCI) Brand Protection Committee estimates a loss of Indian Rs 200 billion per annum, the media reports assess the damage to the Indian industry at around Indian Rs 300 billion per annum. Meanwhile, a 2007 study conducted by the Associated Chambers of Commerce and Industry of India (ASSOCHAM) estimates that the annual loss of revenue to the Indian government is Rs 150 billion and the loss to the industry is Rs 300 billion.<sup>1</sup>

Moreover, in the country, one of the biggest losers is the Fast Moving Consumer Goods (FMCG) sector, which is losing about Rs 17 billion of revenue annually as a result of counterfeits. The government alone from the FMCG sector is losing about Rs 6 billion by way of unpaid taxes and duties. Likewise, the National Council of Applied Economic Research (NCAER) study, established by the Automotive Component Manufacturers Association of India (ACMA), highlighted that counterfeit auto parts constitute over 37 percent of the total market size of Indian aftermarket parts.

## Impact of Counterfeiting

Till recently, counterfeiting was by and large considered by most developing economies, due to their sheer ignorance, as a victimless crime that provides the market with a cheap alternative product of a little lesser quality. They were little aware about the fact that such widespread abuse of IP creates health and safety dangers for their consumers, loss of jobs, loss of profit to the genuine manufacturers and, worst of all, largely affects their growing economy. Also, on a long term, the sale of fake goods does considerable financial and reputation damage to manufacturers, traders and trademark owners and undermines consumer confidence in the legitimate products. Below highlighted are the major impacts that relevant stakeholders face due to counterfeiting.

### Consumers

Consumers generally go for purchasing counterfeit products for variety of reasons like value for price, opportunity to use relatively much cheaper products without worrying about it being damaged, a way to remain trendy, benefit from social status associated with brand, etc. But, hardly does he realise that once a counterfeit product which is lower in quality is purchased, he is more likely endangering his own and his dependents' health and safety, as many of these products are made with unsafe, untested or sub-standard ingredients and components. Every year, thousands of consumers suffer accidents and injuries as a result of unregulated counterfeit products. Further, through such careless illegal purchase, he restricts himself in future to new advanced products as his purchase of fake goods takes away the legitimate profits for the legitimate producers, thus forcing these producers to refrain from any new product research and development.

Of course, it cannot be denied that the consumers do have some initial monetary benefits through such purchases, but the long term negative impacts generally outweigh the limited beneficial impact of counterfeiting.

### Manufacturers

As said, the prime victims of counterfeiting are largely the genuine business concerns that make and distribute original products. For them, the losses are doubly damaging, particularly in terms of reduced sales and profits. There are also other long term concerns, including loss of sales from consumers in future, who buy the low quality counterfeit products and associate the genuine product too with such poor quality. Moreover, it creates a negative impact on the company's brand image and the value of the business, thus increasing their marketing expenses for brand protection.

The gravity of this crime on industries was clearly highlighted in a recent study 'The Effects of Counterfeiting and Piracy on India's Entertainment Industry', prepared for the US-India Business Council (USIBC) by Ernst & Young

India, which estimates that the Indian entertainment industry loses some 820,000 jobs and about US\$4bn each year to counterfeiting and piracy.

### Economy

Another adverse consequence of counterfeiting is on the economy as a whole. The easy availability and production of counterfeit products in a particular country would alert vigilant consumers throughout the world about the product quality of that particular product and similar such products manufactured in that country. This would gradually affect the business and trading environment of the economy. For instance, most of the countries, both developed and developing, are now putting a strict vigil on products imported from China, since many counterfeit products are made in China.

Also, counterfeiting does create a big impact on the employment across the economies. Studies suggest that yearly millions of jobs have been destroyed by counterfeiting and piracy. Instead, if counterfeiting and piracy could be eradicated, or seriously curbed, then the same number of jobs could be created all around the globe.

**Table 1: Summary of Principle Potential Socio-economic Effects of Counterfeiting**

Impact Area	Potential Affects
Innovation and growth	- Reduction in incentives to innovative - Possible negative effects on medium and long term growth rates
Criminal activities	- Increase in flow of financial resources to criminal networks, thereby increasing their influence in economies
Environment	- Sub-standard infringing products can have negative environmental effects - Disposal of counterfeit and pirated products has environmental consequences
Employment	- Shift of employment from rights holders to infringing firms, where working conditions are often poorer
Foreign direct investment	- Small, negative effects on levels of foreign direct investment flows, possible effect on structure of foreign direct investment
Trade	- Negative effects on trade in products where health and safety concerns are high

Source: The Economic Impact of Counterfeiting and Piracy, OECD Publishing, 2008.

## **Government**

The major effects of counterfeiting and piracy on governments are foregone tax revenues in the form of Sales Tax, Excise Tax, Income Tax and Customs Duty and so on. Tax revenue losses are particularly high in certain sectors like tobacco and alcoholic beverages where excise taxes are high. The ASSOCHAM found that counterfeiting and piracy has robbed the Indian government of US\$31.25bn in lost tax revenue.

Also, supplementary expenses are linked with fighting counterfeiting wherein huge amount of costs are spent with customs and related law enforcement agencies and related judicial proceedings. Besides, significant costs are incurred while handling seized goods.

## **International Efforts to Combat Counterfeiting**

The increasing number of counterfeit goods in market poses a significant threat not only to the business but it also acts as a major barrier to trade, since the availability of cheap and low quality counterfeit products in a market in effect hinders the sale of genuine products there. Accordingly, the onus lies on those states where counterfeit products are predominantly prevalent, to strengthen their efforts to eradicate counterfeit goods and take effective action against counterfeiters.

International organisations like the World Intellectual Property Organisation (WIPO), the WCO and the International Criminal Police Organisation (INTERPOL), along with the business community, are toiling hard multilaterally to determine new strategies to fight against counterfeiting.

The Global Congress Steering Group, comprised of the WCO, the WIPO, the INTERPOL, the International Chamber of Commerce (ICC), the International Trademark Association (INTA) and the International Security Management Association (ISMA) aims at highlighting the problem of counterfeiting, by bringing concerned parties together to develop a comprehensive strategy to tackle the problem at the national, regional and global levels.

The primary objective of the Steering Group is to organise and host an annual Global Congress to:

- raise awareness on the problems associated with counterfeiting and piracy;
- promote better legislation and enforcement;
- enhance cooperation and co-ordination;
- build capacity; and
- promote solutions, particularly in the key focus area of health and safety risks related to counterfeit products.

Now, the Congress has become a leading international forum for shaping practical strategies to combat counterfeiting and piracy.

Also, the issue of counterfeiting is dealt pluri-laterally through the G8 summit meetings to develop more effective global solutions. The most important of all the meetings was the Gleneagles Summit in July 2005 where a post-G8 statement was published entitled, 'Reducing IPR Piracy and Counterfeiting through more Effective Enforcement'. This Statement has been ascribed as being the start of the process leading to proposals for an Anti-counterfeiting Trade Agreement (ACTA).

Immediately after the Gleneagles Summit, a similar declaration 'Combating IPR Piracy and Counterfeiting' was adopted at the St. Petersburg Summit in July 2006. This declaration had the following objectives to:

- keep the spotlight on trade in counterfeit and pirated goods and secure agreement on projects that promote greater cooperation among national law enforcement and customs officials;
- link victims of IPRs infringement to national enforcement authorities;
- build capacity in developing countries to combat trade in counterfeit and pirated goods; and
- conduct further research into the economic impact of piracy and counterfeiting on national economies, brands, rights holders and public health/safety.

Likewise, bilateral agreements are entered between various nations as it is considered as a good instrument to fight counterfeiting of products. Till date, some of the accomplishments in the IP domain were achieved using this tool. For instance, Swiss Economics Minister and India's Commerce and Industry Minister signed a Memorandum of Understanding (MoU) on August 07, 2007 aiming at protecting IPRs. The MoU establishes a working group to prevent the production, distribution and sale of counterfeit products and envisages an exchange of information and experiences between delegations as well as the possibility of involving representatives from trade and industry on a case-by-case basis.

## **WTO on Counterfeiting**

The World Trade Organisation (WTO) Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement incorporates provisions intended to address the problem of counterfeit goods in international trade. The preamble of the TRIPs Agreement indicates that members recognise the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods. In fact, Article 51, footnote 14 of TRIPs, defines the term counterfeit trademark goods as any goods, including packaging, bearing without authorisation a trademark which is identical to the trademark validly registered in respect of such goods or which cannot be distinguished in its essential aspects from such a trademark and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation.

### Box 1: Efforts to Expand the Scope of Definition – A Threat to Fair Trade

The International Medical Products Anti-counterfeiting Taskforce (IMPACT), instigated by the World Health Organisation (WHO), had recently suggested the revision of the already established WHO definition of counterfeit medicine. The established definition is – “*a medicine, which is deliberately and fraudulently mislabelled with respect to identity and/or source. Counterfeiting can apply to both branded and generic products and counterfeit products may include products with the correct ingredients or with the wrong ingredients, without active ingredients, with insufficient active ingredients or with fake packaging*”. The IMPACT wanted to change this definition and swap the clause ‘deliberately and fraudulently’ with ‘a medical product is counterfeit when there is a false representation in relation to its identity, history, or source’. It also says that ‘this applies to the product, its container, packaging or other labelling information.’ Accordingly, the proposed new definition would apply to both branded and generic products. This was hence strongly opposed by few countries including India, since by this new definition legitimate generic medicines would easily become targets in the enforcement of counterfeit goods. Moreover, this new definition, if read with the EC Regulation 1383/03 that allows seizure of counterfeit products even during transit, could mean a serious threat to India’s exports of generic pharmaceutical products.

Already, EC customs officials have many times seized shipments of medicines while in transit to developing countries on grounds of alleged IP violations in transit countries. For instance, the Dutch government, pursuant to the EC Council Regulation No 1383/2003, in 2008, seized 17 times medicines bound for countries like Brazil, Peru, Colombia, Ecuador, Mexico, Portugal, Spain and Nigeria. Most of these medicines originated from India. This repeated seizure by the EU is considered by many as an attempt to confuse legitimate generic medicines with counterfeit fakes.

However international apprehensions about counterfeiting existed even prior to the TRIPs Agreement. A proposal on trade in counterfeit goods was submitted for the first time during the Tokyo Round in 1978. This initiative was taken primarily due to the wide distribution of counterfeiting trademarked goods in the international market, with no or hardly any means available in the international regime at that time to curb this menace. This 1978 proposal on the regulation on anti-counterfeiting measures was put forth by the US and the European Commission (EC) supported by Japan and Canada seeking some legal remedy in an international forum for anti-counterfeiting measures. Nevertheless, this effort failed to reach an agreement among then contracting parties of General Agreement on Tariffs & Trade (GATT).

Later, it was only in the year 1986, through Uruguay Round negotiations, a mandate was called for the development of a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods. Thus, the TRIPs Agreement was negotiated as part of the Uruguay Round. The provisions therein are significant to creators and inventors, since it lawfully obligates a WTO Member to accommodate procedures sanctioning effective action against IPR infringement through speedy and deterrent remedies.

#### Going TRIPs Plus Way

Addressing issues surrounding counterfeit goods in the international arenas is very important and any rules, laws

or actions taken in this regard are to be highly appreciated. But, care should be taken to make sure that such rules and actions are developed in a transparent and democratic manner, ensuring both the rich and poor countries active participation. In the recent years, developed countries, mainly EU and US, are seriously discussing various measures to tackle IP crimes that are mostly TRIPs-Plus and are even forcing the developing countries to take on such additional obligations through various multilateral and bilateral negotiations. In addition, they are highlighting their TRIPs-Plus agenda through international organisations and summits such as the Universal Postal Union (UPU), the WHO and the G8.

For instance, the IMPACT is a new TRIPs-Plus initiative undertaken by the WHO. It faced strong criticism from developing countries during the 61<sup>st</sup> World Health Assembly in 2008 and one of their primary concerns, among many, was the IMPACT’s definition of ‘counterfeiting’ and WHO’s ignoring of its previous initiative, i.e. ‘Guidelines for the Development of Measures to Combat Counterfeit Medicines’ without any explanation.

These efforts for the enhancement of IP enforcement standards are a matter of grave concern for the developing countries. Recent developments<sup>2</sup> are a clear example to highlight the fact that TRIPs-Plus enforcement standards adversely impact not only legitimate trade between nations but also the life of millions of people, especially in developing countries, thus denying their right to development.

## Box 2: US-China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights (WT/DS362)

The US initiated this WTO dispute in April 2007, after bilateral discussions with China failed to resolve the US concerns. Hence, as a first step, the US requested consultations with China concerning certain measures pertaining to the protection and enforcement of intellectual property rights in China.

The four matters on which the US requests consultations are:

1. the thresholds that must be met in order for certain acts of trademark counterfeiting and copyright piracy to be subject to criminal procedures and penalties;
2. goods that infringe intellectual property rights that are confiscated by Chinese customs authorities, in particular the disposal of such goods following removal of their infringing features;
3. the scope of coverage of criminal procedures and penalties for unauthorised reproduction or unauthorised distribution of copyrighted works; and
4. the denial of copyright and related rights protection and enforcement to creative works of authorship, sound recordings and performances that have not been authorised for publication or distribution within China.

The US claims that in relation to the four above-mentioned matters, possible inconsistencies with the TRIPs Agreement arise. Later, as the consultations failed to resolve the dispute, a panel was established to examine the matter in September 2007. In this dispute, the US sought to eliminate three significant structural barriers in China's IPR enforcement laws. First, the Chinese Copyright Law does not protect copyrighted works that do not meet China's "content review" standards. This blanket denial of protection deprives certain copyright owners of vital enforcement tools to prevent unauthorised copies from being produced in China and distributed there or exported to other markets. The Panel found that this denial of protection is impermissible under Article 9.1 of the TRIPs Agreement, which incorporates Article 5(1) of the Berne Convention for the Protection of Literary and Artistic Works, and specifies that copyright protection, including guaranteed exclusive rights, must be afforded to works that are entitled to such protection. The Panel also found that this denial of protection is incompatible with Article 41.1 of the TRIPs Agreement, which requires enforcement procedures to be available to permit effective action against infringement of these copyrighted works.

Second, China's rules for disposing of IPR-infringing goods seized at the border provide for counterfeit goods to normally be auctioned, subject only to the condition that the infringing trademark be removed. Returning these goods to the marketplace with only the infringing mark removed, however, could confuse consumers and harm the reputation of the legitimate product, facilitating, rather than deterring, further acts of infringement involving these goods. The Panel agreed with the US that China's disposal rules are inconsistent with Articles 46 and 59 of the TRIPs Agreement, which do not permit trademark-infringing imports seized at the border to be released into the channels of commerce, subject only to removal of the infringing trademark.

Third, China's laws provide for criminal prosecution of counterfeiting and piracy only when the trademark counterfeiting or copyright piracy exceeds specified legal thresholds (expressed in terms of the volume or value of infringing goods, e.g., 500 copies of a pirated DVD or approximately US\$7,000 worth of counterfeit goods). Article 61 of the TRIPs Agreement requires criminal penalties and procedures to be available for all "commercial scale" copyright piracy and trademark counterfeiting. The US pointed out that this provision means China has an obligation to establish standards for prosecution and conviction that capture all commercial-scale activity and it cannot create thresholds so high as to be divorced from market realities. The US also argued that China's specific thresholds fall short of these standards.

The Panel largely accepted the US arguments concerning the appropriate construction of Article 61 of the TRIPs Agreement concerning criminal enforcement obligations. It agreed with the US that the term "commercial scale" in that provision means that China cannot set its thresholds for prosecution of piracy and counterfeiting so high as to ignore the realities of the commercial marketplace. However, the Panel found that it would need additional evidence to apply Article 61, thus construed to China's existing thresholds and find them wanting.

Importantly, the Panel clarified that whether acts of counterfeiting or piracy are "on a commercial scale" depends on factors such as the product at issue, whether it is a designer watch, DVD, or a software title and the particular market in which it is sold. The Panel also made it clear that determining what constitutes "commercial scale" must take into account the impact of technological developments, such as the Internet and the evolution of marketing practices that can enable pirates and counterfeiters to flourish with lower costs and in more pervasive ways.

Source: United States Wins WTO Dispute Over Deficiencies in China's Intellectual Property Rights Laws, USTR Press Release, January 2009. Accessible at <[www.ustr.gov/about-us/press-office/press-releases/2009/january/united-states-wins-wto-dispute-over-deficiencies-c](http://www.ustr.gov/about-us/press-office/press-releases/2009/january/united-states-wins-wto-dispute-over-deficiencies-c)>

## Law and Enforcement in India

Like in many other developed countries, India does not have a separate legislation to address counterfeiting. However, there are statutory remedies, both civil and criminal, embodied in various legislations, including the Trademarks Act of 1999, the Copyright Act, 1957, the Patents Act 1970, the Designs Act 2000, the Geographical Indications of Goods (Registration and Protection) Act 1999 and the Customs Act 1962. The Customs Act lays down provision to protect intellectual property rights against cross-border movement of counterfeit goods. Moreover, recently, the country has notified the IPR (Imported Goods) Enforcement Rules 2007, aiming at strengthening the legal framework related to IP and Customs laws. It complies with the border control measures, as required by WTO Agreement on TRIPs.

Also, the country has signed Customs Mutual Assistance Agreement with most of its major trade partners, including the European Union, Israel, Russia, UK, Hong Kong, Maldives, Uzbekistan, Iran, Egypt, US, China, South Asian Association for Regional Cooperation (SAARC) countries, South Korea, Australia and Brazil. The agreement lays down formal guidelines and allows officials to share intelligence and investigative data relating to IP violations.

Additionally, during recent times, the Indian judiciary has taken a more serious approach to counterfeiting, due to a greater understanding of IP issues. The courts are imposing responsibility on custom officials to prevent, control and prohibit the import of such goods which violate the proprietary concern of the person having a registered trademark.

In *Adobe Systems, Inc & Anr vs Mahindra Saxena & Anr*<sup>3</sup>, the Delhi High Court has ordered the defendants to pay Indian Rs 1 million as compensation to the software majors, Microsoft Corporation and Adobe System, for counterfeiting their licensed products. The court further held that counterfeiting causes financial damages not only to the plaintiffs (Microsoft and Adobe) but also amounts to deception to the public at large. At the same time, the government is losing high revenue because of such illegal activities, as the counterfeiters do not maintain any account books nor pay any taxes. The court further added that, in case damages are not granted in counterfeiting cases, they will be encouraged.

In *CISCO Technologies vs Shrikanth*<sup>4</sup>, the Delhi High Court held that the statutory authorities should prohibit import of products that would result in or abet the violation of a trademark owner's proprietary interest. The court also highlighted the need to fight counterfeiting at the borders, by preventing the importation of infringing goods into India, and issued a related direction to the Collector of Customs regarding Cisco products.

Dealing with the issue of parallel import in the case of *Samsung Electronics Company Ltd vs Choudhary*<sup>5</sup>, the Delhi High Court restrained the defendants from importing or exporting or dealing in grey market of plaintiff's products under the trademark Samsung. The court noted that under the Trademarks Act, a proprietor may bring an action for infringement against an importer where genuine goods have been materially altered, without the proprietor's consent, after being placed on the market.

In another landmark case, the Delhi High Court, in the *Time Warner Inc. vs Lokesh Srivastava & Another*<sup>6</sup>, awarded punitive and exemplary damages, in addition to compensatory damages for flagrant infringement of trademarks and copyrights. This stringent action was taken by the court to highlight the fact that the breach of IPRs was a wrong done not only to the plaintiff but also to the society at large and the consumers who suffer on account of that deception.

### Box 3: Some Controversial Legislations

#### *Kenya's Anti-counterfeiting Law*

Kenya passed a controversial legislation, "The Anti-Counterfeit Act", in December 2008. Even before it is enforced, many, including India drug manufacturers, are pressurising for amendments that would reduce the Bill's broad scope and expansive definition of counterfeit goods.

The legislation defines counterfeiting as a number of actions taken "without the authority of the owner of any intellectual property right subsisting in Kenya or elsewhere", thus potentially bringing within its scope generic copies of medicines still under patent anywhere in the world, even when the patent is not in force in either Kenya or the country where it was manufactured. Those opposing it fear that the law could be replicated elsewhere in Africa, with devastating consequences for the generic drug producers.

#### *East African Community and Uganda Considering Anti-counterfeit Goods Bills*

Both Uganda and the East African Community (EAC) are in the process of drafting Counterfeit Goods Bill that aims to curb trade in counterfeit goods that infringe IPR. The Bills prohibit the release of counterfeit goods into the market and address offences relating to trade in counterfeit goods. However, both the Bills have come under criticism since it is believed that, when implemented, these legislations will distort trade within and outside the regions, as it would prohibit the use or importation of generic products.

The Drugs and Cosmetics Act was amended by the government in 2008 to enhance the penalties for those trafficking in spurious drugs. But this amendment is certainly creating a cause of concern for many since now a legitimately authorised generic drug could be interpreted as a spurious drug as per the new vague definition of the term 'spurious'.

This concern even turned out to be true in the recent *Bayer-Cipla drug patent linkage case*<sup>7</sup>, wherein Bayer sought to block a generic version of its Nexavar cancer drug, developed in India by Cipla as Soranib, on the grounds that it was a spurious drug according to the terms of the Drugs and Cosmetics Act. However, to everyone's relief, the Delhi High Court dismissed this complaint, saying that Bayer's argument would render all generic drugs spurious under the Act. Hence, there is now an urgent need for clarity on the definition else multinational pharmaceutical companies would most likely use this as a way to block generic companies from manufacturing generic drugs and soon the country might witness like cases on similar grounds.

Besides, given that the Indian government along with other developing countries are strongly objecting against any move at the international level to broaden the definition of the word counterfeiting to incorporate legitimate generics, the government, at first, need to take initiative to redefine the word 'spurious' under the Act and ensure that the term is simply restricted to substandard drugs.

## Conclusions

There is no simple solution or remedy that can be functionalised to get rid of counterfeiting, since the menace has reached global dimension and hence it certainly needs a global approach. However, international organisations, such as WIPO and WHO, while discussing such controversial IP enforcement activities, should ensure that development is not compromised. For this, such platforms for discussion should be made more transparent, with equal participation from different economies, since any form of IPR violation does not affect the rich nations alone – it is a global threat.

Likewise, while the developed countries are showing more interest in enforcing TRIPs-Plus stringent standards to counter menace like counterfeiting, piracy, patent infringement, etc., issues like bio-piracy, traditional knowledge and protection of expressions of folklore that are quite important for developing nations are least addressed. The developing nations should strongly put forth such important areas to be addressed at the international level.

When it comes to addressing counterfeiting, Ernst & Young, in a study, had identified two market participants who play a key role in promoting piracy and counterfeiting. These are consumers and the counterfeiters. Hence, any efforts taken to address this menace need to be focused on raising awareness and enforcement, with a continuing need for capacity and skill building within the enforcement machinery. Also, a better awareness on the socio-economic consequences of counterfeiting among all stakeholders is vital to put forth this issue more seriously on the political agenda.

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## References

- The Economic Impact of Counterfeiting and Piracy: Executive summary, OECD, Paris 2007. Accessible at <[www.oecd.org/dataoecd/13/12/38707619.pdf](http://www.oecd.org/dataoecd/13/12/38707619.pdf)>
- Derek Bosworth, Deli Yang, Conceptual Issues of Global Counterfeiting on Products and Services, *Journal of Intellectual Property Rights*, Vol. 11, January 2006, pp. 15-21.
- G. Srinivasan, Campaign against Counterfeit Goods, *The Hindu - Business Line*, Saturday, October 27, 2007.
- Draft speaking points of the WTO Deputy Director General, Third Global Congress on Combating Counterfeiting and Piracy, Geneva, 30-31 January 2007. Accessible at <[www.OMPI.ch/export/sites/www/enforcement/en/global\\_congress/docs/rufus\\_yerxa.doc](http://www.OMPI.ch/export/sites/www/enforcement/en/global_congress/docs/rufus_yerxa.doc)>
- Adolf Huala, Trade-related Aspects of Intellectual Property Rights and Developing Countries, *The Developing Economies*, 39-1 (March 2001), pp. 49-84.
- Dr. Duncan Matthews, The Fight against Counterfeiting and Piracy in the Bilateral Trade Agreements of the EU, Briefing Paper, European Communities, 2008. Accessible at <[www.europarl.europa.eu/activities/committees/studies/download.do?file=21459](http://www.europarl.europa.eu/activities/committees/studies/download.do?file=21459)>
- Pravin Anand, Anti-counterfeiting 2009 – A Global Guide – India, 2009, pp. 99-102.
- The First Global Congress on Combating Counterfeiting – Outcome statement, Global Congress Final Doc., 2004. Accessible at <[www.ccapcongress.net/archives/Brussels/Files/osfinal.pdf](http://www.ccapcongress.net/archives/Brussels/Files/osfinal.pdf)>
- Luis Vayas Valdivieso, Need to Guard against TRIPs-Plus Enforcement Agenda, South Centre, 2009. Accessible at <[www.southcentre.org/index.php?option=com\\_content&task=view&id=1077&Itemid=279](http://www.southcentre.org/index.php?option=com_content&task=view&id=1077&Itemid=279)>

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## Endnotes

1. Counterfeit brands a bargain or a bust? Financial Express, September 15, 2009.
2. In 2008 alone, 17 drug consignments were seized in transit at Europe, using the EU Regulation on IP Enforcement, which allows seizure of goods in transit. These consignments were being exported from developing countries (such as India and Brazil) to other developing countries, and the contents of the consignments are perfectly legal in both the exporting as well as the importing nations. These highly questionable seizures resulted in the crisis of health programmes, as it resulted in delays and prohibitive costs of access to life-saving medicines in developing countries of Africa and Latin America.
3. CS (OS) No.782/2002.
4. 2005 (31) PTC 538 (Del.)
5. 2006 (33) PTC 425 (Del.).
6. 2005 (30) PTC 3 (Del.).
7. Bayer Corporation & others Vs Union of India (UOI) & others, WP(C) No.7833/2008

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*This Briefing Paper is written by Simi T B, Assistant Policy Analyst & Researcher (International Trade Law), CUTS Centre for International Trade, Economics & Environment. The author would like to thank Atul Kaushik, Director, CUTS Geneva Resource Centre and Shannad Basheer, Ministry of HRD Professor in IP Law, National University of Juridical Sciences (NUS), Kolkata for their valuable comments on the paper.*

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