



# Invisible enemy

The role of illicit trade in compounding the already serious problem of unemployment was highlighted by a recent FICCI conclave

INDIA is at war with an invisible enemy. This adversary in none other than smuggling and counterfeiting, which are together termed as illicit trade. Illicit trade is the world's largest growing industry and its size is estimated to range between \$650 billion and \$3 trillion according to multiple studies. This evil business represents 10 per cent of global trade and has been termed as the crime of the 21<sup>st</sup> century by the Federal Bureau of Investigation (FBI). Anticipating the threat posed by illicit trade to the government, industry and citizens, the Federation of Indian Chambers of Commerce and Industry took the initiative to dedicate a forum by establishing the Committee Against Smuggling and Counterfeiting Activities Destroying Economy (CASCADE) on the January 18, 2011.

In the Indian context, a report by FICCI CASCADE last year estimated the loss to seven industry sectors at ₹1,05,000 crore, increasing 44 per cent between 2011-12 and 2013-14. The total loss to the government on account of this illicit trade was ₹39,000 crore in 2014 and from these sectors the maximum revenue loss to the exchequer on account of illicit trade is attributed to tobacco products at ₹9,000 crore, mobile phones at ₹6,700 crore and alco-

holic beverages at ₹6,300 crore.

FICCI CASCADE is also at the forefront of generating awareness on the hazardous impact of smuggled, contraband and counterfeit products amongst the consumers and citizens, capacity building of law enforcement agencies, research and proposing law reforms, systematic dissemination of enforcement techniques, procedure and strategy through regular workshops for the guidance of its members, sharing the best practices followed globally for combating illicit trade and provide knowledge and support to the industry members.

FICCI CASCADE has a formidable think tank which includes prominent personalities like Najib Shah, Former Chairman, Central Board of Indirect Taxes and Customs, Sanjiv Tripathi, Former Chief, Research and Analysis wing (RAW), Hem Kumar Pande, Former Secretary, Ministry of Consumer Affairs, Ajay Shankar, Former Secretary, Department of Industrial Policy and Promotion, Justice Manmohan Sarin, Former Chief Justice, High Court of Delhi and J&K, Neeraj Kumar, Former Commissioner, Delhi Police, P K Malhotra, Former Secretary, Ministry of Law and Justice, Anil Sinha, Former Director, Central Bureau of Investigation, Narendra

Sabharwal, Former Deputy Director General, WIPO, Vikram Srivastava, Former Director General, Central Reserve Police Force (CRPF) and Kameshwari Subramanian, Former Chief Commissioner of Central Excise, Customs and Service Tax, Bengaluru Zone. Under the able guidance of this think tank, FICCI CASCADE has over the years, achieved multiple milestones and created an environment that addresses the various facets of the rather complex subject of illicit trade.

Over the past five years, FICCI CASCADE has upped the ante and joined hands with several institutions of international repute such as WIPO, UNODC, Interpol, OECD, WCO, UKIPO, USPTO, US Department of Homeland Security, JETRO, Australian Border Protection to fight and heighten response on the impact of illicit trade. This led to the emergence of Movement Against Smuggled and Counterfeit Trade (MASCRADE). Since 2013, FICCI CASCADE has been organising international conferences to generate awareness, find tangible solutions and chalk out a sustainable road map to thwart the evil impact of illicit trade. The following are the International conferences that have been held over the past five years:

1) 'Trade in Counterfeit, Pirated



and Smuggled Goods- A Threat to India's National Security and Economy' (September 2013)

- 2) 'Illicit Trade- Threat to National Security and Economy' (January 2016)
- 3) 'Illicit Cross Border Trade in Goods- Impact on Economy and Consumers'(December 2016)
- 4) 'Protect Your Brand Globally- Fight Counterfeiting, Smuggling and Piracy' (October 2017)

In 2018, the theme of the conference was 'Ensuring Brand Security for Sustained Businesses and Employment Generation'. This two-day event was held on November 1-2, and witnessed wide-ranging participation from policymakers and stakeholders. Issues ranging from funding of terrorism by illicit trade, loss to the exchequer, flagging morale of genuine industry to increasing threat on the safety of consumers were discussed threadbare.

In-addition, this year, an important point was brought in, where the role of illicit trade in compounding the already

serious problem of unemployment was highlighted. It is my firm view that not only has smuggling and counterfeiting taken away jobs from the local habitants but have also made a significant addition to the 19 million unemployed people India is likely to have by the end of 2019. Local craftsmen have been gradually rendered unemployed as smuggled goods from neighbouring countries through the Indian markets. With eight sessions in all, MASCRADE 2018 delved in each and every aspect pertaining to smuggling and counterfeiting.

The following were the topics and recommendations of the sessions:

#### **Inaugural Session**

This looked at the overall picture and highlighted the need for a collective effort to address the problem. The loss of employment because of this scourge was clearly spelt out and the role of constant technological innovation as a powerful deterrent was underscored.

#### **Unleashing the Power of a Global Multilateral Response to Curb Illicit Trade**

The need to share best practices between different countries was important, the fact that unscrupulous elements often exploit the gap between governance and technology to violate international agreements should be reduced, there was also a strong view that better intelligence methods need to be developed through the training of more specialised enforcement units equipped with state-of-the-art technology. In addition, it was felt that there was an urgent need for integrated actions at the international level in identifying, investigating and prosecuting people involved in illicit trade.

#### **Connecting the Dots: Holistic and Sustainable Approaches to Brand Protection**

It was felt that mere protection of IPRs by the industry is not sufficient, there is a need for the industry to police their products, pursue counterfeiters and

illegal trade operators and periodically monitor the sale of goods both by the retailers and online sellers. The industry needs to stay ahead of the curve and innovate at regular intervals and there is a requirement for an integrated supply chain management system. Since, illicit trade is a huge problem in rural, tier 2 and tier 3 cities, there is a need for awareness programmes at the local level.

### Leveraging Intellectual Property Rights for Economic Growth and Business Competitiveness

The need for a voluntary mechanism where the Internet Service Provider (ISP), advertising agencies or even the aggregators and search engines come together and decide on a mechanism to take down infringing websites could be an effective tool in dealing with this problem. The DIPP, Ministry of IT and Telecom could hold regular consultative programmes with the stakeholders as far as laws and procedures were concerned.

### Opening Session

Safety and security of a brand requires a 3P strategy— Prevention, Participation and Punitive along with a 3C approach where the right holders need to Cooperate, Collaborate and Coordinate. It was also recommended that some money from the CSR and government consumer fund could be allocated for effective enforcement of economic offences.

### Senior Leadership Discussion: Where We Are and What Needs To Be Done

It was felt that the next frontier of transparency and measurement is mobile applications and as illicit markets have grown significantly, there are more



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and more technological barriers in transparency and measurement. It was recommended that the industry needs to plan a method to start measuring and changing this space. The industry also needed to segment themselves by focusing and speaking to the right set of authorities for specific problems and appraising state-level officials and checking implementation requirement, strengthening of the KYC process for on-boarding any seller on ecommerce platform was critical. It was recommended that IP infringement be made a non-bailable offence.

### Fight Against Organized Crime in Illicit and Counterfeit Trade: Perspectives from Law Enforcement Agencies

To address the issue of organised crime

a high level national security strategy should be developed along with a National Intelligence Fusion Centre which would include representatives from the police, customs, law enforcement, intelligence units. It was also felt that offences related to counterfeiting and smuggling be considered a national crime.

### Role of the Judiciary

The judiciary indeed has a proactive role to play in this matter, however, issues such as lack of sensitivity as far as violation of IP laws and acts, low priority for IP related crimes, incomplete understanding of the existing law exist, these are over and above the already serious matter of pendency, therefore, mechanisms such as Alternate Dispute Resolution (ADR), civil liabilities and/or plea bargaining could be incorporated. It was also recommended that judicial officials should be exposed to IP laws/amendments in the beginning of their career along with refresher courses.

With such wide ranging recommendations, I have no doubt in my mind that in the times ahead, we will be able to make steady and meaningful headway in understanding, engaging and blunting the impact of illicit trade on the financial, industrial and societal health of our country. It is imperative that we remain focused and assiduously devise strategies that keep us ahead of those indulging in illicit trade. While a lot has been done by the government, industry and citizens at large, implementation of out-of-the-box initiatives is the need of the hour. **g**

*The writer is Sr. Vice President- Corporate Affairs, ITC Ltd and Chairman, FICCI CASCADE. The views expressed here are personal.*