

Learning from the World: Experience and Cooperation

Amongst Nations needed to combat Illicit Trade

The sobering fact that India does not rank high in the Global Illicit Trade Environment Index (GITEI), an annual study brought out by *the Economist Intelligence Unit*, and needs to take corrective action to bring down the risks of illicit trade raises troubling concerns for the policy makers. According to the Index based on four parameters, Government Policy, Supply and Demand, Customs Environment, and Transparency and Trade, India ranks 49 globally, and 9, in the Asia-Pacific - rankings which we can most certainly improve.

In the context of the growing menace of illicit trade worldwide—the World Economic Forum (WEF) estimates the global market of illicit trade to be about \$ 3 trillion by 2022. Here, the 6th edition of MASCRAGE, the acronym for the movement against smuggled and counterfeit trade, conducted under the aegis of FICCI's Committee Against Smuggling and Counterfeiting Activities Destroying the Economy (CASCADE) recently holds particular relevance. It has been pointed out by the WEF, that while everybody does express concern, the response to this problem has been disorganized and leaves a lot to be desired.

The continued success of the conference - MASCRAGE is testimony, both of the extent of the problem, and the contribution which this conference makes to policy makers and stakeholders engaged in combating this menace. The presence of two Union Ministers of State, *the Hon Minister of State, Ministry of Finance Shri Anurag Thakur, and the Hon'ble Minister of State, Ministry of Home Affairs, Shri Nityanand Rai*, both of whose departments are concerned with the problem, along with *Shri Pranab Kumar Das, Chairman of the CBIC*, another key organization engaged in the fight against smuggling and counterfeiting, is indicative of the resolve of the government to effectively address this complex adversary, and find implementable solutions to blunt the impact of illicit trade.

The need of the hour today then, as brought out at MASCRAGE, is to proactively and conscientiously address the many issues exacerbating the state of the global problem of illicit trade and understand its visible outcomes and measurable impacts. There is also an immediate need for harnessing the potential of multilateralism through intergovernmental actions and of an effective monitoring and inspection of Free Trade Zones (FTZs) to ensure legitimate trade flows so that FTZs do not become 'hotspots' for illicit trade and organized crime.

Countering the beast of illicit trade not only requires an understanding of, and co-operation between institutions globally, but also the designing of effective global strategies and improving the regulatory framework. Unfortunately, no country can claim to have eliminated the problem—everybody has had varying degrees of success and all countries have paid a price. Trade in smuggling, contraband, counterfeit and pirated goods has risen steadily in the last few years and now stands at 3.3 percent of global trade. Hence, its existence and operation are broad in scope and large in value, impacting not only the global economy, causing losses to industry, government and society but are also adversely affecting the health and safety of the consumers, and is additionally facilitating an underground economy and organized crime. Tragically, illicit operators display greater cooperation between each other across countries than what governmental institutions do, both

within a country and across borders. In order to understand the global dimensions of the illicit trade challenge so that a possible framework may be setup to tackle it, a few international experiences, all tabled at MASCRAGE may be reviewed.

According to *Mr. Tim Sheppard*, Counsellor (Australian Border Force), Australian High Commission, who spoke of Australia's approach to tackle the problem of tobacco smuggling and emphasized that if the risks are minimized upfront there will be less work for law enforcement officer to do. According to him, high tax rates on tobacco have actually incentivized tobacco smuggling. On a moderate investment, importing a container of illicit cigarette could provide a 5,000 percent return on investment without the same kind of fines or penal provision such as in narcotics. The Australian Government was cognizant of the problem and consequently increased the fines and prison terms for tobacco smuggling to 10 years of imprisonment and penalty to the tune of five times of duty avoided. Also, the close cooperation between the Australian Border Force and Department of Home Affairs, the Australian Criminal Intelligence Commission (ACIC), the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Commonwealth Director of Public Prosecutions (CDPP) and the Australian Taxation Office (ATO) - has led to good results—more than 600 tonnes of illicit tobacco estimated to about AUD 600 million in evaded duty having been seized in last one year alone.

Talking about the Italian experience, *Col. t. ISSMI Vincenzo Tuzi*, Guardia di Finanza Attaché, Embassy of Italy, said that the number of unusual products that had been seized in recent times indicated the presence of large criminal organizations who kept a tab on markets and economics before starting producing market-specific counterfeit goods. To tackle such a scenario, Tuzi emphasized the need for every country to have the same penalties for certain kinds of fraud. This would facilitate cooperation in investigation. Italy, he mentioned has an anti-counterfeiting MIS in place which at an operational level allowed IPR holders to work actively with the law enforcement by sharing information about their products that could be a target for fraud. The system provides reports for the IPR holders on fraud and other information useful for the protection of their rights This database also provides useful feedback through data and risk analysis for various statistical purposes and has proven to be a starting point for further investigation projects on a tactical and strategic level.

According to *Mr. Huw Watkins*, Head of Asia Policy, Intellectual Property Office, UK and *Mr. Julian Saldanha*, First Secretary, HM Revenue and Customs, British High Commission, 2.5 % of exports worldwide were counterfeit goods as were 6.5% items used in IT and communication, that 4-5% of goods imported in UK were and that India ranked 6th in the world in counterfeit production. In this background, they felt that enforcement agencies need to look at the entire chain in the life cycle of counterfeit goods—from the placing of orders, to manufacturing, to shipping, to importation, to retail sale to wholesales, and reworking and transportation. This needs to be followed by an identification of areas in the chain where disruption of the illegal activity could be done. As per Watkins, while Free Trade Zones have been beneficial for trade, they have also been very vulnerable for criminals to exploit. In this regard he emphasised that the UK IPO worked closely with Universities as knowledge and resource centres and that he would be interested in working closely with the Indian authorities on similar lines. On the issue of addressing online counterfeits, it was shared that UK would be signing an MOU with trading platforms in China/South East Asia to counter this growing problem.

Ms. Shilpi Jha, Senior Legal Counsel for Intellectual Property-South Asia, Embassy of the United States of America outlined some of the challenges that the US PTO faces while dealing with the SAARC countries and with India. Key amongst these were a *Lack of awareness* which was prevalent right from amongst consumers up to the government on not just IPR issues but also on industry and government initiatives in this area; a *Lack of coordination* among agencies especially given India's federal polity; *Fear of losing /lack of trust* as industries always fear that sharing too much of data with custom/police will cause information to leak out; and counter-wise the enforcement machinery feels that by doing too much work on behalf of the industry, the latter's responsibility will diminish.

To summarize, the chief takeaways on stemming and addressing the challenges of illicit trade are very instructive for India in its fight against this debilitating malaise. The Australian experience in tackling tobacco smuggling could be useful for India, as it is facing a similar challenge today. The possibility of developing an anti-counterfeiting information system in India on the lines of the Italian experience could be definitely explored. The strategy of examining each link in the counterfeit chain and tackling the weaker link to disrupt the chain, an approach adopted by the UKIPO could also be usefully examined by the Indian authorities. These authorities could also examine the role of SEZ's and find out whether there exist similar instances of such misuse. India could also consider MOU's with online trading platforms to sensitize them to the possibility of their being misused for the sale of counterfeit goods. The Indian authorities could relook at the present efforts at publicizing the ill-effects of buying smuggled and counterfeit goods and develop a more robust publicity strategy to this effect. Finally, issues such as a lack of trust, lack of cooperation amongst agencies, and lack of appreciation of the nefarious impact of counterfeiting are common to India. An institutional mechanism to address these challenges could also be explored.

In conclusion, I must admit that after hearing the initiatives adopted, I am confident that if we develop greater communication flow between nations, and between various enforcement agencies in our country, modify the many best practices according to the needs and situations prevalent in our country, and equip our enforcement agencies with the latest technological tools that keeps them ahead of the curve, then we will be able to weaken this adversary which has been damaging the economies and societies and compromising the safety and security of nations the world over.

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