



SUMMARY OF RECOMMENDED POLICIES AND ACTION POINTS FROM THE REGIONAL ANTI-ILLICIT TRADE CONFERENCE

HELD ON 15th -16th SEPTEMBER 2016 AT INTERCONTINENTAL HOTEL NAIROBI, KENYA

As part of the implementation of the EABC 2016 work plan, EABC conducted a Public-Private Dialogue (PPD) titled the Regional Anti- Illicit Trade Conference whose objective was to provide an opportunity to discuss major forms of Illicit trade in East Africa including counterfeiting, substandard goods, smuggling, Infringement on IPR among other areas. Being a public-private dialogue, there was clear participation of the Revenue Authorities, Bureaus of standards, ministries responsible for trade, the Judiciary, the Police, the various agencies responsible for fighting Illicit trade among others. There was a lot of discussion around surveillance and enforcement, the policy and legal frameworks as well as dealing with the entry points for these goods.

Some of the key issues which were discussed and meeting came up with agreed recommendations include: Expediting the finalization and enactment of the EAC anti-counterfeit law in order to establish a regional framework to fight counterfeits, Partner States without a regulatory framework to address illicit trade to expedite completion of on-going discussions on draft policies/legislations. To deter engagement in illicit trade and repeat offending, various forms of illicit trade, especially counterfeiting and smuggling should be elevated to same level as other serious criminal cases such as drug-trafficking or money laundering. In regard to parallel importation, the EAC region should look at the existing laws with a view to ensuring they strike the right balance between genuine competition and curbing fraud and smuggling. Several sector specific recommendations were made for Pharmaceuticals products, petroleum products, electronic and electrical products, tobacco among other products.

The matrix of key recommendations from the meeting is attached below as annex 1.

ISSUE OF DISCUSSION	RECOMMENDATIONS	ACTION POINTS	RESPONSIBLE PERSON/TIME FRAME
	<p>EAC Partner States should expedite the finalisation and enactment of the EAC Anti-Counterfeit Law in order to establish a regional framework to fight counterfeits.</p> <p>Once done, there should be framework through which the Community collaborates to combat illicit trade issues, similar to the EAC Standards Committee.</p>	<p>Continuous advocacy by private sector at the regional and national level</p>	<p>EAC Secretariat, EAC Partner States.</p> <p>By June 2017</p>
On Policy and Legislation	<p>Partner States without a regulatory framework to address illicit trade should complete on- going discussions on draft policies/legislations.</p>	<p>On- going advocacy by the private sector</p>	<p>By December 2017</p>
	<p>EAC should harmonise IPR laws across EAC Partner States to enable mutual recognition of IPR registered in any of the EAC Partner States. Rather, the EAC to be recognized as one IP territory for purposes of enforcement.</p>	<p>Private sector to carry out a study to establish the various IPR regimes across the EAC Partner States - KAM already undertaking this study. EABC will work with KAM to take it forward.</p> <p>EAC Partner States to support in the study once they are involved by the Consultant working under KAM in order to realize a comprehensive study for the good of the entire region.</p>	<p>EABC/KAM, by March 2017</p> <p>EAC Partner States & IPR Agencies</p>
	<p>To ensure coherence in addressing illicit trade issues, structured inter, intra and cross border collaboration, coordination and cooperation should be fostered among institutions combating illicit trade, including Revenue Authorities, IPR agencies, Anti-Counterfeit Agencies, Police,</p>	<p>Each Partner State to form interagency committees in order jointly to address issues of illicit trade including joint planning and execution of sensitization programs</p>	<p>EAC Partner States and regulatory agencies.</p>

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	Bureaux of Standards, Judiciary, sector regulatory authorities and the private sector.	to enforcement officers and the general public.	
	To deter engagement in illicit trade and repeat offending, various forms of illicit trade, especially counterfeiting and smuggling should be elevated to same level as other serious criminal cases such as drug-trafficking or money laundering.	Concerted effort by both private and public sector to have in place more punitive /deterrent legislations across EAC Partner States	EAC Partner States and the Judiciary
	<p>Laws on seizures and raids should be designed to operate without the need of court orders and should allow holding of illicit products for the period sufficient to make the case against the culprit. This should be extended to websites that advertise counterfeit goods.</p> <p>To protect genuine traders, law authorities should be held accountable for all losses incurred in cases where they raid / seize legitimate goods.</p>	EAC Partner States should review their relevant laws	EAC Partner States and regulatory agencies
	The law should be designed to provide for the destruction of illicit goods once seized	EAC Partner States should review their relevant laws. They should also advocate for prosecutor-guided investigations so as to have tamper-proof cases at the courts. The courts should also ensure that they provide guidance on the ultimate destruction of such goods in order to have a logical conclusion of any matter.	EAC Partner States and regulatory agencies

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	<p>In regard to parallel importation, the EAC region should look at the existing laws with a view to ensuring they strike the right balance between genuine competition and curbing fraud and smuggling.</p>	<p>EABC to establish the relevant laws in each Partner State in regard to parallel importation and coordinate the private sector to develop a position on best practice / application and then advocate for it.</p>	
	<p>Sector specific:</p> <ul style="list-style-type: none"> - To curb counterfeits in pharmaceutical products, there should be no more than two designated points of entry in each of the EAC Partner States, which are manned by the relevant regulatory authorities. - For the oil lubricants market, standards to differentiate between virgin and recycled lubricants should be tightened / made where not existing. In addition, all lubricant imports into the region should undergo PVOC. - EAC should harmonize regulation on submission of data/statistics to match imports and sales for each entity and also harmonise border controls e.g. no trucks should be allowed to cross to Kenya or to Tanzania if the tankers are not licensed by the regulators in either Country or taxes have not been remitted as required by either Country. 	<p>Enforcement institutions to work closely with the private sector in order to successfully enforce against violation of the law.</p> <p>EABC to advocate for the harmonization of regulations related to border controls in order to curb illicit trade.</p>	<p>EAC Partner States</p>
	<p>There should be continuous capacity building, in terms of training and increased manpower to strengthen the ability of the judiciary to handle</p>	<p>Private sector in each Partner States to have continuous engagement and sensitization to Judicial officers on</p>	<p>EABC and Apex bodies as well as the Judiciary.</p>

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Judiciary	illicit trade cases.	matters of illicit trade	
	EAC Partner States should harmonise consequence management, both fines and jail terms, to curtail relocation of the vice to the more lenient States.	EABC to collect information on consequence management regimes in each 5 EAC Partner States; coordinate the private sector to develop a position, and host a PPD to advocate forward the position.	
To enhance Enforcement and Surveillance	To address the problem of porous borders that enable proliferation of illicit goods, enforcement in EAC Partner States should individually and jointly undertake frequent border patrols and checks and raids in the markets.	Advocate for intra and interagency collaborations within the enforcement across the EAC region	EAC Partner States and regulatory agencies in particular the Revenue authorities and the police
	Sector regulatory authorities should carry out enforcement of standards that are relevant to their industries – e.g. – engineers’ registration boards in respect to combating illicit trade in electrical items.	The private sector to lobby for more enforcement through sector driven regulatory authorities.	EAC Partner States and regulatory agencies in particular the Revenue authorities and the police
	Institutions at points of entry should be empowered / capacitated with available modern technology to enable detection of counterfeits, smuggled products and other forms of illicit trade. Furthermore, enforcement institutions should be capacity build, including on areas like drafting charges.	Both the public and private sector to work together in order to create and enhance the necessary capacities that will enhance detection of illicit goods	EAC Partner States and regulatory agencies in particular the Revenue authorities and the police

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	To enhance enforcement at the regional level, an EAC Supervisory Unit that provides the framework under which to co-ordinate the operations of national enforcement institutions regionally should be established.	I believe the EAC Counterfeits Bill provides for this....	EAC Partner States and regulatory agencies in particular the Revenue authorities and the police
	To combat illicit trade at the source, EAC governments should initiate strategic discussions with countries which manufacture and export counterfeit/pirated products into the region, with a view to restricting entry of these goods.	<p>The private sector to advocate for the Government to have bilateral agreements with sourcing country not to produce counterfeit products.</p> <p>The private sector to advocate to bureau of standards to ensure that PVoC programme is checking on counterfeit products from source country. Such measures will include IPR owners sharing vital intelligence information with the PVoC agents in order to curb entry or importation of such products from source</p>	EAC Partner States and regulatory agencies in particular the Revenue authorities and the police
	EAC Partner States should increase the number of enforcement personnel where there is shortage to support surveillance and enforcement efforts.	The private sector to lobby individual government for an increase in government budget to identified enforcement agencies in order to increase their human capacity.	Enforcement agencies

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Increasing sensitization and awareness	To address the challenge of ignorance and poor public awareness about illicit goods, IPR owners, in collaboration with enforcement agencies and consumer agencies should develop systematic, co-ordinated and effective consumer awareness programmes both at national and regional to create a strong public opinion against the use/consumption of counterfeit/pirated products	<p>IPR owners to take forward, involving private sector Associations and the public sector.</p> <p>Consumer bodies should be supported to have coordinated campaigns against illicit forms of trade.</p>	EAC Partner States EABC Apex bodies Consumer bodies
	To enhance information exchange, sharing of best practices and to forge synergies, information and intelligence on initiatives to combat illicit trade should be shared across regional bodies.	Enhance intra and interagency collaborations	Agencies
	To address low awareness by judiciary and enforcement agencies on illicit trade matters, there should be coordinated sensitisation programmes targeting both parties.	The private sector to take the lead in creating awareness to enforcement agencies and the judicial officers on matters of illicit trade	Judiciary & Private Sector
Role of Private Sector	To counter the many uncontrolled and informal distribution systems in the region, brand owners are encouraged to formalise distribution systems through use of appointed / authorised dealer arrangements, accompanied with publicity to inform consumers.	Ensure that all the private sector players are compliance to the laid down regulations	EABC and apex bodies
	To understand the scope of illicit trade, factors contributing to it and needed action, private sector should, at sector level both at national and regional level, collate the needed data and identify clear sector recommendations and action plans to address the forms of illicit trade affecting them.	EABC and National Associations to convene the sector level meetings; sectors to share data and the relevant BMOs to use the findings generated to develop positions.	Private Sector led by the EABC.

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		<p>Enforcement agencies to regularly share data on successful seizures of illicit goods and their value with their private sector partners</p>	
	<p>To enhance mutual recognition of IPR and also protection across the region, brand owners should register their IP across the region until a system for regional registration is established.</p>	<p>EABC and the National Associations to support brand owners by providing information /contacts on how to register their IP in other EAC P/States</p> <p>IPR agencies to increase awareness creation</p>	<p>Private Sector and IPR agencies</p>
	<p>To enhance awareness of IPR across the region, the private sector should create a database of IP registered in each of the EAC Partner States, which should be regularly updated.</p>	<p>EABC to spearhead the publication of IP registered across the region –can include page on its website,</p>	<p>EABC and the Private Sector</p>
	<p>Private sector should engage more with the judiciary especially to share ideas on how best the latter can support the fight against illicit trade.</p>	<p>A national interagency committee to be established by each Partner State that involves all players across the entire justice chain, from investigations, prosecutions and sentencing.</p>	<p>Judiciary and Private Sector</p>
	<p>Private sector to pile pressure for the establishment of the special court....</p>	<p>Private sector to advocate for the establishment of special courts at national level that will be dealing with illicit trade matters</p>	<p>Private Sector</p>

Other Sector based recommendations, submitted by the energy and petroleum sector

- Review the downwards value addition (say 20%) on locally manufactured lubricants to encourage free movement of locally manufactured lubricants to create economies of scale that will encourage backward integration. It will be easier to control quality of locally manufactured goods and we shall create thousands of jobs.
- Adulteration can be eliminated by dis-incentivizing via harmonization of taxes on IK to the same level as AGO and PMS. Kenya tax difference is high with IK attracting only Ksh 8.17 while AGO and PMS attract Ksh 29.35 and Ksh 38.92 respectively. The low tax IK does not in any way benefit the low income earners who should be using it as a household energy but rather the unscrupulous business people who use it to adulterate the higher taxed fuels. This results to tax evasion and damage to machinery and the environment.
- LPG is smuggled through EAC countries by road and this smuggled LPG is used to illegally fill legitimate brand owners cylinders. Specifications of the smuggled LPG are doubtful especially with respect to the presence of mecaptan which is not met hence putting consumer at risk as they cannot detect leaks. Legitimate LPG cylinder owners do not get a return on their investments hence they lose confidence and therefore they are not able to inject sufficient number of cylinders in the market which is critical for LPG penetration. Some of the LPG that is illegally stored and illegally filled is imported legitimately but is under declared at the ports of entry. So it would be good for the EAC to harmonize regulation on submission of data/statistics to match imports and sales for each entity. It would be worthwhile to also harmonize border controls-no trucks should be allowed to cross to Kenya or to Tanzania if the tankers are not licensed by the regulators in either Country or taxes have not been remitted as required by either Country etc