



Illicit trade: Fueling terror financing and organised crime

October 2017

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Foreword – FICCI

Illegal trade in smuggled, counterfeited and pirated goods dampens the economy in multidimensional ways. It destabilises the legal industry, restrains innovation and investments, reduces government revenues and hampers the health and safety of consumers. Moreover, globally it fuels transnational crime, corruption, and terrorism. As it converges with other criminal activities it undermines the rule of law and the legitimate market economy, creating greater insecurity and instability around the world.

The Government of India at all levels has introduced laws that are not only compliant with our international obligations but are in many ways progressive. However, due to the complexity and alarming growth of the illicit trade, more inter-governmental efforts and public-private alliances are needed to identify approaches leading to the development of a holistic strategy. Reviewing of current regulations related to smuggling, counterfeiting and piracy; using of latest technology to aid security forces and enforcement agencies; raising the penalties for those committing this crime; allocating more financial and human resources to counter this activity, and running awareness campaigns are some areas where adequate thrust can be given.

This report on **Illicit Trade: Fueling terror financing and organised crime** is a product of a FICCI initiative, namely the Committee Against Smuggling and Counterfeiting Activities Destroying the Economy [CASCADE]. The report helps improve our understanding of the nexus between terror financing, organised crime and illicit trade.

We hope that this report would contribute to the debate on the subject and spur the stakeholders to find ways and means to mitigate the challenge.

I wish FICCI-CASCADE success in its future initiatives.



Dr. Sanjaya Baru
Secretary General
FICCI

Message from Chairman - FICCI CASCADE

It has now been established beyond doubt that illicit trade is the fuel that energises the terror machine. Today, the world's largest and most notorious terrorist organisations are relying on the proceeds from illicit trade to give shape to their evil designs. Illicit trade is damaging national progress by impacting its financial, social and physical health.

It is in this backdrop that we had arrived at the conclusion, that there is an urgent need for a comprehensive study and thus FICCI CASCADE approached KPMG in India to evaluate in a detailed manner these complex issues and their impact. KPMG has now prepared a detailed report titled- Illicit trade: Fuelling terror financing and organised crime. It is a compilation of facts and figures, best practices, case studies and initiatives at the national and international level to understand terrorism and organised crime, its finance mechanisms and chart a framework for preventing the financing of terrorism.

It is my firm view that in order to conquer this menace, all stakeholders will have to collectively put their might behind the cause. This will enable us to reach our desired goal of defeating the evil intentions of the terrorists and those indulging in organised crime.

I am confident that you will find this a useful read and I look forward to your valuable inputs so that we can further improve upon our strategies to deal with this growing menace.



Anil Rajput

Chairman
FICCI CASCADE

Foreword – KPMG in India

Growth of illicit trade has been one of the major challenges and concerns for the governments and industry stakeholders across the globe. With rapid technology evolution, illicit trade and organised crime have found a refined and vogueish nexus causing the problem to increase manifolds. Further, the advent of sophisticated technologies such as bitcoins, dark net, e-markets, e-commerce websites, money making in illicit trade has become a walkover, thereby increasingly posing security threat and danger to nations worldwide.

To this end, for dealing with the national threat of terrorism, as a nation, we need strong and sustainable policy system to deal with the constant danger of criminal activities and human life loss. Over the last few decades, governments have formulated strong policies and taken tough stances on terrorist bodies with strong support from industry where the organisations have established benchmarks to reduce the growing problem of illicit trade, a prime source of terrorism funding.

In this knowledge paper, '**Illicit Trade: Fueling terror financing and organised crime**', KPMG in India has discussed the linkages between illicit trade, terrorism and organised crime. We hope you find the knowledge paper useful to understand the fine network of organised crime, terrorism and illicit trade.

We would like to express our gratitude towards FICCI CASCADE for providing us with an opportunity to provide our viewpoints on a topic of national importance at the conference 'MASGRADE 2017- Protect your brand globally: Fight Counterfeiting, Smuggling and Piracy' organised in New Delhi on 12 and 13 October, 2017.



Mohit Bahl
Partner and Head
Forensic Services
KPMG in India



Ritesh Tiwari
Partner
Forensic Services
KPMG in India

“We are living in an era where parallel economy fuelling through illicit trade such as counterfeiting and smuggling is stifling the sustainable growth of developing nations like India. It is absolutely necessary for the policy makers and industry to tackle this issue by taking on the bull by its horns.”

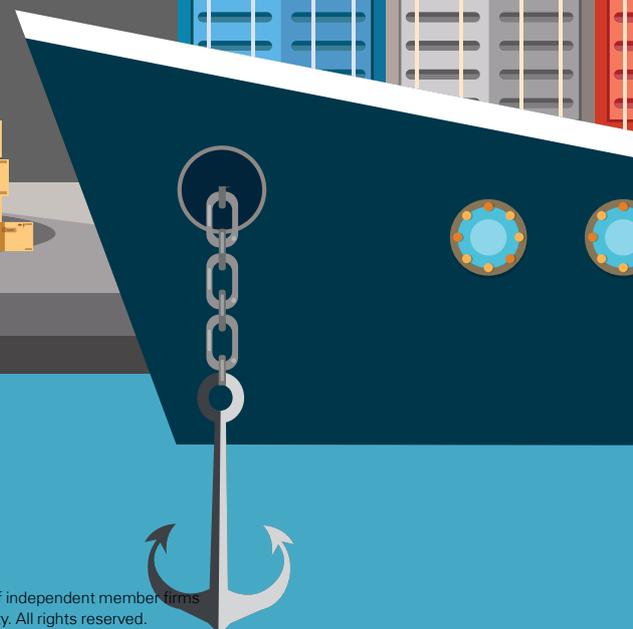
- Mohit Bahl

Partner and Head
Forensic Services, KPMG in India

“Illicit trade and organised crime function hand-in-hand, with illicit trade being one of the most preferred means of criminal financing. These are issues which cannot be tackled in isolation. The industry should support to further government’s focus on breaking the backbone of financing of criminal activities– the industry could play a pivotal role in minimising the leakages in the supply chain”

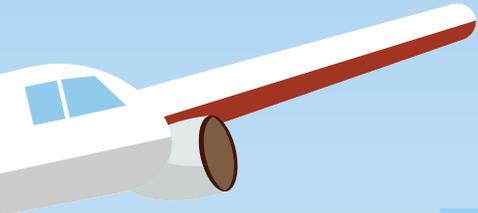
- Ritesh Tiwari

Partner,
Forensic Services, KPMG in India



“The nefarious link between illicit trade and terrorism has been established beyond doubt. It is high time that all stakeholders join hands to defeat the evil designs of anti-national forces, failing which a huge price will have to be paid.”

- Anil Rajput
Chairman
FICCI CASCADE



Executive summary

Terrorism is a global problem that affects almost every country of the world, consequences of which are felt by the industry, government and the civilians alike. More than 55 per cent of all attacks in 2016 took place in Iraq, Afghanistan, Pakistan, India, and Nigeria. In order to fund and execute these attacks, terrorist organisations require financing for which they employ different financing mechanisms such as state-sponsored financing, charities and donations, kidnapping, extortion etc. It has been observed that illicit trade which includes smuggling, counterfeit and piracy is one of the most preferred mechanism used by these organisations to finance their operations. Many prominent terrorist organisations such as Hezbollah, Lashkar-e-Taiba, Al Qaida, Irish Republican Army, etc. rely on illicit trade for financing upto 20 per cent of the terror operations, recent example of which is Charlie Hebdo attacks.

Illicit trade is a problem that has high economic impact and is growing exponentially with time. In the report 'Trade in Counterfeit and Pirated Goods:

Mapping the Economic Impact' published by Organisation for Economic Co-operation and Development (OECD) and European Union Intellectual Property Office (EUIPO) in April 2016, it is estimated that the total economic and social costs globally due to counterfeiting and piracy worldwide stood at USD737 to USD898 billion in 2013 and is expected to rise to USD1.54 to USD1.87 trillion by 2022, suggesting an approximate increase of 108 per cent. Apart from this, the total employment losses globally due to counterfeit and piracy stood at 2 to 2.6 million jobs in 2013 and is expected to rise to 4.2 to 5.4 million jobs in 2022, suggesting an approximate increase of 110 per cent.

Smuggling in India takes place in various forms- mis-declaration, undervaluation, misuse of end use and other means. The seizure value for mis-declaration of goods stood at INR1,187 crore in 2016, while that of undervaluation of goods stood at INR254 crore. The seizure value from misuse of end use was at INR2,780 crore, seeing a rise from INR953 crore in 2015, suggesting an increase of 190 per cent in 2016 from the



previous year. The most commonly counterfeited and smuggled goods are tobacco, cigarettes, electronic items, gold, machinery and parts, alcoholic beverages, auto components, Fast Moving Consumer Goods (FMCG) and mobile phones. As per KPMG in India's analysis on UN COMTRADE data for years 2012-2016, average smuggling in electronics for these years is estimated to be INR 3,429.69 crore. Similarly, average smuggling in gold for these years is estimated to be INR 3,119.56 crore and for machinery and parts is estimated to be INR 5,913 crore. The percentage penetration of illicit trade in the cigarettes market increased from 15 per cent to

21 per cent over the years 2010-2015. Whereas, the number of smokers in India over years increased, the sales volume of cigarettes went down, thereby suggesting an increase in the penetration of illicit trade in the industry.

There are certain factors that drive the growth of illicit trade in the industry. Higher taxation rates, availability of cheaper alternative, lack of awareness and lack of enforcement mechanisms are key factors that encourage the consumers to opt for counterfeited, smuggled or pirated good without realising the after effects of promoting the illicit trade.

Recommendations:





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1

Introduction

1.1. Terrorism and organised crime

The United Nations (UN) panel in the year 2005 defined terrorism as an act intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organisation to do or abstain from doing any act.¹

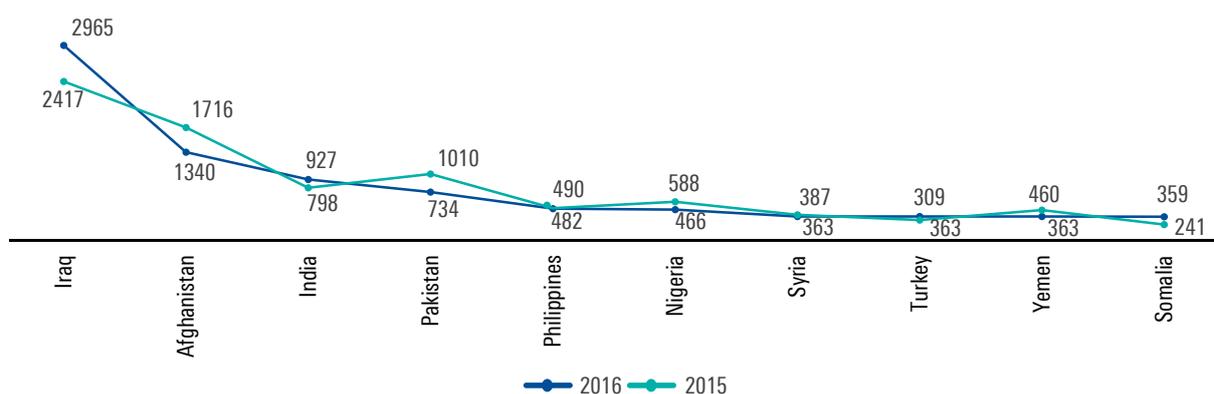
However, despite recognition of terrorism menace at a global level, the definition of terrorism could not be officially arrived at, due to the fact that a terrorism in one country can be viewed as an act of freedom movement in another country.

As per the most recent data available through the global report on terrorism by US Homeland Security,² India is the third most affected country by terrorist activities in 2016, with the first and second positions occupied by Iraq and Afghanistan respectively. India's

neighbour, Pakistan, however slipped down by a position from 2015 to occupy fourth position in the 2016 report.

A number of nations such as Afghanistan, Pakistan, Nigeria and Yemen on the other hand witnessed lesser number of terrorist activities in 2016, compared to 2015. Further, Iraq, Afghanistan, Pakistan, India and Nigeria accounted for nearly half the global terrorist attacks in 2015.³

Figure 1: Ten countries globally with the most number of terrorist activities



Source: National Consortium for the Study of Terrorism and Responses to Terrorism, U.S. Department of State

- As shown in figure 1, the number of terrorist activities in India increased to a total of 927 in 2016 from 798 in 2015, showing an alarming increase of approximately 16 per cent
- Nearly 75 per cent of all deaths in 2016 due to terrorist attacks took place in five countries (Iraq, Afghanistan, Nigeria, Syria, and Pakistan)
- More than 55 per cent of all attacks in 2016 took place in five countries (Iraq, Afghanistan, Pakistan, India, and Nigeria).

1. Combatting Terrorism, Eighth report of second Administrative Reforms Commission, June 2008

2. Global Report on Terrorism 2016, Department of US Homeland Security, July 2017

3. National Consortium for the Study of Terrorism and Responses to Terrorism, US Department of State, Accessed on 1 September, 2017

1.2. Illicit trade

Smuggling, counterfeiting and piracy are currently affecting multi-billion dollar industries, such as tobacco, alcoholic beverages, computer hardware, auto components, FMCG, packaged food items and mobile phones, pervasive across countries. The losses caused due to smuggling, counterfeiting and piracy are not restricted to economic costs, but expand their scope to social costs as well such as increased crime rate in the society.

International Chamber of Commerce (ICC) identifies counterfeit and piracy as a form of theft, where the theft is associated with illegal acquisition and use of intellectual property (IP). Thus, the economic and social costs associated with counterfeiting and piracy is similar to those with other forms of theft.⁴

Organisation for Economic Co-operation and Development (OECD) estimates that the total

economic and social costs due to counterfeiting and piracy stood at USD737-898 billion in 2013 and is expected to rise to USD1.54-1.87 trillion by 2022.

Further, total estimated tax loss due to counterfeit and piracy was roughly calculated to be USD96-130 billion in 2013 and is expected to rise to USD197-270 billion in 2022.

Smuggling has been a point of concern for Indian administration for past many decades, with narcotic drugs, gold and tobacco accounting for the major smuggled goods. As per the Directorate of Revenue Intelligence (DRI), the value of seizures for gold and cigarettes in the year 2016-17 stood at INR435 crore and INR78 crore respectively and the seizure value for narcotic drugs in 2016-17 stood at INR4885 crore, thus suggesting the large magnitude of smuggling industry in India.⁵

The OECD/European Union Intellectual Property Office (EUIPO) estimates that international **trade in counterfeit and pirated products** accounted for as much as 2.5 per cent of the value of international trade, or **USD461 billion, in 2013**



Major components of illicit trade include tobacco, auto components, alcohol, computer hardware, fast-moving consumer goods (FMCG) and mobile phones⁶



1.3. Links between illicit trade, terrorism and organised crime

Union des Fabricants (UNIFAB), while linking illicit trade to organised crime suggests that counterfeiters are increasingly associating themselves with organised crime and terrorism, with terrorist organisations relying upon the illicit trade as one of the sources of funding.

As per the United Nations Commission on Crime Prevention and Criminal Justice (UNCCPCJ), counterfeiting is the second largest source of income for criminal activities such as terrorism, globally. Terrorist organisations are manufacturing counterfeit goods and smuggling them across borders to finance their crime operations.

A large number of terrorist organisations across the world rely on illicit trade such as smuggling and counterfeiting as their sources of financing. One such terror unit, Al-Qaeda, operating globally, has illicit trade of cigarettes and apparels as one of the financing source. Lashkar-e-Taiba and Irish Republican Army also draw their source of income from illicit trade of cigarettes among other goods. D-Company is identified as a terrorist organisation thriving on the black market of counterfeit goods in India. The transformation of D-Company into a terrorist entity is believed to coincide with its entry into trade of counterfeit goods, according to the observers.⁷

The first large-scale cigarette trafficking case tied to terrorism was prosecuted in North Carolina, US, in 2002. A federal jury in Charlotte convicted Mohamad Hammoud of violating a ban on providing material support to terrorist groups by channeling profits from a multi-million dollar cigarette-smuggling operation to Hezbollah



4. The Economic Impacts of Counterfeiting and Piracy, report prepared for BASCAP and INTA, International Chamber of Commerce, 2016

5. Value of Seizures 2016-17, Directorate of Revenue Intelligence

6. Socio Economic Impact of Counterfeiting, Smuggling and Tax Evasion in Seven Key Industry Sectors, FICCI, 2012

7. COUNTERFEITING & TERRORISM, Union des Fabricants, 2016

1.4. Changing nature of terrorism and organised crime

The evolution of terrorism in recent times is driven by the development of unique technologies that provides a platform to maneuver its operations. For example, Darknet, not accessible by normal search engines and requiring specific software to access, serves as being an illegal marketplace for counterfeited and smuggled goods. It also provides sellers and buyers the opportunity to remain anonymous, by facilitating the transactions through crypto currency such as bitcoins.

The transactions through bitcoins are completely anonymous and are also untraceable, thereby providing a convenient mechanism for transactions across regions and borders to fund terrorism and organised crime.⁸

Essentially, Darknet has become one of the major platforms for supporting illicit trade which eventually helps in generating easy financing for organised crime and terrorism.

Today, terrorists' profile has changed and almost each deviant individual can evolve from simple delinquency to terrorism. For isolated terrorists, counterfeit is the opportunity to finance themselves fast, while progressing unnoticed



As part of 75 international prosecutions specifically aimed at actions financing terrorism since 2001, it appears that the smuggling and counterfeiting of cigarettes account for over 20 per cent of criminal funding sources for terrorist organisations



1.5. Changing nature of illicit trade

Evolution of internet, and with it, e-commerce has defined new ways for illicit trade to prosper. E-commerce provides clear benefits to both consumers and businesses and is therefore, believed to be one of the easiest ways of trading in the modern world. However, e-commerce is increasingly becoming a major enabler for the distribution and sale of counterfeited and pirated tangible goods as it opens new possibilities to get access to such goods in areas that were traditionally beyond the reach of counterfeiters. In addition, counterfeiters are able to function across multiple jurisdictions, evading capture, and are also able to take down and set up

new websites overnight without losing their potential customer base.

With the development and penetration of e-commerce in traditional markets, the problem of counterfeiting is increasing multi-fold. The e-commerce industry is becoming structured and matured across the world, but the legal framework is far from being comprehensive, thus making online platform a breeding ground for illicit trade.⁹ Growth of technology and the increasing use of internet has also paved the way for piracy, providing a convenient platform to deal in pirated content through easily downloadable content, torrents and magnets.

Internet has become one of the distribution channels for counterfeit goods par excellence, because of its apparent anonymity, its ability to operate across different jurisdictions and its potential to resent sophisticated replicas in seemingly official online boutiques



Internet is full of websites failing to respect the protection of personal data. The purchase of counterfeit goods online may expose consumers to many damages such as spams, computer virus, and theft of personal and banking data



8. The Deep Web, darknets, Bitcoin and brand protection, by Akino Chikada, Markmonitor Inc, accessed on 14 August, 2017
9. China's e-commerce legislative and regulatory framework, China Briefing, Lu Yao, Zhang Shirley, Ku Eunice, 2013



Terrorism and organised crime

2.1. Terrorism

Global terrorism database defines terrorism as 'threatened or actual use of illegal force and violence by a non-state actor to attain a political, economic, religious, or social goal through fear, coercion, or intimidation'.¹

The following criteria should be satisfied for an activity to be classified as a terrorist action:

- It should be intentional in nature
- It should be perpetrated by sub-national actors
- It should entail violence or immediate threat of violence

Eighth report by the 2nd Administrative Reforms Commission² identifies the following forms of terrorism:



1. Global Terrorism Database, accessed on 3 August, 2017

2. National Consortium for the Study of Terrorism and Responses to Terrorism, US Department of State, accessed on 1 September, 2017

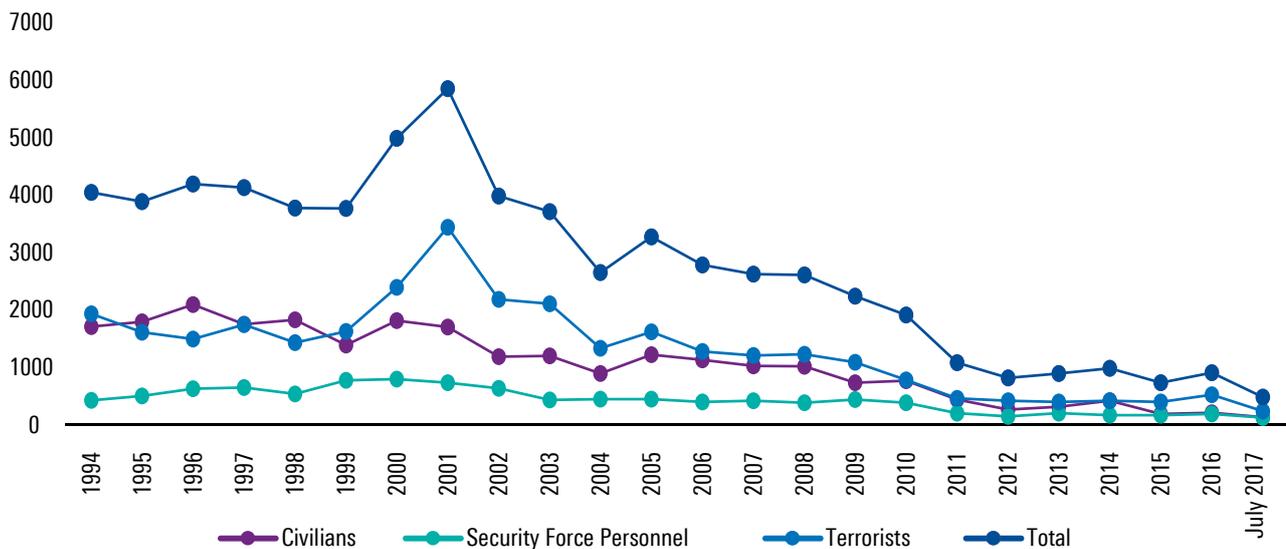
2.2. Overview of organisation of terrorism and organised crime

Eighth report by the 2nd Administrative Reforms Commission identifies the following means of terrorism:

- Environmental terrorism
- Weapons of mass destruction
- Chemical weapons
- Nuclear weapons
- Biological weapons
- Cyber terrorism
- Suicide terrorism

As per the insights from South Asia Terrorism Portal, the total annual fatalities in India have decreased to 898 in 2016 from 3,259 in 2005 due to terrorist activities. However, the annual fatalities in 2016 saw an increase of approximately 20 per cent, thus suggesting an increase in the number of both attacks and fatalities. Thereby it can be inferred that the annual fatalities in India due to terrorist attacks have increased over 20 per cent in 2016 from the year 2015, which is an alarming increase in the number of fatalities. Figure 3 shows the conflict map of India presenting the affected areas and the organisations affecting them. It can be interestingly noted that majority of the affected states share the international border or coastline from where smuggling can be facilitated.

Figure 2: Number of fatalities in India



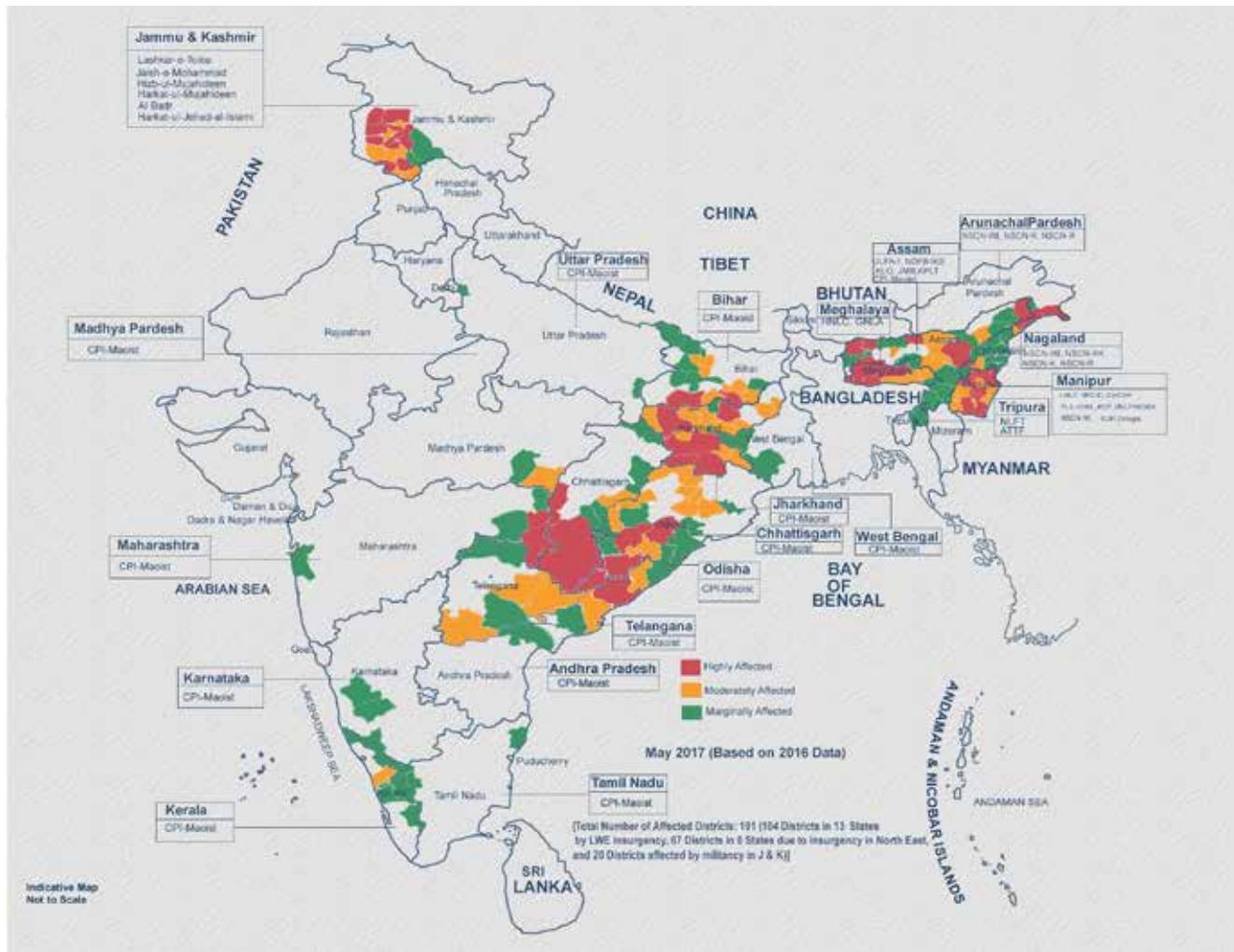
Source: South Asia Terrorism Portal, satp.org accessed on 11 August, 2017

While India ranked highly among countries that experienced the most terrorist attacks in 2016, the lethality of these attacks remained relatively low and declined by 31 per cent compared to 2014

More than half of the terrorist attacks in India in 2016 took place in four states:

Chhattisgarh	18%
Manipur	12%
Jammu and Kashmir	19%
Jharkhand	10%

Figure 3: India conflict map 2017



Source: South Asia Terrorism Portal, satp.org accessed on 11 August, 2017

2.3. Financing terrorism and organised crime

According to the U.S. Homeland Security Department, terrorist financing is the generation of funds via licit or illicit means that are then remitted to a terrorist organisation or its front organisation via formal or informal financial channels. These funds may be used either to run the costs of the organisation or to carry out attacks.

The costs associated with terrorist organisations can be categorised as direct and indirect costs.³

On 28 September 2001, the United Nations Security Council adopted Resolution 1373, which says that nation states should ‘prevent and suppress the financing of terrorist acts’



3. Combatting Terrorism, Eighth report of second Administrative Reforms Commission, June 2008

2.4. Source of financing of terrorism and organised crime

Financing of terrorist organisations can be classified as through legitimate and illegitimate means. The legitimate means include state-sponsored financing, charities and donations, front companies and legitimate businesses. The illegitimate means of financing include smuggling, sale of counterfeit goods, piracy and activities such as kidnapping and extortion.

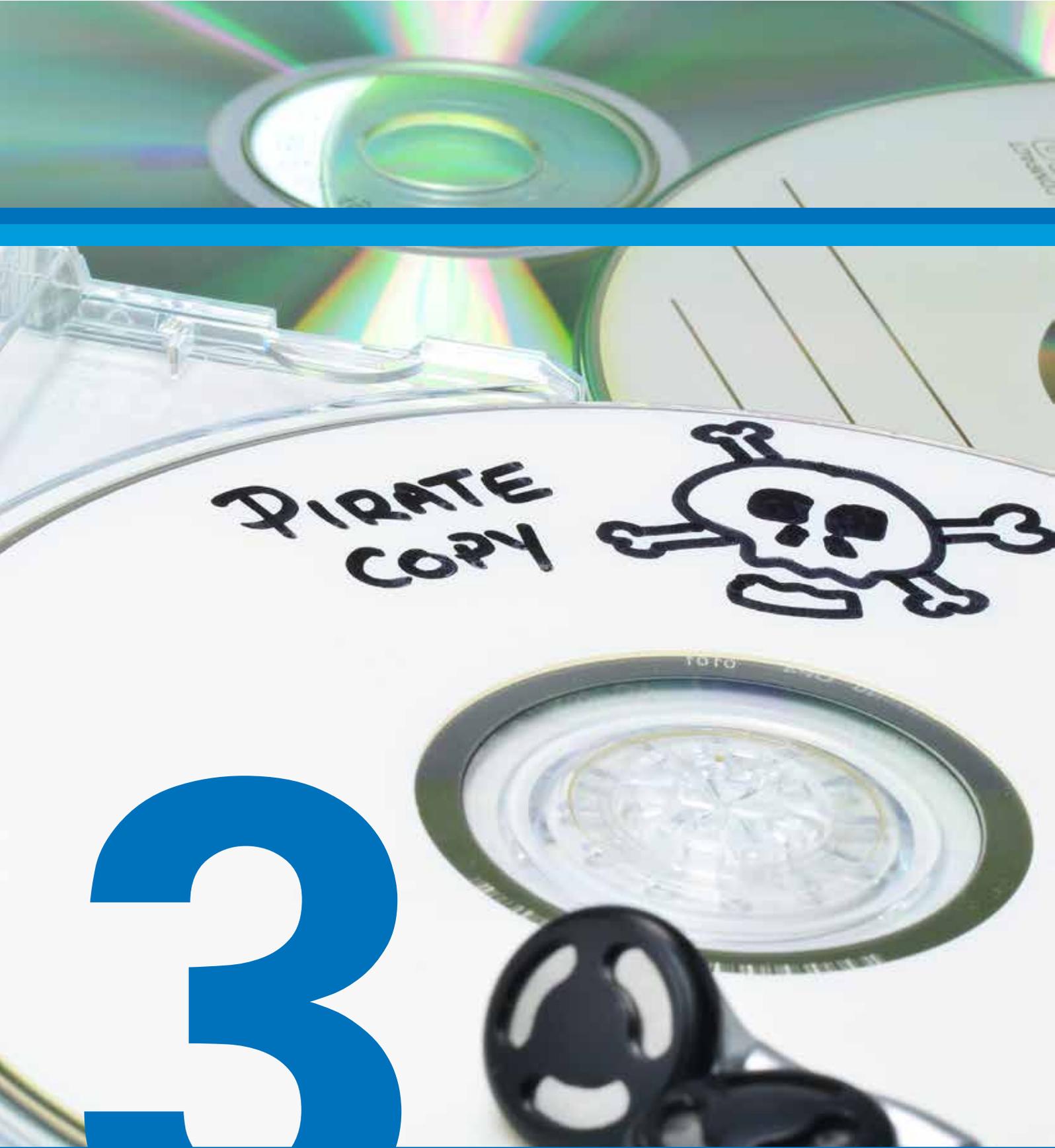
Ideological and religious terrorist groups seek finance for their activities by appealing to their ideological followers and raise most of their corpus through donations and charities.

These groups make fund transfers from one region to another either through proxy front-companies or through crypto-currency, thus making the monitoring of transfers difficult.

Smuggling, counterfeiting and piracy appeal to the terrorist organisations more than the other means of financing because of the low risks associated with it. The legal frameworks in most countries are not as stringent for IP theft compared to the theft of other goods or other illegal activities such as kidnapping and extortion.⁴



4. Tracking down terrorist financing, Council on Foreign Relations, www.cfr.org, accessed on 27 August, 2017



3

Illicit trade

3.1. Economic impact of smuggling, counterfeiting and piracy

Illicit trade is a widespread and ever growing problem with significant amount of trade taking place in various commodities. According to The Economic Impacts Of Counterfeiting And Piracy,¹ total value of counterfeit and pirated goods stood between USD923 billion and USD1.13 trillion in 2013 which is greater than the gross domestic product of 178 countries in the world. Out of this, approximately USD249 - USD456 billion is estimated to contribute to domestic production and consumption and USD461 billion towards international trade in counterfeit and pirated goods. Total value of counterfeit and pirated goods is estimated to rise further to USD1.90 trillion - USD2.81 trillion by 2022.²

The tax loss caused due to this is estimated to reach USD199 billion - USD270 billion in 2022 from the current USD96 billion – USD130 billion.³ The effects of this trade are not limited to mere tax loss to the governments. Counterfeiting and piracy will lead to an estimated net employment loss of 4.2 million - 5.4 million in 2022, compared to 2 million - 2.6 million in 2013.⁴

Piracy also plays a contributing factor to this total value with total digital piracy in movies, music and software standing at USD213 billion and is estimated to further grow to around USD384 billion - USD856 billion.⁵ Further breakup of piracy is given in the Table 1

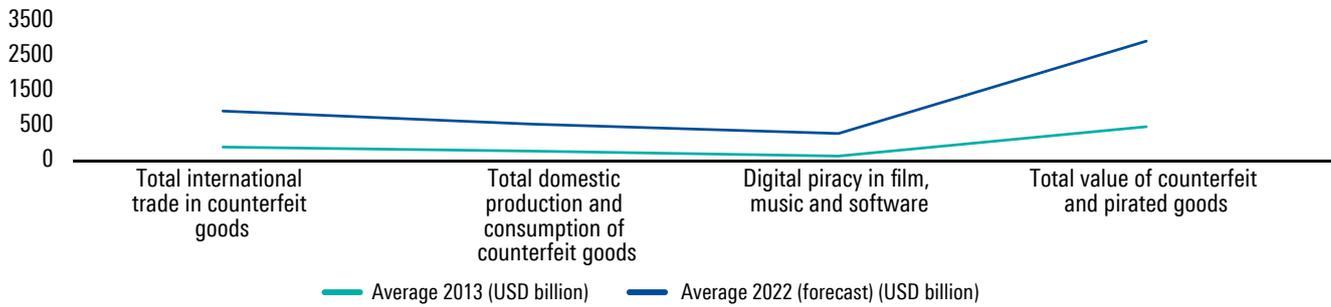
Table 1: Digital piracy in 2013 and forecast for 2022

Piracy	2013 (USD billion)	Estimate for 2022 (USD billion)
Digital piracy in film	160	289-644
Digital piracy in music	29	53-117
Digital piracy in software	24	42-95
Total	213	384-856

Source: The Economic Impacts of Counterfeiting and Piracy – Report prepared for BASCAP and INTA, International Chamber of Commerce, 2016

1. The Economic Impacts of Counterfeiting and Piracy, report prepared for BASCAP and INTA, International Chamber of Commerce, 2016
 2. The Economic Impacts of Counterfeiting and Piracy, report prepared for BASCAP and INTA, International Chamber of Commerce, 2016
 3. The Economic Impacts of Counterfeiting and Piracy, report prepared for BASCAP and INTA, International Chamber of Commerce, 2016
 4. The Economic Impacts of Counterfeiting and Piracy, report prepared for BASCAP and INTA, International Chamber of Commerce, 2016
 5. The Economic Impacts of Counterfeiting and Piracy, report prepared for BASCAP and INTA, International Chamber of Commerce, 2016

Figure 4: Value of trade in counterfeiting and piracy in 2013 and forecasted in 2022



Source: The Economic Impacts Of Counterfeiting And Piracy – Report prepared for BASCAP and INTA, International Chamber of Commerce, 2016

Total international trade in counterfeit and pirated goods stood at USD461 billion and is estimated to rise to USD991 billion by 2022

Total value of counterfeit and pirated goods stood at USD923 billion - USD1.13 trillion and is estimated to rise to USD1.90 trillion - USD2.81 trillion by 2022

Illicit trade is a problem that affects almost all major economies across the world.

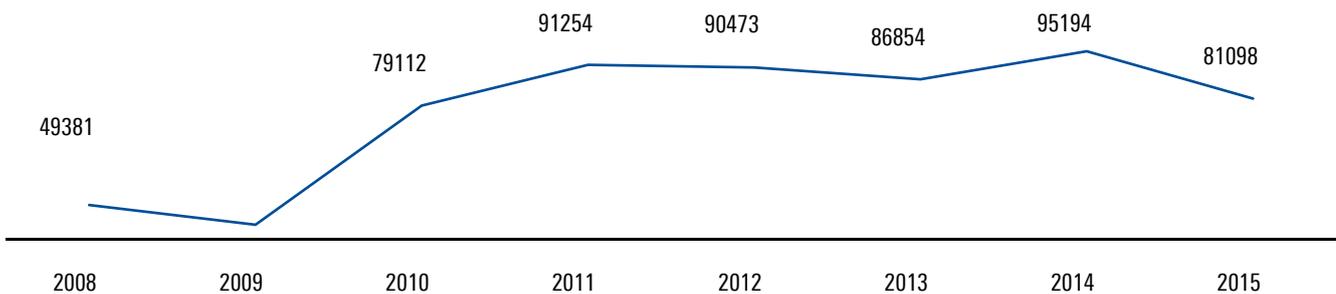
European Union saw 81,098 cases of IPR seizures in 2015 which was a reduced number from 95,194 in 2014⁶ (Figure 5). It is interesting to note that immediately after the Great Depression in 2010, the number of IPR seizures in European Union saw a massive rise of more than 80 per cent from 43,572 in year 2009 to 79,112 in year 2010 and more than 100 per cent to 91,254 in 2011. Similar trends can be noticed for the United States between the year 2009 and 2011 where the number of seizures rose from 14,841 in 2009 to 24,792 in 2011⁷ (Figure 6). While the

economy was recovering from the Great Depression, the number of IP seizures also saw a growth. The number of seizures reached their peak in 2014 with 95,194 seizures and United States witnessed the maximum number of seizures in 2016 with 31,560 seizures. Increased number of seizures can be attributed to two factors, first being the increase in the trade of counterfeited and pirated goods and second being the enforcement by the countries getting stricter. As the awareness regarding intellectual property is rising and the countries are taking it more seriously, the seizures are bound to increase but as the above reports suggested, the trade in such goods is also increasing manifold.

Total employment losses globally due to counterfeit and piracy stood at 2-2.6 million in 2013 and is expected to rise to 4.2-5.4 million in 2022

Total tax loss globally due to counterfeit and piracy was estimated to be USD96-130 billion in 2013 and is expected to rise to USD197-270 billion in 2022

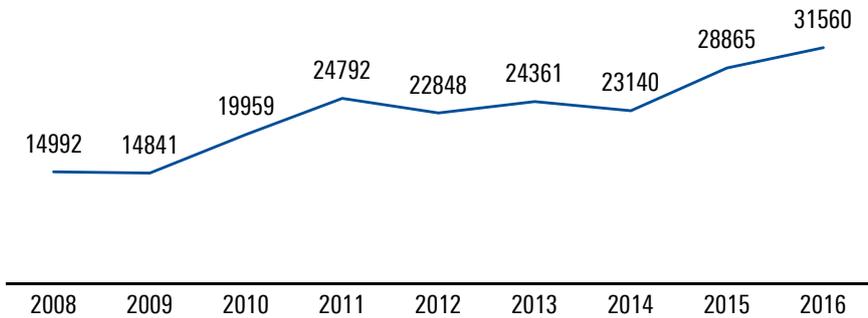
Figure 5: Number of cases in EU’s customs enforcement of IPR



Source: Report on EU customs enforcement of intellectual property rights, European Commission, 2015

6. Report on EU customs enforcement of intellectual property rights, European Commission, 2015
 7. IPR annual seizure statistics, U.S. Customs and Border Protection, 2008-2017

Figure 6: Number of IPR seizures in the U.S.



Source: IPR annual seizure statistics, U.S. Customs and Border Protection, 2008-2017

For U.S., in Fiscal Year (FY) 2016, the number of IPR seizures increased 9 per cent to 31,560 from 28,865 in FY 2015. The total estimated manufacturer's suggested retail price (MSRP) of the seized goods, had they been genuine, increased to USD1.38 billion from USD1.35 billion in FY2015. The source economies majorly include China and Hong Kong



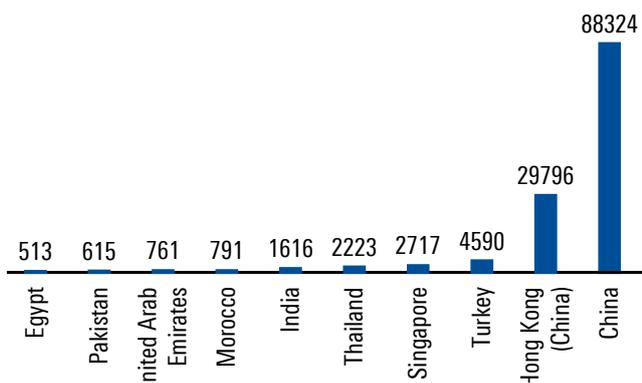
3.2. Counterfeiting

Figure 8 shows the countries whose right holders are most affected by counterfeit and piracy. According to a report by OECD and EUIPO,⁸ the right holders in United States are the major victims of counterfeit and piracy followed by Italy and France. It can be noted that

India is not among the top economies of origin of right holders whose IP rights are infringed.

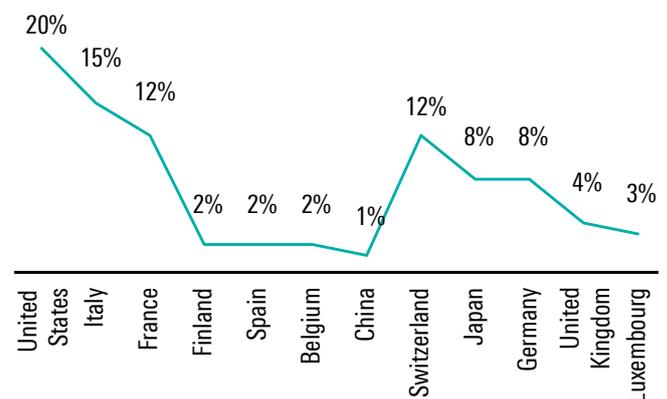
It can be noted that China and Hong Kong cumulatively provided for 89.5 per cent of seizures of counterfeit and pirated goods making China and Hong Kong as the largest provenance economies.

Figure 7: Top provenance economies for counterfeit and pirated goods in 2016



Source: Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, Organisation for Economic Co-operation and Development and European Union Intellectual Property Office, April 2016

Figure 8: Percentage share of various economies of origin of right holders whose IPR are infringed in global counterfeit seizures between 2011 and 2013⁸



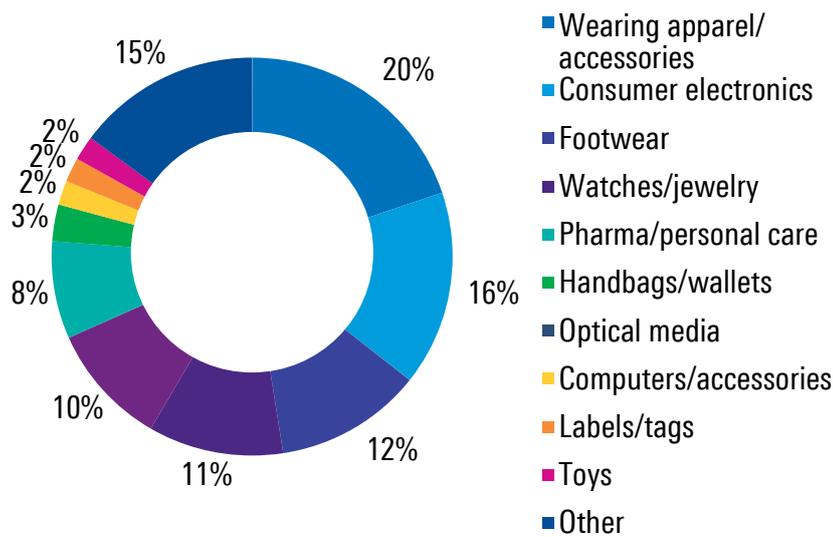
Source: Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, Organisation for Economic Co-operation and Development and European Union Intellectual Property Office, April 2016

8. Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, Organisation for Economic Co-operation and Development and European Union Intellectual Property Office, April 2016

If further details are explored regarding the components of counterfeit in the major economies, it is found that the apparels, consumer electronics and footwear

are the major commodities that are counterfeited in the United States as per the data from the U.S. Homeland Security⁹ (Figure 9).

Figure 9: Product wise IPR seizure statistics, the U.S. Homeland Security 2008-2017



Source: IPR annual seizure statistics, U.S. Customs and Border Protection, 2008-2017

Counterfeiting has far-reaching effects among revenue and employment loss. Counterfeits are made and sold keeping profit in mind. Quality is not a factor driving the production of counterfeits which may have lethal effects. According to a report¹⁰ published by INTERPOL in 2014, Saudi Arabia’s customs department claims that the reason of more than half of the accidents is the use of counterfeit automobile products. According to a report by ICC Counterfeit Intelligence Bureau¹¹, counterfeit cigarettes may contain up to five times more cadmium, six times more lead, 160 per cent more tar, 133 per cent more carbon monoxide with human feces, dead flies, mould and insect eggs.

Counterfeits are also prominent in pharmaceuticals leading to lethal effects. According to Transnational Crime¹², one million people are killed annually because of counterfeit pharmaceuticals.

Another facet of illicit trade is terror financing. Counterfeits have contributed to the major terrorist attacks in different parts of the world. According to the UNIFAB report¹³, the Charlie Hebdo attack was partly funded by the sale of counterfeit goods such as footwear and apparels obtained from China by Kouachi brothers. Thus, counterfeiting can be said to be hampering all of the aspects of global economy, from taxes to jobs to terror financing.

Counterfeiting has managed to acquire a foothold in virtually all important sectors/domains. The counterfeit goods market can be divided into two categories —deceptive and non-deceptive counterfeiting. Deceptive counterfeiting refers to consumers’ purchase of counterfeit products, believing they have purchased genuine articles, whereby counterfeiters earn huge profits on account of the premiums charged for low-cost alternatives. Non-deceptive counterfeiting refers to consumers knowingly buying counterfeit products, looking for what they believe to be bargains

9. IPR annual seizure statistics, U.S. Customs and Border Protection, 2008-2017
 10. Against Organised Crime: INTERPOL Trafficking and Counterfeiting Casebook, INTERPOL, 2014
 11. Counterfeit Cigarettes Contain Disturbing Toxic Substances, ICC Fraud Net, accessed on 28 August 2017, <https://icc-ccs.org/home/news/85-news/360-counterfeit-cigarettes-contain-disturbing-toxic-substances>
 12. Transnational Crime and the Developing World, 2017, Global Financial Integrity, 2017
 13. COUNTERFEITING & TERRORISM, Union des Fabricants, 2016

3.3. Smuggling

Smuggling is considered as one of the most widespread and dangerous illicit trade as it is said to be widely associated with terror financing. It is defined and explained by various statutes in different jurisdictions. World Customs Organisation defines smuggling as 'customs offence consisting in the movement of goods across a Customs frontier in any clandestine manner, thereby evading Customs control.' In India, smuggling is dealt by the Customs Act, 1962.

There can be various factors driving smuggling in various domains and jurisdictions. There may be different reasons and means by which smuggling operations are carried out across the world. According to Invisible Enemy,¹⁴ the factors that affect the smuggling and its extent are:



Smuggling can be of two types:

1. For legal goods
2. For prohibited goods

For prohibited or illegal goods such as drugs and narcotic substances or arms and weapons, smuggling is done in order to make the products available in jurisdiction on demand. The purpose of smuggling legal goods is generally for evasion of duties, taxes, etc.

Table 2: Illicit trade and their estimated annual values in 2014

	Estimate annual value (USD)
Drugs	426 billion to 652 billion
Small arms and light weapons	1.7 billion to 3.5 billion
Human	150.2 billion
Organ	840 million to 1.7 billion
Cultural property	1.2 billion to 1.6 billion
Illegal wildlife trade	5 billion to 23 billion
Logging	52 billion to 157 billion
Mining	12 billion to 48 billion
Crude oil theft	5.2 billion to 11.9 billion

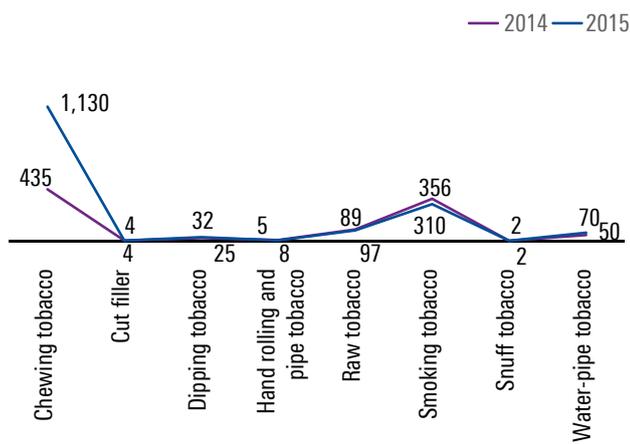
Source: Transnational Crime and the Developing World, Global Financial Integrity, March 2017

14. Invisible Enemy – A Threat to our National Interests, FICCI CASCADE, 2016

According to the Transnational Crime and the Developing World,¹⁵ tobacco and cigarette smuggling remains one of the most smuggled and seized goods. In 2015, the total illicit trade in tobacco and cigarette is worth USD40 billion, out of which USD5.2 billion is contributed by the illegal and counterfeit products.¹⁶

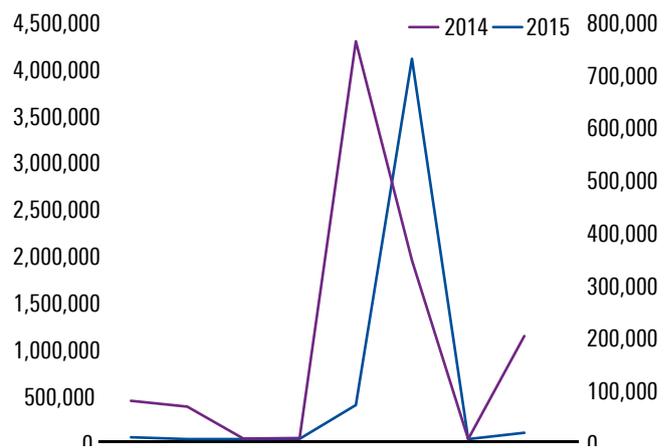
Chewing tobacco, on the other hand saw an increase in number of seizures globally. Different types of tobacco saw different trends in the global seizure scenarios, as can be noticed in Figure 10 and Figure 11.

Figure 10: Globally the number of seizures for tobacco (apart from cigarettes and cigars)



Source: Illicit Trade Report, World Customs Organisation, 2015

Figure 11: Quantity of seized tobacco, globally (apart from cigarettes and cigars)



Source: Illicit Trade Report, World Customs Organisation, 2015

Further, smuggling is said to be contributing to the excessive taxation loss and terror financing. According to¹⁷ UNIFAB Report, 15-20 per cent of terror funds in Waziristan area are contributed by cigarette smuggling. According to the same report, after the rise of Islamic state, the cigarette smuggling has grown by two times, oil smuggling has grown by four times and mobile phone smuggling has grown by six times in Turkey-Syria border.

3.4 Piracy

The World Trade Organisation (WTO) in its agreement on Trade Related Intellectual Property Rights (TRIPS) defines pirated copyright goods as goods which are copies made without the consent of the right holder or person duly authorised by the right holder. The piracy exists in various domains.

According to Global Piracy Report¹⁸ released by MUSO, number of visits to piracy sites as a ratio

to the country's user internet population were calculated. Poland, despite having very less population contributed to the maximum piracy visits per internet user of 197 visits per user followed by Turkey with 153 visits per user.

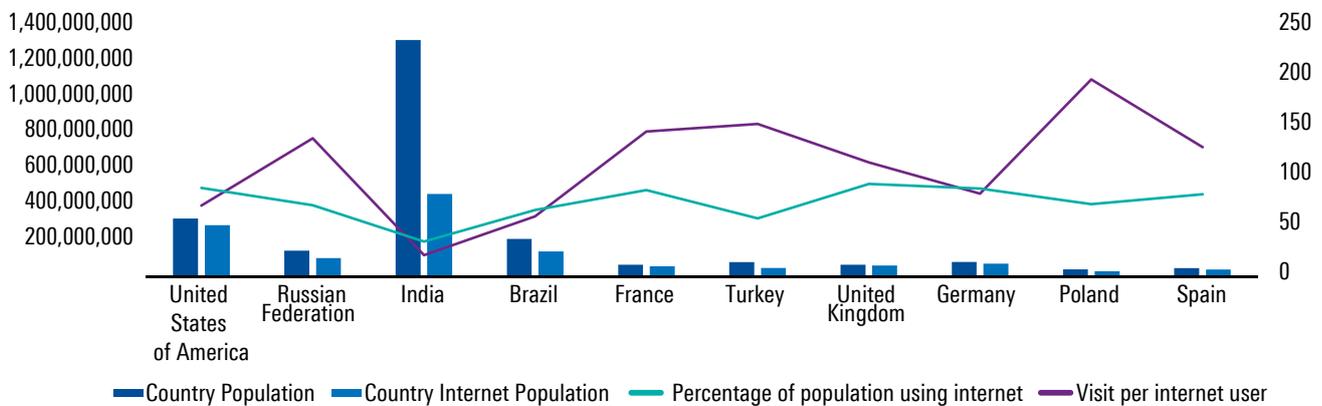
India was found to have one of the lowest piracy visits per user with 21 piracy visits per internet user. One of the main reason for this trend is that India also has 35 per cent of population using internet which is one of the lowest whereas countries such as Germany, Poland and Spain have more than 70 per cent of population using internet.

The United States despite having 89 per cent of population using internet, has only 71 piracy visits per user, which is relatively low as compared to other countries with high percentage of internet using population.

15. Transnational Crime and the Developing World, 2017, Global Financial Integrity, 2017
16. Tobacco: Illicit Trade in Tobacco Products, Euromonitor international, 2016

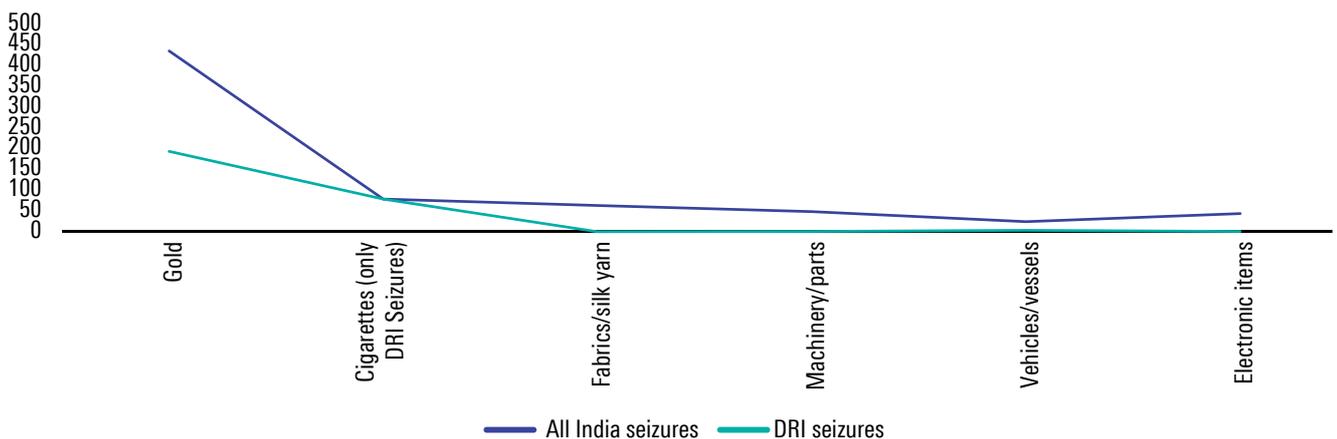
17. COUNTERFEITING & TERRORISM, Union des Fabricants, 2016
18. MUSO Global Piracy Report, 2017

Figure 12: Top countries ranked by piracy visits



Source: Global Piracy Report, MUSO, 2017

Figure 13: Breakdown of piracy visits



Source: Global Piracy Report, MUSO, 2017

Maximum number of visits were attributed to pirated streaming of content followed by public torrents.

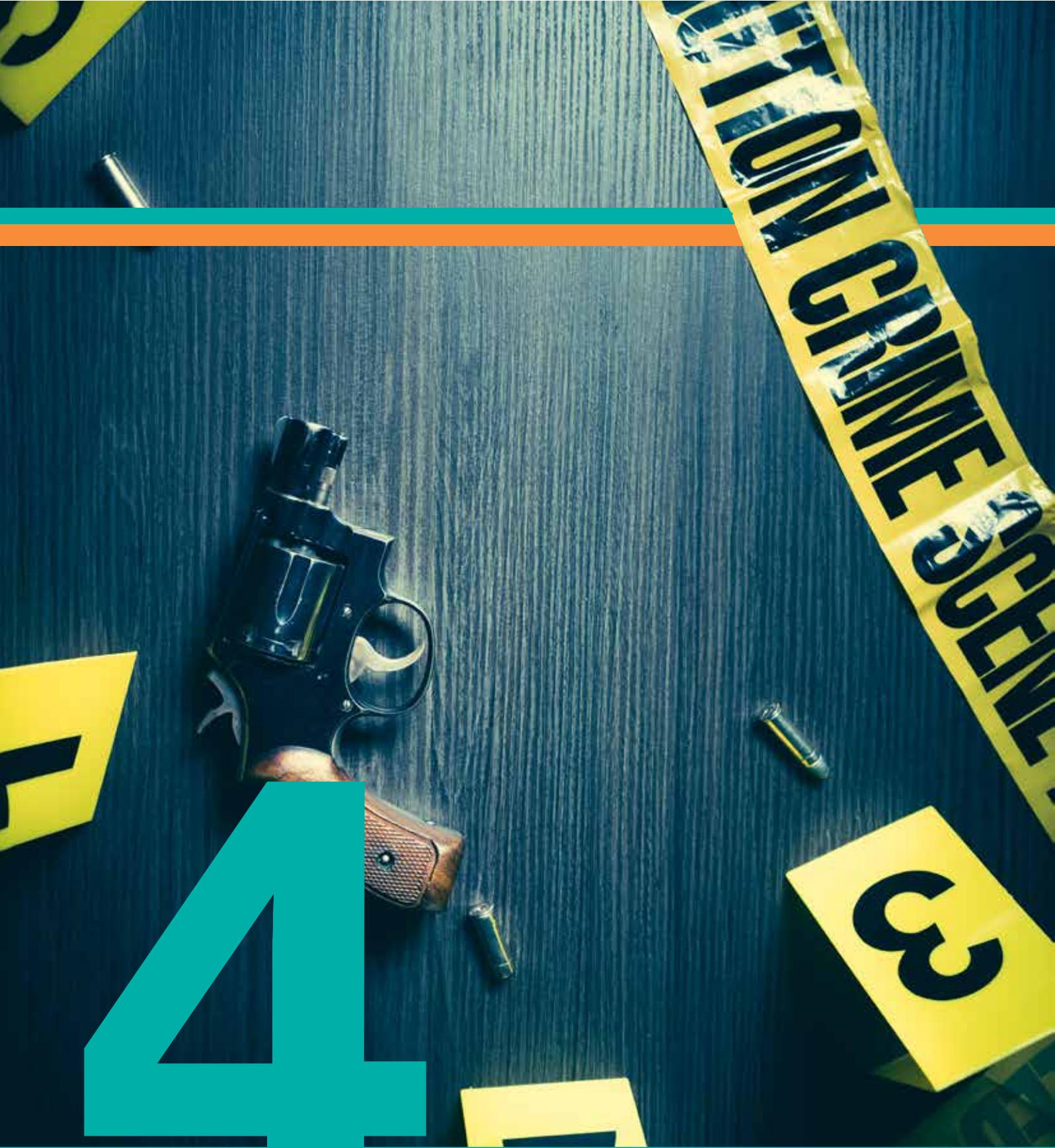
'A drugs dealer buys a kilo of cocaine for about USD47,000 and can hopefully sell it on the street for about USD94,000: he therefore makes a profit of 100 per cent. However, for the same lay-out - and a much lower risk - an enterprising counterfeiter can buy pirated copies of advanced software and resell them at a profit of 900 per cent' was published by Time

magazine in its article 'Busting Software Pirates' by Jennifer L on 18 November, 2002.¹⁹

From illegal streaming to unauthorised web downloads and torrents, every unauthorised use and reproduction of copyrighted material comes under piracy. Globally, piracy in films, music and software was a market of USD213 billion in 2013 which is estimated to grow to USD384 - USD856 billion in 2022.²⁰

19. COUNTERFEITING & TERRORISM, Union des Fabricants, 2016

20. The Economic Impacts of Counterfeiting and Piracy, report prepared for BASCAP and INTA, International Chamber of Commerce, 2016



Focus: Impact of terrorism, organised crime and illicit trade on India



4.1. Menace of illicit trade, terrorism and organised crime in India

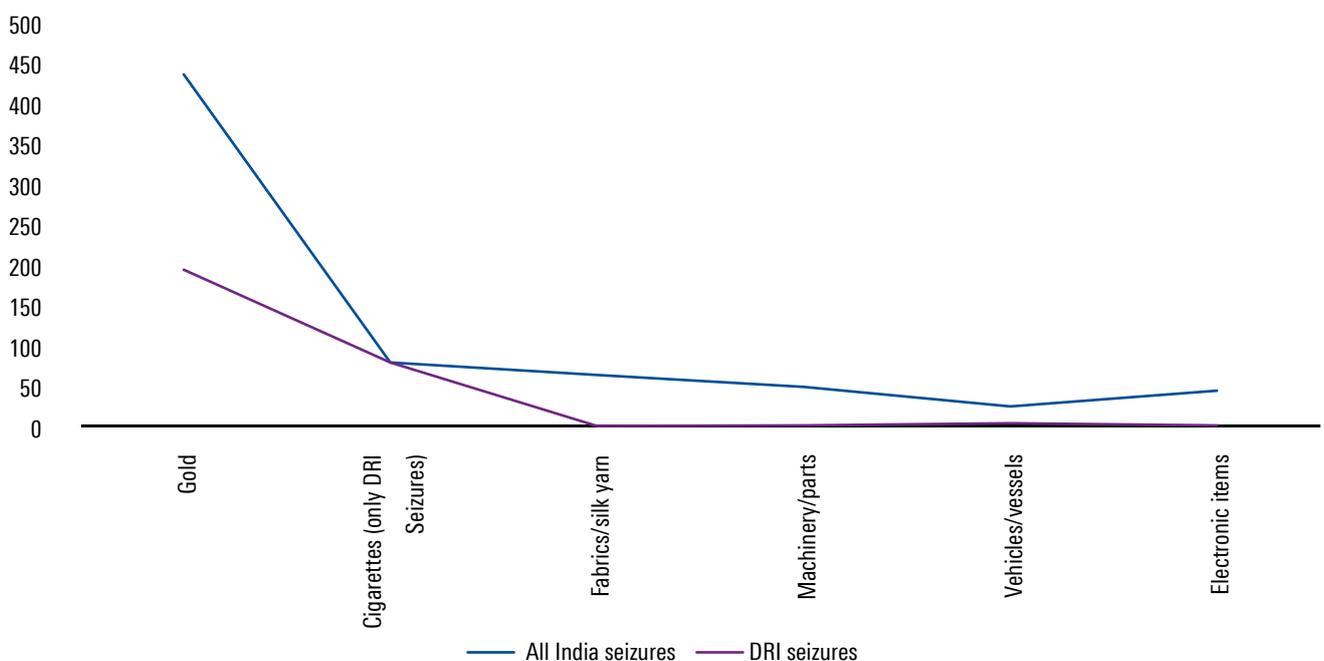
India has been a region affected by terrorism, organised crime and illicit trade ever since its independence in 1947. Of all forms of illicit trade, smuggling happens to affect the most. The nexus of smuggling is used to finance criminal activities, as suggested by various reports by the Government of India.

The seizures of smuggled goods in India, throws light on the magnitude of smuggling industry. The largest number of seizures, as per the Directorate of Revenue Intelligence (DRI), were for narcotic drugs, the value of which stood at INR4,885 crore. The seizure value of smuggled narcotic drugs, is therefore, almost equal to the seizure value of all other smuggled goods put together, as suggested by the data available from the Union Report 1 of 2017 by Revenue Customs of India. Gold, cigarettes and apparel occupy the second, third

and fourth positions with respect to the number of seizures. Figure 14 provides a detailed understanding of the seizure values as reported by DRI.

With respect to gold smuggling, Government of India has taken several steps such as demonetisation. However, the nexus of gold smuggling appears to find its way out of all measures. Smuggling of gold in 2017 has risen again, after observing a temporary dip following demonetisation.¹

Figure 14: Commodity wise seizures, 2017



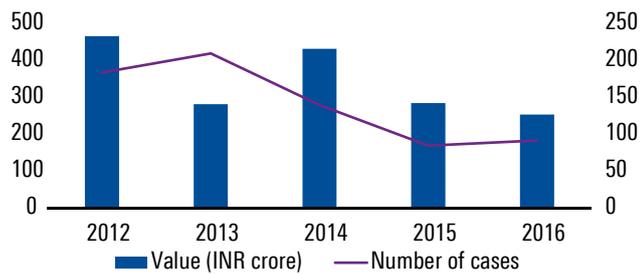
Source: Directorate of Revenue Intelligence, 2017

1. Post demonetization, gold smugglers work out new plans, <http://indiatoday.intoday.in/story/demonetisation-gold-smugglers-dri-hawala-gst/1/920131.html>

Smuggling in India takes place in various form- mis-declaration, undervaluation, misuse of end use and other means. The seizure value for mis-declaration stood at INR1,187 crore in 2016, while that of undervaluation stood at INR254 crore. The seizure value from misuse of end use was at INR770 crore and the seizures from other means was at INR2,780

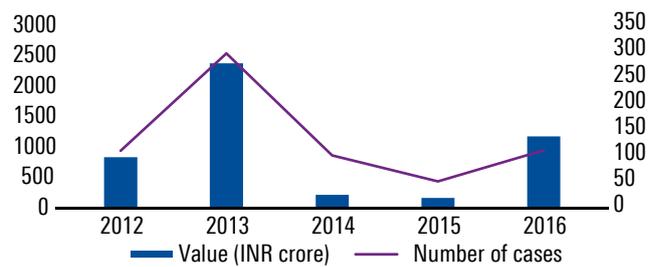
crore, seeing a rise of 191 per cent from INR953 crore in 2015. This suggests evolution of means of smuggling in India with the evolution of government policies to deal with smuggling. Figures 15-18 illustrate the number of seizures and value of seized products smuggled by various means in India.

Figure 15: Number of seizures and value of seized products smuggled by means of undervaluation



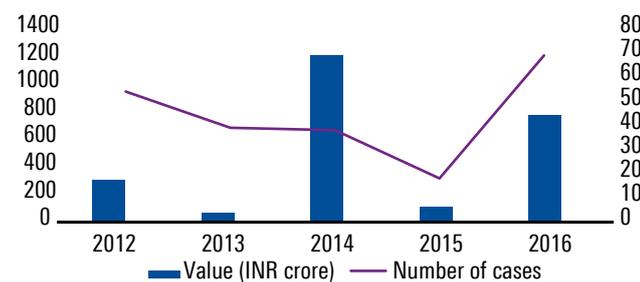
Source: Union Report 1 of 2017 – Revenue Customs

Figure 16: Number of seizures and value of seized products smuggled by means of misuse of end use and other notifications



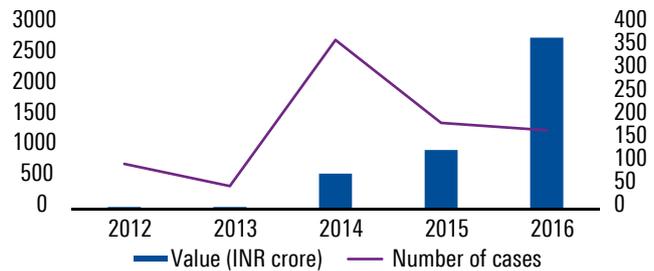
Source: Union Report 1 of 2017 – Revenue Customs

Figure 17: Number of seizures and value of seized products smuggled by means of mis-declaration

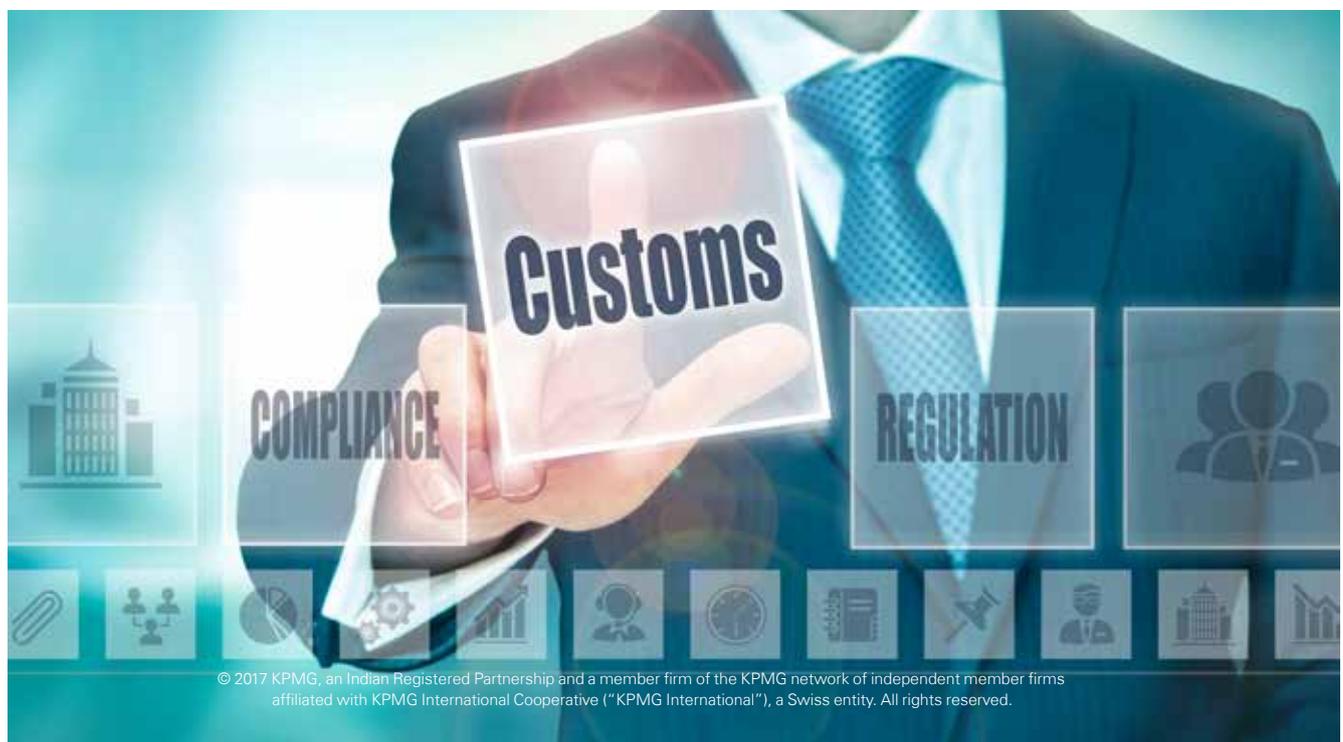


Source: Union Report 1 of 2017 – Revenue Customs

Figure 18: Number of seizures and value of seized products smuggled by other means



Source: Union Report 1 of 2017 – Revenue Customs



4.2. Impact of illicit trade on industries

The following sub-sections provide insights into the impact of illicit trade on a few key industries in India.

4.2.1. Tobacco and cigarettes

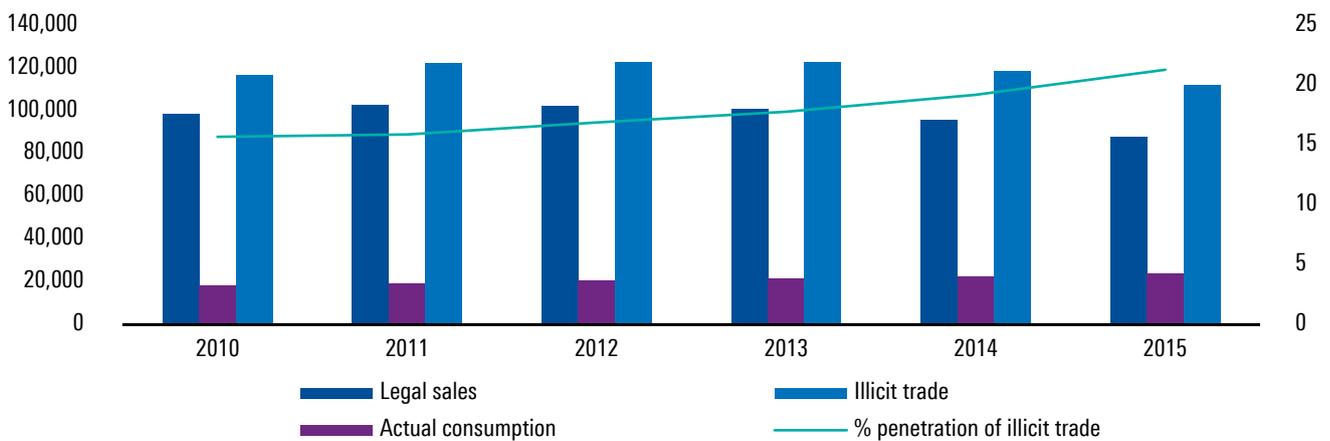
Smuggling and counterfeiting of tobacco products, specifically cigarettes have been a point of concern for both government and industry in India. As indicated in the graphs below, the percentage penetration of illicit trade in the cigarette industry has seen a constant rise in recent years. It will be fair to conclude that the sale of counterfeited and smuggled cigarettes has increased since legal sales of cigarettes has fallen from 2010-2015 with number of smokers not decreasing.

India, having ratified the WHO Framework Convention on Tobacco Control (FCTC) in 2004, identifies the elimination of illicit trade in tobacco as a key goal in its policies. Article 15.1 of WHO FCTC states that 'The

parties recognise that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and the development and implementation of related national law, in addition to sub-regional, regional and global agreements, are essential components of tobacco control'.

Legal sales of cigarettes in India by volume fell from 98.58 billion stick units in 2010 to 88 billion stick units in 2015. However, the actual consumption fell by just 4.9 billion stick units during the same time, thus suggesting an estimated rise of 5.5 billion stick units in illicit trade market. Estimating the value of one stick unit at an average of INR10.5, as per the data available of seizures from Directorate of Revenue Intelligence, the market of illicit trade in cigarettes rose by INR5,775 crore between the years 2010 and 2015, making the illicit trade market for cigarettes in India worth INR25,000 crore.

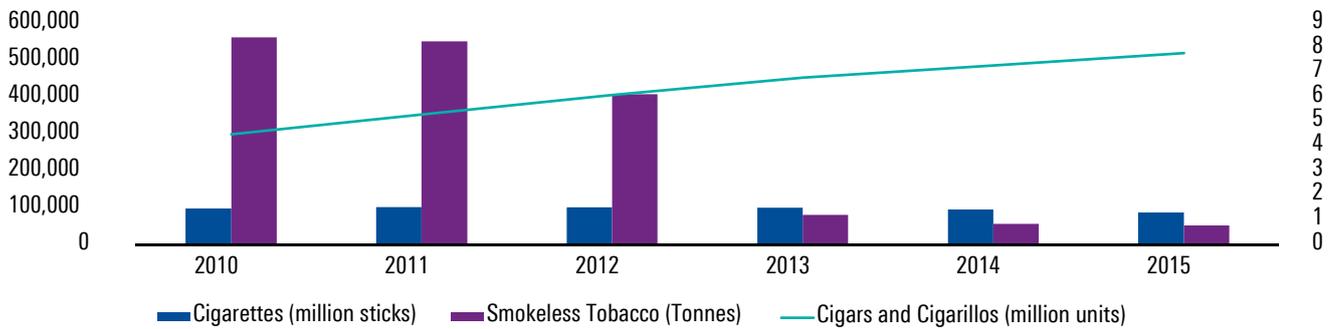
Figure 19: Illicit trade estimate of cigarettes: Volume 2010-2015



Source: Tobacco in India, Industry overview, Euromonitor International, 2016



Figure 21: Forecast sales of tobacco by category: Value 2015-2020



Source: Tobacco in India, Industry overview, Euromonitor International, 2016

Several reports from DRI suggest that smuggling of cigarettes is increasing in recent years due to

- a. Increase in taxes by the Government of India on cigarettes and
- b. Availability of cheap cigarettes in the neighbouring countries, thereby leading to an increased demand for smuggled cigarettes.

As observed in the previous sections, apart from evasion of taxes, the illicit trade of tobacco products has been a catalyst for terrorism and organised crime. Therefore, it becomes instrumental for both

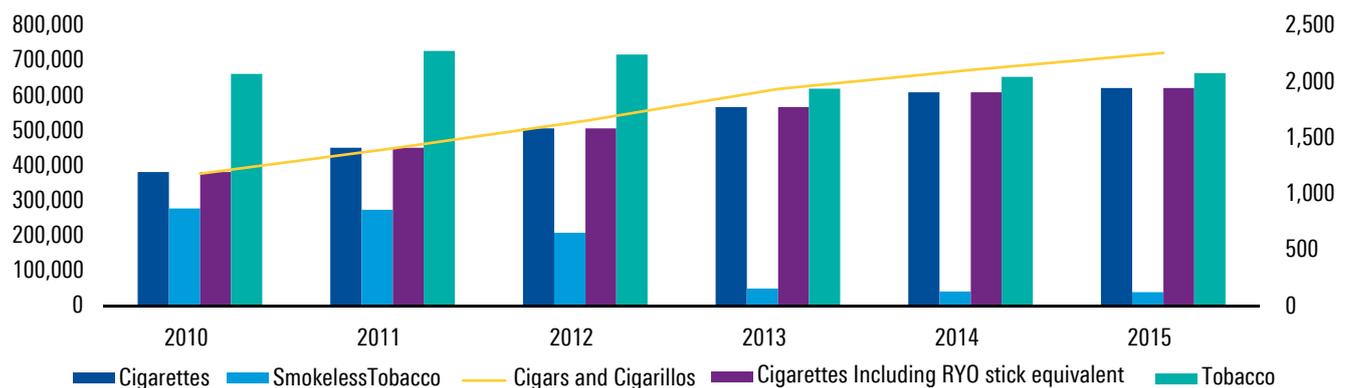
the government and industry to come up with policy measures for mitigating illicit trade of tobacco and its products. The effect of sin tax on cigarettes should be evaluated vis-à-vis the threat which is posed to the security of the country by indirect financing of terrorism and organised crime.

The figures below suggest that the legal sales of cigarettes are further expected to fall from 2015-20, thus providing a larger market share to the illicit market. It has been observed that the percentage of illicit trade in cigarettes has increased in the past and is expected to increase further in future.

The percentage penetration of illicit trade in the cigarettes market increased from 15 per cent to 21 per cent over the years 2010-2015. Tax structure during the same time also suggests an increase in the tax on cigarettes, thus suggesting a direct link between increased taxes and increased illicit trade of cigarettes

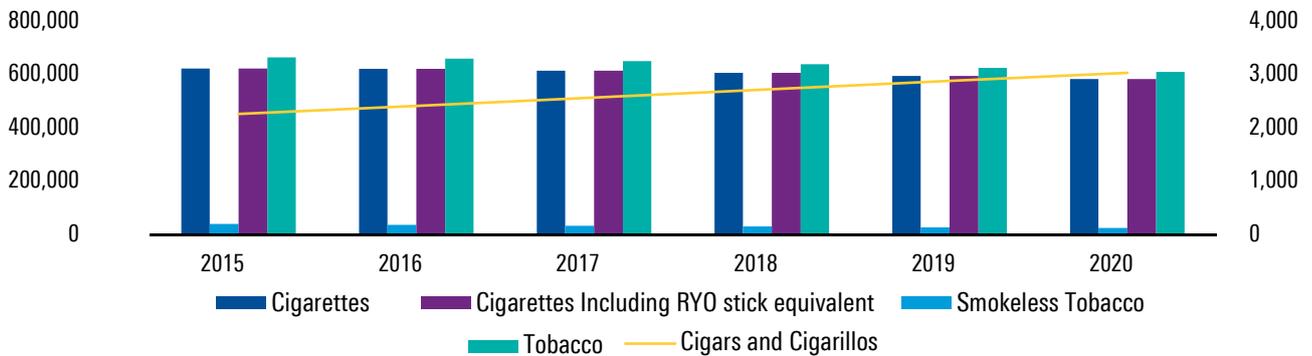
The number of smokers in India has increased from 50 million in 2010 to 54.5 million in 2015

Figure 21: Forecast sales of tobacco by category: Value 2015-2020



Source: Tobacco in India, Industry overview, Euromonitor International, 2016

Figure 22: Sales of tobacco by category: Value 2010-2015



Source: Tobacco in India, Industry overview, Euromonitor International, 2016

4.2.2. Alcoholic beverages

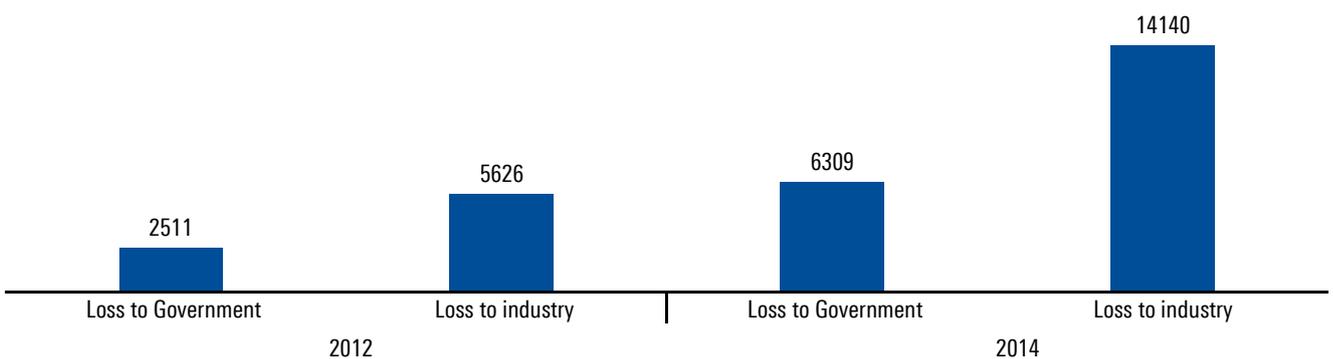
Alcoholic beverages industry faces a major problem of grey marketing at both global and national level. According to Illicit Markets- A Threat to our National Interests: The Alcoholic Beverages Industry, published by FICCI and Thought Arbitrage Research Institute(TARI) in 2015, the grey market loss to the alcoholic beverage industry stood at INR14,140 crore in 2014 which had increased from INR5,626 crore in 2012 observing an increase of over 150 per cent.

This resulted in a huge tax loss to the government with an estimated revenue loss of INR6,309 crore.

There may be several reasons that contribute to such an extensive grey marketing of alcoholic beverages. The primary reason being lack of awareness regarding the consequences on health because of counterfeit alcohol. The consumer, lured by the lowered prices tends to purchase the cheaper alternative.

Another reason for proliferation of counterfeit alcohol is prohibition of alcohol in many states in India. There is a prohibition on alcohol in states such as Gujarat, Bihar etc. Despite the ban, the consumption of the alcohol in these states is not nil.² One of the major sources of the alcohol in such states is considered to be counterfeit alcohol.

Figure 23: Estimated grey market loss to government and industry (INR crore) - alcoholic beverages



Source: Illicit Markets- A Threat to our National Interests: The Alcoholic Beverages Industry, FICCI CASCADE, 2015



2. <http://www.hindustantimes.com/india/a-chequered-history-does-alcohol-prohibition-really-work-in-india/story-dR7CYZVLDvzLdkDe9wKo1H.html>, accessed on 12th August, 2017

4.2.3. Auto component

The auto component market is similarly plagued by counterfeits and grey market. The Indian auto component industry suffered a loss of INR10501 crore in 2014 due to grey market which increased from INR9198 crore in 2012, according to Illicit Markets- A Threat to our National Interests: The Auto Components Industry, released by FICCI and Thought Arbitrage Research Institute (TARI) in 2015.

However, according to Indian Automotive Aftermarket; The Road Ahead by ACMA, the counterfeit penetration has reduced from 36 per cent 2010-11 to 5 per cent in 2016-17.

According to Illicit Markets- A Threat to our National Interests: The Auto Components Industry, a report prepared by FICCI and Thought Arbitrage Research Institute(TARI) in 2015, there are various factors that contribute to the growth in auto component grey market:

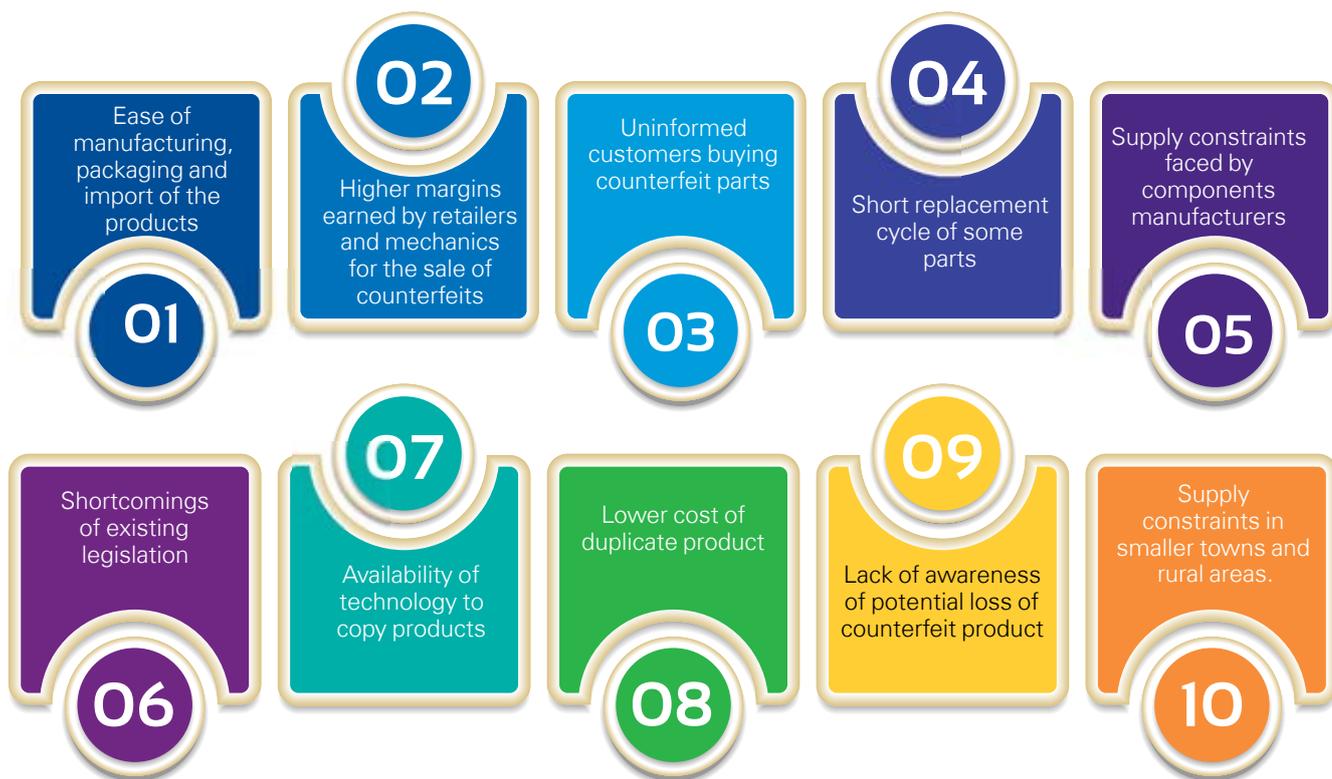
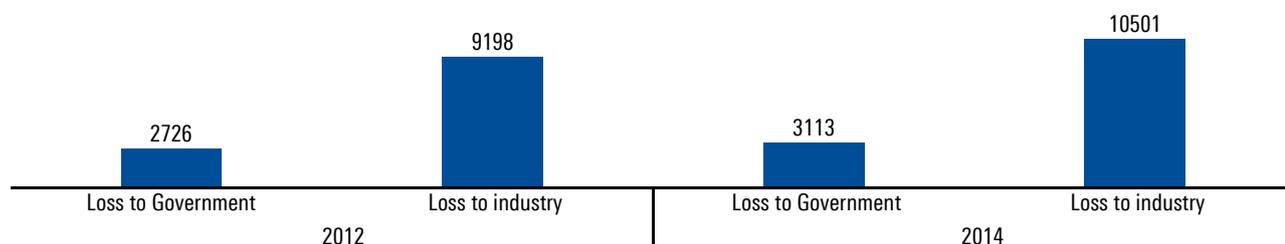
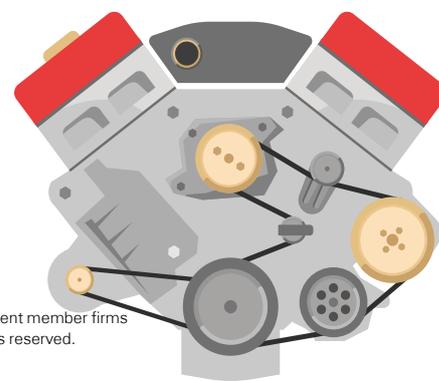


Figure 24: Estimated grey market loss to government and industry (INR crore) – auto components



Source: Illicit Markets- A Threat to our National Interests: The Auto Components Industry, FICCI CASCADE, 2015



3. Indian Automotive Aftermarket; The Road Ahead, ACMA, 2017

4.2.4. Fast Moving Consumer Goods (FMCG)

The FMCG industry is expected to grow at a compounded annual growth rate (CAGR) of 14.7 per cent to USD110.4 billion during 2012-2020, according to India Brand Equity Foundation (IBEF) of the Ministry of Commerce and Industry, Government of India. It comprises of three components namely packaged food or food and beverages, personal goods and house care products.

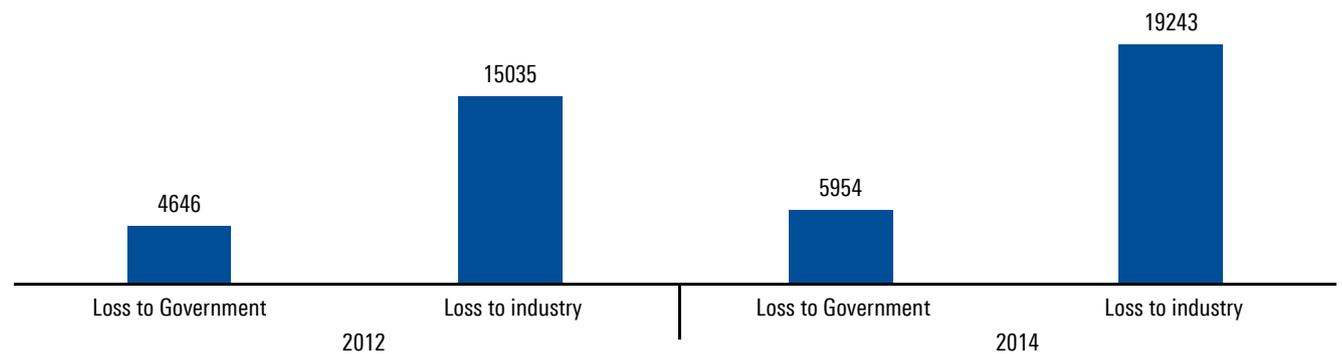
The extent of grey market in FMCG industry can be estimated by a survey conducted by FICCI CASCADE

in 2015 which stated that 30 per cent of the products in the industry were found to be fake and 80 per cent of the consumers believed they were using genuine products.⁴ In 2014, FMCG personal goods industry suffered an estimated loss of INR19,243 crore due to grey market with INR5,954 crore loss to the government.

According to Illicit Markets- A Threat to our National Interests: The FMCG –Personal Goods Industry, key factors driving the grey market in FMCG goods industry are:



Figure 25: Estimated grey market loss to government and industry (INR crore) – FMCG goods



Source: Illicit Markets- A Threat to our National Interests: The FMCG –Personal Goods Industry, FICCI CASCADE, 2015



4. Illicit Markets- A Threat to our National Interests: The FMCG –Personal Goods Industry, FICCI CASCADE, 2015

4.2.5. Packaged foods

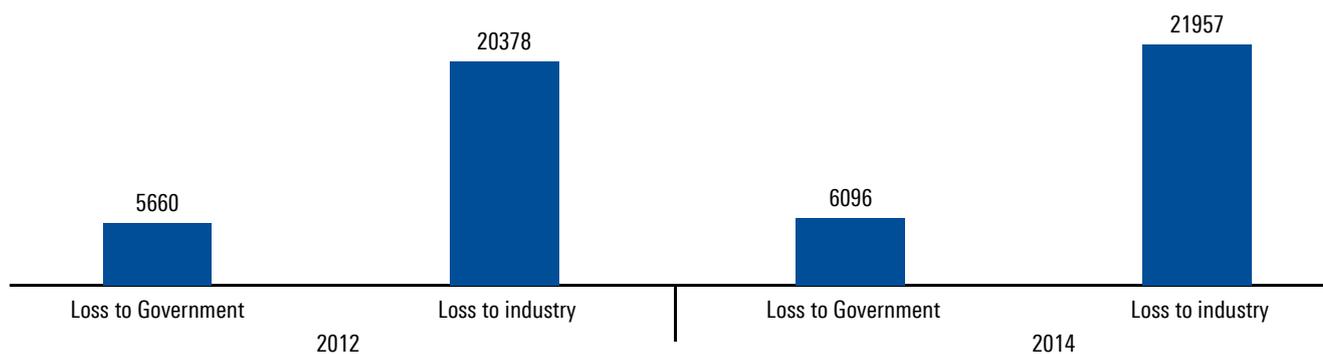
The packaged foods industry is expected to grow at 9 per cent annually to become a USD100 billion industry by 2030, dominated by milk, sweet and savoury snacks and processed poultry, according to Illicit Markets- A Threat to our National Interests: The FMCG – Packaged Food Industry, by FICCI and Thought Arbitrage Research Institute(TARI), released in 2015.

The packaged food industry also lost an estimated INR21,957 crore to grey market in 2014 with INR6,096 crore loss to the government.

According to Illicit Markets - A Threat to our National Interests: The FMCG – Packaged Food Industry, by FICCI and Thought Arbitrage Research Institute(TARI), released in 2015, there are certain factors that contribute to the counterfeiting of food industry that are:



Figure 26: Estimated grey market loss to Government of India and industry (INR crore) – food industry



Source: Illicit Markets Source: Illicit Markets- A Threat to our National Interests: The FMCG – Packaged Food Industry, FICCI CASCADE, 2015 s- A Threat to our National Interests: The Auto Components Industry, FICCI CASCADE, 2015



4.2.6. Mobile phones

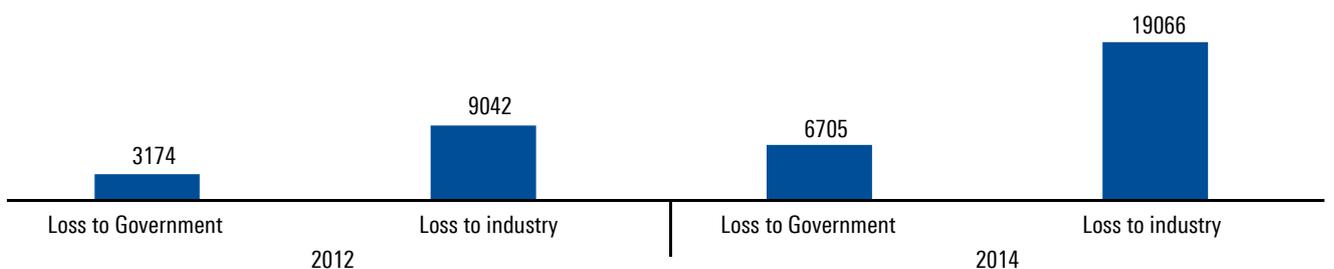
There are reports of seizures of counterfeit phones and phone accessories on a regular basis. According to the India Brand Equity Foundation (IBEF)⁵ of the Ministry of Commerce and Industry, Government of India, as of February 2017, the total number of subscribers in India are 1.185 billion, making India the second largest subscriber base in the world.

The mobile phone market in India witnessed one of the highest grey market losses increase to industry with an estimated loss of INR 19,066 crore in 2014 increased from INR 9,042 crore in 2012.⁶

According to Illicit Markets- A Threat to our National Interests: The Mobile Phones Industry, by FICCI and Thought Arbitrage Research Institute(TARI), released in 2015, there are many factors contributing to the grey market such as:



Figure 27: Estimated grey market loss to Government of India and industry (INR crore) – mobile phones



Source: Illicit Markets- A Threat to our National Interests: The Mobile Phones Industry, FICCI CASCADE, 2015

5. India Brand Equity Foundation (IBEF)

6. Illicit Markets- A Threat to our National Interests: The Mobile Phones Industry, FICCI CASCADE, 2015

4.2.7. Computer hardware

According to National Association of Software and Services Companies (NASSCOM)'s strategic review, 2017, India's IT-Business Process Management industry is projected to grow at 8 per cent in FY2017 to USD154 billion. One of the major segment of this industry is computer hardware industry.

In 2014, the computer hardware industry lost nearly INR7344 crore to grey market.⁷

Government also suffered a loss of INR1923 crore in form of revenues from the computer hardware market. According to Illicit Markets- A Threat to our National Interests: The Computer Hardware Industry, by FICCI and Thought Arbitrage Research Institute(TARI), released in 2015, major factors that contributed to the increase in grey market are:

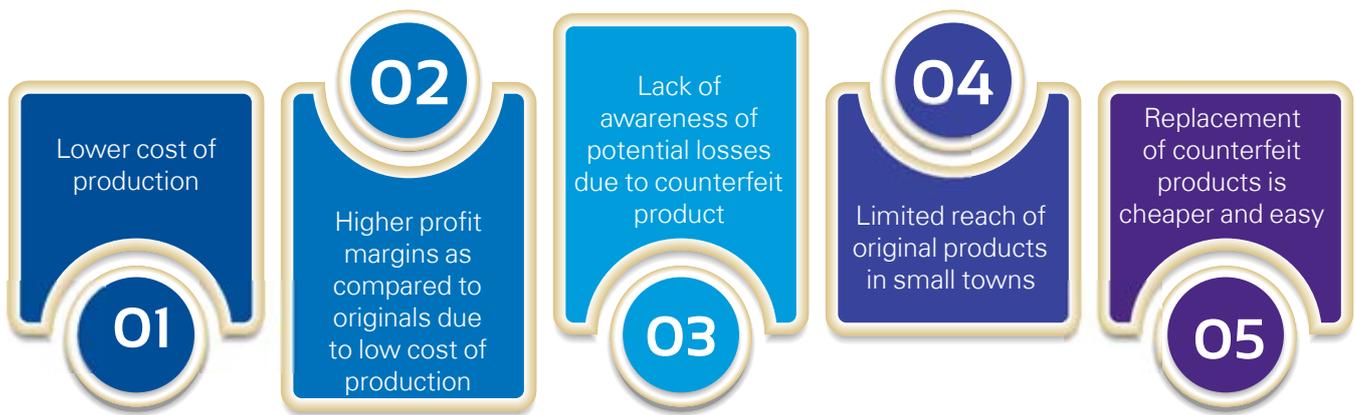
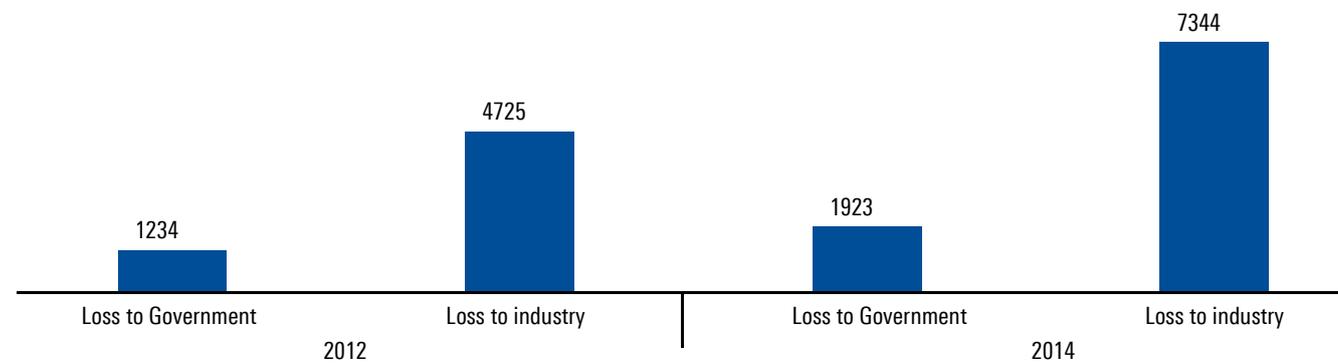
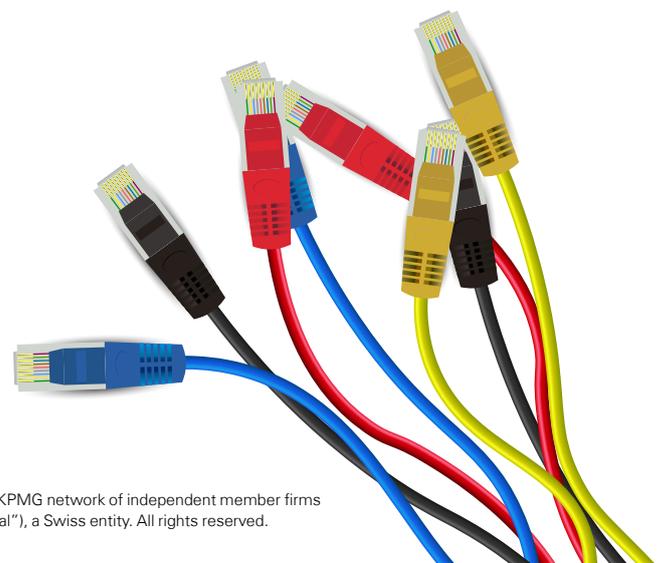


Figure 28: Estimated grey market loss to Government of India and industry – Computer hardware



Source: Illicit Markets- A Threat to our National Interests: The Computer Hardware Industry, FICCI CASCADE, 2015



7. Illicit Markets- A Threat to our National Interests: The Computer Hardware Industry, FICCI CASCADE, 2015

4.3. Smuggling on the rise in India

4.3.1. Methodology for estimation of smuggling in India

The size of smuggling in India for three industries, viz. gold, electronics and machinery has been analysed by calculating the difference in the exports that were

reported by different countries to India and the imports of the same product reported by India.⁸ The statistics for import and export are collected from the UN COMTRADE's⁹ database for the following HS codes:

Table 3: Industry and HS codes for UN COMTRADE data

Industry	HS code
Gold	7108
Machinery and parts	8402, 8403, 8404, 8405, 8406, 8407, 8408, 8409, 8410, 8411, 8412, 8413, 8414, 8415, 8416, 8417, 8418, 8419, 8420, 8421, 8423, 8424, 8425, 84231, 8432 8433, 8434, 8435, 8436, 8437, 8438, 8439, 8440, 8441, 8442, 8444, 8445, 8446, 844, 8448, 8449, 8451, 8452, 8453, 8454, 8455, 8456, 8457, 8458, 8459, 8460, 8461, 8462, 8463, 8464, 8465, 8466, 8467, 8468, 8474, 8475, 8476, 8477, 8478, 8479, 8480, 8481, 8482, 8483, 8484, 8485
Electronics	8517, 8518, 8519, 8520, 8521, 8522, 8523, 8524, 8525, 8526, 8527, 8528, 8529, 8532, 8533, 8534, 8540, 8541, 8542

The export statistics are provided in Free on Board (FOB) prices. In order to estimate the smuggling accurately, imports are adjusted for various factors

such as Cost, Insurance and Freight (CIF). The import values are adjusted by 21 per cent, complying with the CBEC guidelines¹⁰ in order to calculate the FOB prices.

Table 4: Estimated smuggling for electronics industry

Year	Export to India reported by world in USD million (A)	Import from world reported by India in USD million (Y)	Adjusted Imports: CIF-FOB margin at 21 per cent (in USD million) (B)	Technical smuggling: CIF-FOB margin at 21 per cent (in USD million) (A-B)
2012	18,863.66	19,971.34	15,777.36	3,086.30
2013	18,758.21	20,618.92	16,288.95	2,469.26
2014	20,839.46	22,792.38	8,005.98	2,833.48
2015	24,947.47	26,707.14	21,098.64	3,848.83
2016	26,550.41	27,392.20	21,639.84	4,910.57
Average	21,991.84	23,496.40	18,562.15	3,429.69

Source: UN COMTRADE, 2017 and KPMG in India's analysis, 2017

8. Invisible Enemy, FICCI CASCADE, 2016

9. UN COMTRADE : <http://unstats.un.org/unsd/tradekb/Knowledgebase/50290/Mirrors-statistics?Keywords=cif>, accessed on 12 August, 2017

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Table 5: Estimated smuggling for gold

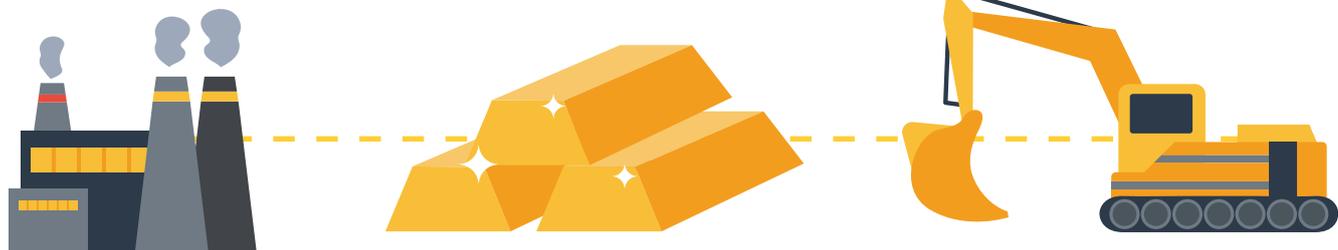
Year	Export to India reported by world in USD million (A)	Import from world reported by India in USD million (Y)	Adjusted Imports: CIF-FOB margin at 21 per cent (in USD million) (B)	Technical smuggling: CIF-FOB margin at 21 per cent (in USD million) (A-B)
2012	46,134.48	52,606.77	41,559.35	4,575.13
2013	35,064.76	37,711.85	29,792.36	5,272.41
2014	26,804.45	31,039.69	24,521.35	2,283.10
2015	29,463.27	34,999.55	27,649.64	1,813.62
2016	19,779.70	22,944.49	18,126.15	1,653.55
Average	31,449.33	35,860.47	28,329.77	3,119.56

Source: UN COMTRADE, 2017 and KPMG in India's analysis, 2017

Table 6: Estimated smuggling for machinery and parts

Year	Export to India reported by world in USD million (A)	Import from world reported by India in USD million (Y)	Adjusted Imports: CIF-FOB margin at 21 per cent (in USD million) (B)	Technical smuggling: CIF-FOB margin at 21 per cent (in USD million) (A-B)
2012	28,176.53	26,066.44	20,592.49	7,584.04
2013	24,484.29	22,455.15	17,739.57	6,744.72
2014	24,135.55	21,866.32	17,274.39	6,861.16
2015	22,482.52	22,060.48	17,427.78	5,054.74
2016	21,300.69	22,756.50	17,977.63	3,323.06
Average	24,115.92	23,040.98	18,202.37	5,913.54

Source: UN COMTRADE, 2017 and KPMG in India's analysis, 2017





The magnitude of illicit trade is much larger than commonly perceived either by the people or governments world over. An alarming aspect of this is that with the passage of time, instead of being contained, it is, in fact, only proliferating further, and that too, at an accelerated pace. There is an urgent need for all concerned to make sincere concerted efforts to eliminate this menace before it perils our existence.

- PC Jha
Advisor

FICCI CASCADE & Former
Chairman, Central Board of Excise
and Customs

“Smuggling and counterfeiting are found to be the major source of funding for terrorist groups world over and only by controlling these can we expect a control on terrorism in the world.”

- Deep Chand
Advisor

FICCI CASCADE & Former
Special Police Commissioner,
Delhi Police



Conclusion and way ahead

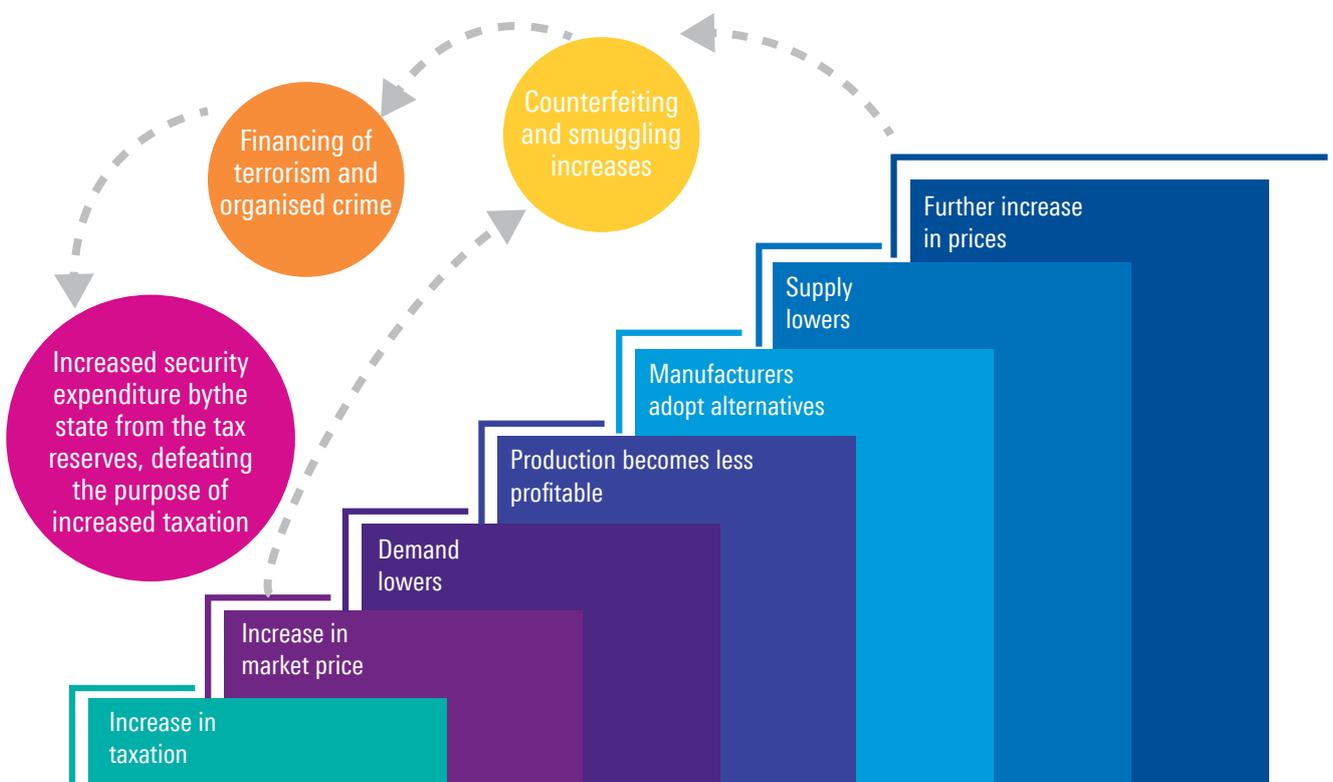
5.1. Conclusion

Counterfeiting, smuggling and piracy is a widespread menace with far reaching effects. There are different factors for various industries that lead to the increased smuggling, counterfeiting and piracy. The factors that affect most of the markets are:

- Sector being unorganised
- Weak regulatory and implementation mechanism
- Higher taxation/duty rates
- Counterfeit or smuggled good being the cheaper alternate
- Lack of awareness among consumers.

Figure 28 shows how increased taxation and duty rates lead to increased illicit trade and ultimately defeats the purpose of increase in taxation due to allocation of more funds in security expenditure to curb terrorism, a part of which is financed by illicit trade.

Figure 28: Linkage between higher taxation and illicit trade



In order to fight against illicit trade, various stakeholders such as government, manufacturers and enforcement agencies can play an instrumental role, further elaborated in subsequent parts of the chapter.

5.2. Key recommendations for Government of India

The government has taken various measures to curb the growing menace of illicit trade in recent times, but the magnitude of the problem remains large. Smuggling, counterfeiting and piracy used by criminal organisations are proving to be a challenge for the administration, given their financial enormity. Therefore, it becomes instrumental for the government to take further actions on its growing menace in order to provide a healthy environment to businesses and reduce the security threats posed to the country.

We recommend the following detailed framework for the government in order to help curtail the extent of illicit trade in India, and thereby, the organised crime associated with it.

Increased consumer awareness

Advertisements and campaigns can be initiated to increase awareness in areas prone to the menace of illicit trade. Awareness about counterfeit and smuggled goods through seminars, road shows, conferences and workshops can be arranged by various departments and ministries. The companies can be given a statutory obligation to use their Corporate Social Responsibility (CSR) funds in raising awareness about such issues, which will help in strengthening the socio-economic structure of the country

Enforcement of laws

The government can take measures to strengthen the IP laws and enact new regulations which make IP theft a crime of equal magnitude as other thefts. The Trade Marks Act, 1999 and the Copyright Act, 1957 can be strengthened further, whereby its infringement should be made a non-bailable offence

Creation of single nodal ministry

A single nodal ministry can be entrusted with the responsibility for coordination of all national efforts against illicit trade

Creation of special task force

A special task force can be created to counter illicit trade, with stakeholders from the government and industry. The task force hence created can coordinate with security forces of the country to keep a check on the illicit trade

Engage with international organisations

Indian ministries can engage with international organisations such as WIPO, WTO, OECD, INTERPOL, EUROPOL, etc. to strengthen international IP protection laws, in order to decrease both illicit trade and organised crime globally

Balance between taxation policies and revenue needs

The government may consider redefining its taxation policies. The Ministry of Finance can take steps so that indirect taxes on goods do not prove to be an incentive for their smuggling, and hence poke a hole in the state coffers in form of security maintenance to curb organised crime funded by illicit trade. Figure 28 provides a socio-economic perspective due to increased taxation

5.3. Key recommendations for the industry

Various stakeholders can collaborate in different ways in order to limit the illicit trade and grey market of an industry. Instead of a one-time process, where the counterfeit, pirated or smuggled goods are identified and the law takes its course, the manufacturers and right owners should make it a continuous process of collaborating with the enforcement agencies from time to time. The manufacturers should not limit their interests to mere arrest of the offenders and seizure of the goods. The conviction of the offender should be ensured as well in order to create a deterrence.

The manufacturers must adopt anti-counterfeiting solutions and technologies such as coding and printing

technology, forensic markers, tamper evidences, RFID, hologram, security labels, packaging design, digital mass sterilisation, digital mass encryption and surveillance technologies. There must be a strict mandate to the manufacturers to employ these solutions and technology.

Manufacturers and right holders must be aware of their rights with respect to the IP they hold in order to better enforce their rights. Multiple and regular checks should be made in order to ensure that there are no counterfeits present in the market.

5.4. Key recommendations for the enforcement agencies

The enforcement agencies play the most important role in combating a menace such as illicit trade. There are certain challenges that the enforcement agencies face.

The Economic Offences Wing (EOW) deals with the violation of fiscal laws also faces several challenges such as resource crunch, staff stability, limited training etc.

1

In order to help ensure better enforcement, capacity building programmes and sensitisation activities can be organised

2

Illicit trade is a dynamic crime and changes its course of action and methodologies from time to time, in order to evade from the enforcement agencies. The agencies need to be well prepared to combat illicit traders and their changing methodologies. Special trainings can be provided to officers in order to equip them with the knowledge and skills to investigate such crimes

3

Lack of information remains as another key problem with illicit trade. There can be a better mechanism for coordination and exchange of information, both at national and global level. As the illicit trade acts as one of the major sources of terror financing, different agencies of states and countries must act in coordination to find out and act upon the nexus

4

While investigating a case of intellectual property right infringement, the case should be investigated thoroughly for further links to terrorism and organised crime. A better knowledge exchange is essential in order to unearth the potential links

5

Litigation is a time taking process, and there is a risk of excessive harm if the criminal is let loose for long time in case of illicit trade. Such offences must be dealt in expeditious matter. There can be special courts dealing with cases related to such offences so that the litigation time is reduced.

Glossary



OECD	Organisation for Economic Co-operation and Development
EUIPO	European Union Intellectual Property Office
BASCAP	Business Action to Stop Counterfeiting and Piracy
INTA	The International Trademark Association
UNIFAB	Union des fabricants- Pour La Protection Internationale De La Propriete Intellectuelle
WCO	World Customs Organization
SATP	South Asia Terrorism Portal
FMCG	Fast moving consumer goods
UN	United Nations
ICC	International Chamber of Commerce
IP	Intellectual Property
DRI	Directorate of Revenue Intelligence
UNCCPCJ	United Nations Commission on Crime Prevention and Criminal Justice
WTO	World Trade Organization
TRIPS	Trade Related Intellectual Property Rights
FCTC	Framework Convention on Tobacco Control
TARI	Thought Arbitrage Research Institute
CAGR	Compounded annual growth rate
IBEF	India Brand Equity Foundation
NASSCOM	National Association of Software and Services Companies
FOB	Free on board
CIF	Cost, Insurance and Freight
CSR	Corporate Social Responsibility
EOW	Economic Offences Wing

About FICCI

Established in 1927, FICCI is the largest and oldest apex business organisation in India. Its history is closely interwoven with India's struggle for independence, its industrialization, and its emergence as one of the most rapidly growing global economies.

A non-government, not-for-profit organisation, FICCI is the voice of India's business and industry. From influencing policy to encouraging debate, engaging with policy makers and civil society, FICCI articulates the views and concerns of industry. It serves its members from the Indian private and public corporate sectors and multinational companies, drawing its strength from diverse regional chambers of commerce and industry across states, reaching out to over 2,50,000 companies.

FICCI provides a platform for networking and consensus building within and across sectors and is the first port of call for Indian industry, policy makers and the international business community.

About FICCI CASCADE

In the recent past India's economic growth story has attracted world's attention bringing new challenges for the domestic economy. One of the challenges currently faced is the growing illicit trade in counterfeits, pass offs and smuggled goods. These activities are also threatening brands not only in every region of the country but across the globe.

Contraband and counterfeit products hurt the integrity of the brand, further diluting the brand owner's reputation. This not only results in erosion of sales of the legitimate product but further [CASCADE]s onto affect the consumers in the form of health and safety hazards. With the above insight the Federation of Indian Chambers of Commerce and Industry (FICCI) took the initiative to dedicate a forum by establishing the Committee Against Smuggling and Counterfeiting Activities Destroying the Economy - CASCADE on 18th January, 2011.

FICCI Committee Against Smuggling and Counterfeiting Activities Destroying Economy (CASCADE)

About KPMG in India

KPMG in India, a professional services firm, is the Indian member firm affiliated with KPMG International and was established in September 1993. Our professionals leverage the global network of firms, providing detailed knowledge of local laws, regulations, markets and competition. KPMG has offices across India in Ahmedabad, Bengaluru, Chandigarh, Chennai, Gurugram, Hyderabad, Jaipur, Kochi, Kolkata, Mumbai, Noida, Pune and Vadodara. KPMG in India offers services to national and international clients in India across sectors. We strive to provide rapid, performance-based, industry-focussed and technology-enabled services, which reflect a shared knowledge of global and local industries and our experience of the Indian business environment.

KPMG International

KPMG is a global network of professional services firms providing Audit, Tax and Advisory services. We operate in 152 countries and have 189,000 people working in member firms around the world. The independent member firms of the KPMG network are affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. Each KPMG firm is a legally distinct and separate entity and describes itself as such.

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KPMG's Tax services are designed to reflect the unique needs and objectives of each client, whether firms are dealing with the tax aspects of a cross-border acquisition or developing and helping to implement a global transfer pricing strategy. In practical terms that means, KPMG firms work with their clients to assist them in achieving effective tax compliance and managing tax risks, while helping to control costs.

KPMG Advisory professionals provide advice and assistance to help enable companies, intermediaries and public sector bodies to mitigate risk, improve performance, and create value. KPMG firms provide a wide range of Risk Consulting, Management Consulting and Deal Advisory services that can help their clients respond to immediate needs as well as put in place the strategies for the longer term.

Acknowledgements





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Brand and Marketing Compliance:

Priyanka Agarwal
Rahil Uppal

The authors would like to thank the following for their valuable contributions to the report:

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Iqra Bhat
Mohit Bahl
Dr. Pinaki Ghosh
Ritesh Tiwari
Sidhartha Gautam
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Printed in India.