

An Investigation of the Severity, Causes, Impact and Actions Against Counterfeiting and Smuggling in Nigeria

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Abstract *This paper provides evidence-based information through survey that counterfeiting and smuggling are severe problems to the manufacturing sector and the economy of Nigeria and with significant negative effects. The several factors facilitating the counterfeiting and smuggling activities and the subsisting initiatives against these illegal undertakings were explored. A major reason uncovered why these initiatives have not been effective in curtailing the menace of counterfeiting and smuggling is the lack of coordination among stakeholders. The paper therefore concludes that to make success of the fight against counterfeiting and smuggling and their undesired effects on businesses and the economy requires an integrated approach from stakeholders. Accordingly, a number of recommendations are proposed.*

Key words: *Counterfeiting, Smuggling, Manufactured Products, Initiatives, Nigeria*

1. Introduction

Since the empirical works of Kuznet (1965), a large body of studies and existing theories of economic development has ascribed great recognition to the strategic role of manufacturing in the economic development process of any nation. According to Teriba and Kayode (1977), in the absence of a virile manufacturing sector, a country is at the mercy of the primary exports-dominated sector characterized by uncertain behavior-an uncertainty arising from the fact that the behavior of that sector is determined by exogenous and stochastic factors like deterioration in terms of trade, low income elasticity of demand for primary products and acts of God like drought. They therefore, submitted that exclusive reliance on the expansion of the primary sector for engendering fast and sustained growth and development would be difficult and, in fact, impossible. Indeed, the prevalent differentials in economic growth and development status between the developed and developing countries are often attributed to the relative success or failure in manufacturing development and scope. Manufacturing, which is the hub of industrial activities, creates avenues for employment, helps to boost primary production, particularly agriculture, and makes for forward and backward inter-sectoral linkages within the economy, and helps in diversifying the economy as well as increasing its foreign exchange earnings, it also enables local labour to acquire skills, minimize the risk of overdependence on foreign goods and facilitates the fullest exploitation and utilization of available resources. In all these ways, manufacturing activities help to accelerate the process of economic growth and development. The importance of manufacturing in the economic growth and development process of Nigeria has long been recognized. And to realize the vast potentials which manufacturing activities hold for economic growth/development in the country, attempts have been made by the government over time, to stimulate manufacturing activities¹. However, despite the catalogue of incentives, the manufacturing sector has failed to meet the expectations of the Nigerian nation in its contributions to economic growth and development. Rather than being a leading growth sector and a key factor in the socio-economic transformation, the sector's performance has been poor and deteriorating over time (see Table 1).

¹ See Aregbeyen (2004) for the chronological documentation of these incentives over time.

Table 1. Selected Indicators of the Manufacturing Sector Performance in Nigeria (1980-2009)

Year/ Indicators	Share in total Employment ^a	Share of GDP ^b	Annual Growth Rate ^b	Share of Total Exports ^b	Share of Total Imports ^b	Capacity Utilization ^b
1980	17.0	11.1	1.5	0.3	79.2	70.1
1985	18.2	8.6	19.8	0.6	76.0	37.1
1990	10.0	8.1	7.6	0.2	87.9	40.3
1995	9.0	6.6	-5.5	0.3	81.6	29.1
2000	6.0	6.0	3.6	-	80.5	36.1
2005	6.0	3.8	9.6	9.8	32.1	54.8
2006	5.4	3.9	9.4	11.1	32.3	53.3
2007	5.0	4.0	9.6	10.3	32.8	53.5
2008	5.0	4.1	9.3	8.7	33.0	54.7
2009	5.0	4.2	7.9	19.8	31.9	55.0
Average	8.7	6.0	7.3	6.8	56.7	48.4

Source: a- National Bureau of Statistics, Annual Abstract of Statistics, Various Issues.

b- CBN Annual Reports, Various Issues.

In retrospect, the unimpressive contributions of the sector in various aspects despite the numerous incentives can be traced to many factors. The major ones include the general poor state of the economy (particularly, infrastructural deficiencies) engendered by prolonged maladministration of the economy by military rule, political instability arising from frequent change of government, policy distortions and/or contradictions that characterized most of the 1980s and 1990s, entrenched corruption in government, and the menace of smuggling and counterfeiting. However, while most of the analyses of the poor performance of the manufacturing sector in Nigeria have been done in the context of the several other factors that we've mentioned, very limited attention has been paid to impact of smuggling and counterfeiting activities on the sector. Yet these activities have been increasing in magnitude and scope over time in the country. Indeed, counterfeiting and smuggling are twin global problems of enormous magnitude. Today no country, developed or developing is immune from their menace. While precise global data is limited, all indications are that the counterfeiting and smuggling activities have continued to grow. The growth of global trades in counterfeit and smuggled goods has arisen alongside the rise of international trade over the last several decades (Grossman and Shapiro, 1988; Kafchinski, 2009). Counterfeiting and smuggling have grown in scale because they offer enormous profits and little risk for the criminal element of society.

Against this background, the organized Private Sector (OPS) in Nigeria conveyed a consultative forum during which the activities/problems of counterfeiting and smuggling as a major challenge plaguing the industrial sector of the economy was discussed and designated for (empirical) investigation. Consequently, this study was conducted to provide evidence-based information on the problems of counterfeiting and smuggling of products of the manufacturing sector of the Nigerian economy. Specifically, the study assessed the severity of counterfeiting and smuggling of products in the manufacturing sector; identified the causes of counterfeiting and smuggling in Nigeria; ascertained the effects of counterfeiting and smuggling on the firms and the economy at large; took stock of firm-level and industry-level initiatives against counterfeiting and smuggling; collate opinions on the adequacies of anti-counterfeiting and smuggling regulations in Nigeria; and offered suggestions on actions for improving the fight against counterfeiting and smuggling in the country.

The rest of the paper is organized into four sections. An overview of the relevant literature on counterfeiting and smuggling is provided in section II. Section III describes the methodological approach to

the study, while the discussion of findings was done in section IV. The conclusion and recommendations of the paper are contained in section V.

2. Overview of the Literature on Counterfeiting and Smuggling

By and large, counterfeiting and smuggling are twin phenomenon. This is because counterfeit products are often smuggled, both to circumvent inspections and to evade import taxes. Similarly, smuggled products, particularly famous brands are often the target of counterfeiting and counterfeiters. Jütte, (1994) describes them as the oldest forms of deviance in society. According to historical records, from time immemorial, individuals/groups of individuals have fob off imitations of valuables as the real the thing. But, the original "cottage/village industry" nature of counterfeiting is no longer the norm. Similarly, the advent of mass production capabilities and the expansion of trade across borders have further promoted smuggling. Overtime, counterfeiters and smugglers have become more widespread, sophisticated and better organized. Generally, the more famous or well known a brand is, and the more successful it is in the marketplace, the more likely it is to be copied by counterfeiters. Nevertheless, the impact is not limited to large global brand-owning companies. Small successful brands are also impacted.

Consequently, counterfeiting and smuggling have become global activities of enormous and increasing magnitude. According to OECD (1998:3), no country either developed or developing is today immune to counterfeiting and smuggling. Though there are definite "hotspots," where production bases and distribution networks are concentrated, the rise of globalized trade in counterfeits and smuggled goods is a growing concern. Hence, the literature on these illegal activities is also burgeoning. This extant literature has primarily focused on conceptualizing /defining these activities, identifying their causative factors, issues of their control and their impacts. Accordingly, the next sub-section contains the review of the literature on counterfeiting and smuggling, respectively.

2.1. Counterfeiting

The importance of conceptualizing/defining counterfeiting and smuggling is crucial both for understanding the subject as well as in measuring the extent and nature of these problems. In practice, the boundaries of counterfeiting are vague. What constitutes a counterfeit depends, on the one hand, on views about consumer perceptions and, on the other, on the views of Intellectual Property (IP) enforcement agents namely the police, customs and excise officials, trading standard officials that are charge with the responsibility for the seizure of counterfeits.

A counterfeit, in general usage, is something that is forged, copied or imitated without the perpetrator having the right to do it, and with the purpose of deceiving or defrauding. This therefore, implies that counterfeiting is an infringement of the legal rights of an owner of intellectual property rights. Technically, counterfeiting has been defined as manufacturing a product which so closely imitates the appearance of the product of another to mislead a consumer that it is the product of another' (OECD,1998:3). Beyond this definition, the OECD also classified counterfeiting into two as 'deceptive' (when both the counterfeit and the original product appear very similar to deliberately mislead a consumer), and 'non-deceptive' (where the consumer recognizes that the product is not authentic and so pays an adjusted price for it). Correspondingly, the agreement on Trade-related Aspects on Intellectual Property Rights (the TRIPs Agreement) defined "counterfeit trademark goods" as any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation. From these definitions, it becomes obvious that counterfeiting can apply to both branded and generic products and counterfeit

products may include products with the correct ingredients or with the wrong ingredients, without active ingredients, with insufficient active ingredients or with fake packaging.

Estimates of trade in counterfeit goods by (PHWC, 2003) is said to be worth more than 5 per cent of world trade. A number of factors have been associated with this high trade volume in counterfeited goods. These factors can be broadly categorized into four as legal, government regulatory and "practical business" reasons. The legal reasons include lack of clear, established, respected and enforced rule of law, unclear and piecemeal laws on counterfeiting leading to ad hoc enforcement and gaps that criminals exploit, and none recognition of counterfeiting as a serious economic and social crime subject to serious penalties that could serve as deterrent. The government regulatory slacks include laxity in the enforcement of rules, poor inspection and control of the flow of counterfeit goods over national borders, high levels of internal and border taxes on luxury goods, alcohol and tobacco that provide a major incentive for counterfeiting, and lack of anti-counterfeiting enforcement specialists. Profit opportunity and a risk-to-reward balance that favors criminal activity, low security features of firm's products, the advancements in, and relatively inexpensive availability of sophisticated photocopying and printing technologies and equipment that allow counterfeiters to create labels and packaging nearly identical to the real product quickly and cheaply, attraction of unscrupulous and unethical suppliers who have sold legitimate labels, packaging and other materials to counterfeiters, mass production in factories (large and small) using increasingly more advanced production equipment that facilitated the replication of the appearance of just about any product on the market, and increased international trade, and emerging markets, among others without being exhaustive, constitute the practical business reasons that facilitate counterfeiting.

Certainly counterfeiting is not a victimless crime. It poses serious consequences on all countries, whether they are centers for counterfeit production or distribution, or on the receiving end of the fake product distribution network. The many consequences include that: it discourages innovation and growth; reduces employment through job cuts by the companies whose products are being counterfeited as a result of falls in sales and profits, and job cuts by suppliers to, and other businesses reliant on, companies whose products are being counterfeited as demand for their services declines; can reduce foreign direct investment (FDI) as branded goods companies become reluctant to manufacture their products in countries where counterfeiting is rife; damages sales volume, profits, brand value and capitalisation of rights' owners, and can lead to potential legal liability; can seriously affect health and safety of users; can negatively affect consumer confidence; reduces tax revenues (corporate, income, consumption/value-added taxes, etc) to governments- since very few counterfeit goods manufacturers pay any company/income taxes at all, it results in lower national tax receipts which either leads to reductions in government spending or higher tax rates for legitimate businesses (that are thus hit twice by counterfeiting); induce high costs on governments and industry to combat counterfeiting; and encourages participation by organised crime and can be the cause of corruption.

Available records on policy actions against counterfeiting indicate that most counterfeiting combat efforts placed emphasis on 'Awareness' and 'Enforcement'. Awareness entails the launch of public awareness campaigns for consumers, while enforcement incorporates both legislation and execution, in the form of penalties. So far, anti-counterfeiting laws are not in place in many countries and where in place the penalties imposed by most governments are mild or not tough enough to act as a deterrent. These slack in legislative and punitive mechanisms have encouraged the rapid growth of large-scale manufacturing and distribution of counterfeit products. In view of this, many severely affected countries are in recent times making concerted efforts to improve and better enforce laws.

Furthermore, countries with a strong representation of trademark owners have established anti-counterfeiting associations. These are membership organizations, whose main activities include promoting adequate Intellectual Property Rights (IPR) protection, information gathering and liaison with enforcement agencies. Some trade associations are also becoming very active in assisting their members to combat counterfeiting. For example, in Ghana, business Coalition against Counterfeits and Illicit Trade (CACIT) was

launched on the 18th July 2007 with membership spanning several stakeholders/bodies. CACIT seeks the enforcement of intellectual property laws, copyright, patent, and trademark protection, and licensing laws in order to protect consumers from counterfeit products and all other forms of illicit trade, thereby defending the integrity of member organizations' brands. The strategy for achieving these goals include working for the enactment of tougher laws and the education of the business community, consumers, and the media and interaction with authorities – local and international – to strengthen the enforcement of those laws governing illicit trade in all its forms. There is also the effort among the East African Countries (EAC) comprising Burundi, Kenya, Rwanda Tanzania, Uganda, and Zanzibar; beginning from 2008 to formulate an EAC policy on anti-counterfeiting, anti-piracy and other intellectual property rights violations.

There have also been noticeable initiatives at the firm level. Most companies are making sure that their trademarks are adequately protected and implementing anti-counterfeiting and anti-smuggling policies to deal with the menace. A number of technologies, such as holograms, smart cards, biometric markers and inks, are being employed to protect and authenticate genuine products. These devices vary considerably in the degree of sophistication and cost. However, in order to be implemented the technology must be cost-effective, compatible with the product and distribution chain, resistant and durable.

2.2 Smuggling

Like counterfeiting smuggling is an illegal method of conducting business. Deflem and Kelly, (2001) described it as a clandestine activity which involves the importation and/or exportation of goods by wrong or unlawful means with the objective of evading taxes and any other measures prohibiting or restricting the importation or exportation of such goods. Several of the many and imaginative methods that have been deployed by smugglers have included (i) outright avoidance of official Customs controls across the borders (e.g. on lake, overland on road, rail, airport and often through the bush ways. This form of smuggling is generally associated with highly marketable goods, goods of high tax value, and prohibited or restricted goods); (ii) under declaration of goods (a circumstance where the importer declares less quantity on importation documents than the actual goods being imported); (iii) under valuation of goods (whereby goods are given a lower value than they actually have); (iv) mis-classification of Goods (whereby goods are declared under a different class of imports particularly to attract lower rates of tax with intent to reduce the tax liability); (v) falsification of documents (sometimes documents pertaining to certain goods are tampered with in their particulars with intent to benefit the taxpayer by a reduction in tax); (vi) mis-declaration of country of origin (when a different country is declared as the source of goods instead of the correct country of origin); (vii) short landing transit and/or re-export goods (transit goods are those goods which are destined to other countries through another country, re-exports are goods which come into the country but subsequently exited. In both cases, smuggling occurs when the goods finally end up on the market in another country, leading to total evasion of taxes and other controls); (viii) concealment (hiding the smuggled goods in another product); (ix) quantity (premised on the tenet that if enough of a particular product is smuggled then realistically some will get through); (x) bribery (get officials to turn the wrong way by paying them); (xi) threats (get officials to turn the other way or else); (xii) subterfuge (bring the product in away from the eyes of the officials); and (xiii) cover (get someone, like a diplomat to bring the goods in under their own cover), among others.

According to Norton (1988), the underlying cause of smuggling is rooted in differential tariffs or price disparities between markets. In which case, smuggling is motivated by risk-taking strategies prompted by a desire to avoid paying taxes or to make money from the sale of clandestinely imported goods. Sheikh (1989) indicated that the many risks associated with smuggling are alluring due to the anticipated monetary gain. Other fingered causes, which are considered largely secondary include porous border, poor inspection at borders, corruption, presence of informal distribution networks, organized crime, and industry participation.

The effects of smuggling are usually significant in an economy. The major impact often include (i) loss of revenue (smuggling is an act of tax evasion which deprives government of revenue for public expenditure); (ii) distortion of market prices (goods which are smuggled into the country are often sold a lot cheaper than goods brought onto market through the right procedures, smuggling therefore deprives traders of free competition); (iii) collapse of local industries (a country achieves better economic growth by developing its own industrial base. Smuggling under-cuts prices of the locally manufactured goods thus destroying the market for local products. This leads to collapse of local industries); (iv) unemployment (when there is unfair competition in the market, compounded by the collapsing of industries, the labour market (employment base) is eroded, thus professionals, skilled and unskilled personnel remain jobless); (v) undermine firms' investments (which are often substantial in developing well-managed distribution networks; smuggling also corrodes market share and destroys the reputation and profitability of brands-amongst any company's most important assets; and it also facilitates the equally damaging problem of counterfeiting).

To minimize the foregoing negative effects require very calculated and well targeted policy responses, especially by the government. One major way by which government can address the causes of smuggling going by indications from the literature is for the government to upscale its anti-smuggling drive so that seizures can add to the cost of smuggling and thus render smuggling uncompetitive.

2.3 Summary of the Literature Review

From the foregoing review of the literature on counterfeiting and smuggling, a number of salient points can be distilled. These points include that counterfeiting and smuggling are:

- mutually reinforcing illegal activities, from which no country is immune;
- significant and growing problems that have enormous negative economic and social effects;
- highly severe and that their severity are being aided by a number of factors;
- well organised activities and the actors are adept at establishing distribution channels, and this encourages the participation of organised crime;
- infiltration of the legitimate supply lines, with increasing concern over their potentially harmful effects on many products;
- of very damaging effects on consumers, rights holders, governments and the society at large; and
- better understood and dealt with by according them more priority, promoting greater co-operation among stakeholders and improved information collection machinery.

3. Materials and Methods

3.1 Data Collection

The study utilized primary data sourced through survey of firms across some major industrial cities of the country namely Abuja, Lagos, Ibadan, Kaduna and Kano. 25 firms were randomly sampled in each city. The small sample size was informed primarily by funding. Information was also collected from key regulatory agencies and institutions that were believed to be relevant to the study namely the Nigeria Customs Service, Standards Organization of Nigeria (SON), National Agency for Food and Drug Administration and Control (NAFDAC), and the Manufacturers Association of Nigeria (MAN). Data collection was done through structured questionnaires validated by the key stakeholders.

The questionnaire for the firms has eight major sections. The eight sections in sequential order are firm identification; severity of counterfeiting and smuggling problems; causes of counterfeiting and smuggling; the effects of counterfeiting and smuggling; firm level initiatives against counterfeiting and smuggling; industry level initiatives against counterfeiting and smuggling; counterfeiting and smuggling regulations; and suggestions on solutions to the counterfeiting and smuggling problems.

The questionnaires to SON and NAFDAC sought information essentially on the severity of counterfeiting in Nigeria, firms conformity with General Manufacturing Practices (GMP), whether or not firms registered their products and the extent to which they fulfill registration requirements, and their informed opinions on the causes of counterfeiting and smuggling in Nigeria. Given her mandate, the questionnaire for the Nigeria Customs Service focused only on the smuggling aspect of the study. The questionnaire sought for information on the severity of smuggling in Nigeria, causes of smuggling, points and mode of smuggling in Nigeria, the treatment of smugglers and Customs officers' collaboration with smugglers. From MAN, we sought for information on membership, members' firms' conformity with General Manufacturing Practices (GMP), causes of counterfeiting and smuggling, anti-counterfeiting and smuggling initiatives of the Association, and suggestions as well as possible ways to further prevent counterfeiting and smuggling in Nigeria.

3.2 Method of Data Analysis

The data collected from firms and key regulatory agencies and institutions were collated, organized, summarized and carefully analyzed using descriptive statistics.

4. Data Analysis/Findings

The analysis of data and reporting of findings done in this section covers those firms from which we were able to retrieve the questionnaires administered on them. The questionnaires administered on the sampled firms in Abuja could not be retrieved. Questionnaires were retrieved from 24, 10, 22, and 20 firms in Lagos, Ibadan, Kaduna and Kano, respectively. This gives a total of seventy-six firms for the analysis. The questionnaires administered to regulatory agencies and institutions were all retrieved. The analysis/report of findings is presented under eight major sub-sections. Accordingly, Section 4.1 presents a brief profile of the sampled firms. The severity of counterfeiting and smuggling problems are analyzed in 4.2. Section 4.3 assesses the effects of counterfeiting and smuggling on the sampled firms operations. This is followed in section 4.4 by the analysis on the perceptions of the causes of counterfeiting and smuggling in Nigeria. Section 4.5 discusses the initiatives against counterfeiting and smuggling. Issues in counterfeiting and smuggling regulations in the country are examined in section 4.6

4.1 Profile of the Sampled Firms

Majority of the firms totaling 64 and representing about 84 percent of total sample are private firms. Four (4) firms, two (2) each from Lagos and Kano, are publicly owned. The remaining 8 firms gave no response on their firm type. On the nature of the firms, the Limited Company category dominates with a frequency count of 58 out of 76. Next are the Limited Liability Companies with a count of 8. Sole Proprietorship comes next with 4 and then Partnership with 3. The remaining 3 firms did not indicate the nature of their companies. All the firms except three (3) are registered members of the Manufacturers Association of Nigeria (MAN). These are spread across the 10 sectoral groupings of the MAN, however, with skewed distributions in favour of the Chemicals & Pharmaceuticals, Textiles, Wearing Apparels, Carpet, Leather/Leather Footwear, and Domestic & Industrial Plastic, Rubber and Foam in order of listing. One of the firms, by nature of its operations and products falls into two sectoral groups.

4.2 Severity of Counterfeiting and Smuggling Problems

To establish the severity of counterfeiting and smuggling problems, firms were asked to indicate whether or not their products are been counterfeited and smuggled into the country. In addition to this, on counterfeiting,

both NAFDAC and SON were asked to provide information on the total number of seizures of broad classification of manufactured goods (food and drugs by NAFDAC) between 2005 and 2009 as well as the extent of conformity with the Good Manufacturing Practices (GMP) by firms in Nigeria. For smuggling, the Customs was asked to provide information on the total number of seizures of broad classification of manufactured products over the period 2005 and 2009, point and mode of smuggling into Nigeria, the treatment of smugglers and opinion on the adequacy of the penalty for those arrested.

A total of 46 firms out of the 76 sampled firms; representing about 61 per cent, disclosed that they are confronted with the problem of counterfeiting. For smuggling, 35 firms (representing about 46 per cent) indicated being affected. Firms in the Chemicals and Pharmaceuticals group are the most affected by counterfeiting followed by those of the Textiles, Wearing Apparels, Carpet, Leather/Footwear group. The Textiles, Wearing Apparels, Carpet, Leather/Leather Footwear group is the most affected from smuggling activities. 5 of the firms whose products have been counterfeited indicated that it started recently. Another 22 constituting the majority traced theirs to a while ago, while another 11 are of the opinion that their began long time ago. The remaining 8 firms did not respond to the question.

For smuggling 4, 15 and 10 of the firms indicated that it began recently, a while ago and long time ago, respectively. The remaining six firms have no memory of when it commenced. The rating of the extent of products counterfeiting and smuggling was rated very high by 11 firms. 20 others considered it high; while it is considered moderate by 6 firms. Only 3 firms reported a low extent. The remaining six firms gave no response. For smuggling, 10, 14, 3, and 2 gave a rating of very high, high, moderate and low, respectively, while 6 indicated no ratings. It is very instructive that majority of the firms have knowledge of the sources of their product counterfeiting and smuggling. For counterfeiting, the sources mentioned include Asian countries, particularly China, Niger, Cotonou, and within Nigeria. The main sources of smuggling identified are Asian countries particularly China, Singapore, Hong Kong and India; Europe, mainly Turkey and Italy; Middle East, chiefly Dubai; and Niger Republic and Cotonou.

Given that smuggling is usually a syndicated activity; the firms were asked if they are aware of the financiers and backers in the country. While 21 firms representing about 28 per cent of total claimed they know the financiers and backers of smuggling activities in the country, 35 constituting about 46 per cent of the total denied having knowledge of who the financiers and backers are. A total of 20 firms (amounting to about 26 per cent) avoided the question. Those who claimed they know the financiers and backers of smuggling activities in the country mentioned customs officers and their cronies, politicians and their wives, clearing agents and some influential individuals.

Evidences from NAFDAC also suggest that counterfeiting is severe in the country. NAFDAC identified various forms of fake/counterfeit drugs, which include: drugs with no active ingredient(s); drugs with insufficient active ingredients; drugs with active ingredient(s) different from what is stated on the packages; clones of fast moving drugs -these are drugs with the same quantity of active ingredients as the genuine original brand; drugs without full name and address of the manufacturer; herbal preparations that are toxic, harmful, ineffective or mixed with orthodox medicine; expired drugs or drugs without expiry date, or expired and re-labeled with the intention of extending their shelf-life; and drugs not certified and registered by NAFDAC. Counterfeit products, (drugs, food, cosmetics, medical devices, chemicals, and water including all drinks but mostly pharmaceuticals) valued at over N8.0b (US\$60 million) were reportedly seized and destroyed in Nigeria by NAFDAC between April 2001 and December 2004. And between 2005 and 2009, a total of 218 of broad classifications of drugs were reportedly seized. The monetary values of these seizures were not disclosed, but it is certain that they would be of significant monetary value.

NAFDAC noted that most of the fake/counterfeit drugs in Nigeria are imported from Asia, particularly India and China. The problem is not much within the country because NAFDAC enforces the GMP compliance of Local Manufacturers. Monitoring is done routinely and compliance directives are issued and enforced to the letter when lapses are observed. Prosecution is carried out as a last resort when necessary. NAFDAC says it now operates the policy of stopping the importation of counterfeit medicines to Nigeria at source. In doing

this, the Agency has in place the following administrative guidelines: a factory must be GMP certified before it can export drugs to Nigeria; NAFDAC officials must inspect factories anywhere in the world before we register or renew registration for their drugs, foods and other regulated products; NAFDAC has appointed analysts in India and China who re-certify any drug from the two countries before importation into Nigeria; for drugs imported from any country, NAFDAC requires mandatory pre-shipment information to be provided by all importers before the arrival of the drugs; through advocacy and collaboration, Nigerian banks have been convinced to assist in the war against fake drugs. Since February 2003, the banks insist on NAFDAC clearance before processing financial documents for drug importers. This agreement is now a government policy because of its adoption by Central Bank of Nigeria.

Information on the severity of smuggling from the Nigerian Customs Service for the period 2005 to 2009 indicated that total seizures amounted to 3114 in 2005 but declined to 2913 in 2006. It then increased to 3778 in 2007, the highest over the five years period covered. It declined again to 2575 by 2008 and further increase to 2895 in 2009. Total seizures over the five years period amounted to 15,275. The sectoral distribution of the seizures show that seizures in Motor Vehicle & Miscellaneous Assembly accounted for about 54 per cent of the total over the five years covered. The group of others comes next with (about 38 per cent) followed by Textiles, Wearing Apparels, Carpet and Leather/Leather Footwear with about 7 per cent. The insignificant share of the Food, Beverages & Tobacco and Chemicals & Pharmaceuticals sectors is understandable given that they fall under the mandate and control of NAFDAC.

The monetary value of the 2005 seizures amounted to ₦ 11.6 billion, while that of 2006 was ₦ 7.6 billion. It amounted to ₦6.6 billion, ₦4.3 billion and ₦5.3 billion for 2007, 2008 and 2009, respectively. The total value of the seizures for the five years summed up to ₦35.4 billion. Disclosures on the point of smuggling and seizures made by Nigeria Customs Service (NCS) revealed that most smuggling and seizures occur mainly through seaports and other water ways. The second entry point of significance is through border areas (land and creeks), and thirdly through airports. The modes and/or strategies often adopted by smugglers according to the Customs include (i) bribery of the security agencies policing the roots and border areas, and (ii) use of border communities other information sources to check when Customs operatives are not around or less busy. The treatment meted to smugglers when caught basically involves prosecution after their goods are seized. Some are made to face other penalties such as issuance of debit notes. In all, the maximum penalty given to smugglers is imprisonment if found guilty.

From the above, it is evident that counterfeiting and smuggling are severe problems faced by the manufacturing sector of the economy of Nigeria.

4.3 The Effects of Counterfeiting and Smuggling on the Firms

Attempt was made to assess the effects of counterfeiting and smuggling on the operations of sampled firms. To accomplish this, firms were requested to provide information on how their firms have been affected by counterfeiting and smuggling in a number of identified ways. These include sales loss, decline revenue, reduced market share, employment loss, reduction in capacity utilization, and cost of protecting and enforcing products trademarks. Only fifteen (15) firms responded to this enquiry. They all indicated that counterfeiting and smuggling have affected their operations in all the ways indicated. Of these 15 firms, only 3 firms put figures to the information. Given the magnitude of the figures indicated, it is evident that counterfeiting and smuggling have significantly and negatively affected the operations of these firms and perhaps all other firms confronting counterfeiting and smuggling problems. As a matter of fact, a firm reported that it is on the verge of closing down.

4.4 Causes of Counterfeiting and Smuggling

The understanding of the causes of counterfeiting and smuggling is very fundamental to any attempt at devising strategic responses to these problems. In the light of this, sampled firms and the regulatory

agencies/ firm Association were asked to indicate their extent of agreement or disagreement to a number of causes of counterfeiting and smuggling distilled from the literature. The level of agreement was done on a scale from strongly agree to agree, undecided, disagree to strongly disagree. In collating the responses, only factors in the agreed and strongly agreed categories were counted to be valid. The responses are discussed in turn beginning with that of counterfeiting. Table 1 presents the sampled firms perceptions of causes of counterfeiting.

As can be seen from the table, majority of firms affirmed that the suggested factors are causes of counterfeiting except for high levels of internal and border taxes on luxury goods, alcohol and tobacco that provide a major incentive for counterfeiting, and lack of anti-counterfeiting enforcement specialists. To the extent that at least 50 per cent of firms affirmed mass production in factories large and small using increasingly more advanced production equipment that facilitated the replication of the appearance of just about any product on the market, and increased international trade, and emerging markets, we take it that they are potent causes of counterfeiting.

Table 2. Perception of the Causes of Counterfeiting by Sampled Firms

S/N	Perception of Causes	No Firms	% of Total
1	Low security features of firms products in Nigeria	47	62
2	The lucrative nature of the counterfeiting business	66	87
3	Lack of clear, established, respected and enforced rule of law	62	82
4	Laxity in the enforcement of rules, minimal penalties and punishment that provide little or no deterrent.	66	87
5	Laws on counterfeiting are unclear and piecemeal, leading to ad hoc enforcement and gaps that criminals exploit	57	75
6	None recognition of counterfeiting as a serious economic and social crime subject to serious penalties that could serve as deterrent.	60	79
7	Poor inspection and control of the flow of counterfeit goods over the Nigerian borders.	60	79
8	High levels of internal and border taxes on luxury goods, alcohol and tobacco that provide a major incentive for counterfeiting	31	41
9	Lack of Anti-counterfeiting enforcement specialists	22	29
10	The advancements in, and relatively inexpensive availability of sophisticated photocopying and printing technologies and equipment that allow counterfeiters to create labels and packaging nearly identical to the real product quickly and cheaply.	47	62
11	Attraction of unscrupulous and unethical suppliers who have sold legitimate labels, packaging and other materials to counterfeiters.	53	70
12	Mass production in factories large and small using increasingly more advanced production equipment that facilitated the replication of the appearance of just about any product on the market.	39	51
13	Increased international trade, and emerging markets	38	50

Source: Field Survey, 2010

The expressed agreements with the suggested causes of counterfeiting differ among the trio of NAFDAC, SON and MAN². However, they all agreed that the lucrative nature of the counterfeiting business is a cause. In a similar pattern, they all disagreed that lack of anti-counterfeiting enforcement specialists is a cause of counterfeiting in the country.

² Customs was excluded from this part of the analysis since it has no mandate related to checking counterfeiting.

In addition to expressing their opinions with respect to the suggested causes of counterfeiting, the firms and the regulatory agencies/ firms Association were also asked to identify causes of counterfeiting from their point of view. The following were mentioned: (i) high cost of production and therefore non competitive products prices (high cost of products); (ii) preference for cheaper product even at low quality; (iii) unemployment; (iv) the get rich quick syndrome; (v) unmet demand for a market moving brand or product, and (vi) inadequate supervision by regulatory bodies.

Coming to smuggling, a higher proportion of the firms endorsed each of the suggested causes except for industry participation, for which only about 36 per cent of the firms assented to. In order of ranking, porous border and corruption were recognized as the leading causes of smuggling. Poor inspection at borders comes next and followed by tax levels, tax and price differentials. Organized crime as a cause of smuggling was ranked 5th while the presence of informal distribution networks took the 6th position. The perceptions of the regulatory agencies/firms Association also tallied with those of the firms. From NAFDAC and MAN, all the suggested causes were endorsed except for industry participation. SON is of the opinion that poor inspection at borders, corruption and industry participation are not causes of smuggling in Nigeria. For the Nigeria Customs Service, all the suggested factors are valid.

In addition to the causes of smuggling suggested and to which we sought responses, the respondents were also asked to indicate further causes of smuggling in the country. The following causes were mentioned: (i) lack of political will; (ii) lack of good governance; (iii) cheaper products in other countries; (iv) high cost of production in Nigeria/local products are more expensive; (v) high customs duties; (vi) prohibition of imports; (vii) attempt to invade paying duties and taxes; (viii) the desire to gain commercial advantage over fellow importers; (ix) as a means of avoiding processing of documents; (x) to avoid import and export permits requirements; (xi) to avoid exchange control regulations; and (xii) money laundering.

4.5 Initiatives Against Counterfeiting and Smuggling

The discussion under this section is bifurcated. In the first part, we discussed the firm level initiatives against counterfeiting and smuggling. The industry level initiatives are taken up in the second part.

4.5.1 Firm Level Initiatives against Counterfeiting and Smuggling

The attempt at uncovering or providing insights into the firm level initiatives against counterfeiting was hinged on the premise that firms' products should carry some security features no matter how little. Based on this tenet, firms were asked to indicate if or not their products carry any security features to prevent counterfeiting them. About half of the firms have their products carrying security features; while the products of about another half carry no security features. 13 firms gave no response. It is interesting to know that 15 of the 46 firms (about 33 %) that indicated being confronted with counterfeiting have products carrying no security features. The firms that indicated having their products carrying security features were further asked to indicate the nature or type of security features that their products carry. The list of security features indicated include: trade mark and packing materials, threading and batch numbering, embossment and labeling format, different shade of colouring of packaging materials, temper proof logo and seal, customize packaging materials, printing on products caps and inside of caps, logo and trademark, and NIS mark /number and hologram.

The firms were further asked if they can easily distinguish their products from counterfeits. A total of 41 firms answered this question affirmatively. 17 others can't easily distinguish their products from counterfeits while the remaining 18 firms did not respond. From the 41 firms that claimed they could easily distinguish their products from the counterfeits, 10 have their products carrying no security features. There is doubt, therefore, about their ability to easily distinguish their products from counterfeits. As such, the valid number of firms that could easily distinguish their products from counterfeits is the 31 that have their products carrying

some security features. These firms disclosed that they could differentiate their products from counterfeits in the following ways: security features on the products; labeling, embossments; packaging and design; quality; thickness; and weight and texture of products. Furthermore, the firms were asked about the last time they changed their product design and/or packaging as a way of safeguarding their products from being easily counterfeited. Only 26 firms reported to have changed their products design between 2002 and 2010.

Some of the measures that firms have taken in response to counterfeiting of their products were identified to include market raids and seizures, litigation, advertisement/awareness campaign, protected labels, specially designed packaging materials, improve quality of products, reduce the channel of distribution, wrote complaints to relevant Ministries, Chinese embassy, Customs, MAN, NAFDAC etc. Other measures are diversification, provision of technical assistance in carrying out enforcement to the regulators, being careful in appointing distributors, regular change of product design and packaging, inscribe trade mark on products, support different public institutions in building capacities in finding counterfeit products and supporting them in enforcements, cut down the cost of production, searching for sources of counterfeiting, and ensuring that product quality are of high standards.

To address the problem of smuggling, the affected firms reported that they have tried a number of initiatives or measures largely similar to those under counterfeiting. These initiatives include product quality enhancement beyond the smuggled ones, price reduction, market visitations, on the counter spot check, prayers, making complaints to regulatory bodies, litigation, market raid and seizures, advertisement/campaign for patronage of made in Nigeria products, use bodies like MAN, NACCIMA etc. for advocacy, capacity expansion. They have also tried to get a law passed to ban the importation/smuggling of products, liaising with SON, and writing complaints to China and Hong Kong embassies.

4.5.2 Industry Level Initiatives Against Counterfeiting and Smuggling

In order to determine how seriously the firms and their association takes the twin problems of counterfeiting and smuggling, we sought information on what initiatives at the industry level are in place or being contemplated to curtail the severity of these problems from MAN head office and the firms. The response from MAN indicated that a system is being put in place to collect on regular basis information on illicit manufacturing and seizures of counterfeits products and the extent of counterfeiting activities. The Association reported that it had established a group known as "*the MANBRAND Protection Group*" to enlighten the public from time to time on the dangers of patronizing counterfeit products. It was reported that workshop on and/or against counterfeiting and smuggling was organized.

However, it was rather surprising that only a few of the sampled firms seems to have knowledge of the existence of any of these industry level initiatives against counterfeiting and smuggling. In specific terms, only 17 out of the 76 firms, representing about 22 per cent claimed to have knowledge of any industry anti-counterfeiting and anti-smuggling initiatives in place or being planned. Even among the 17, just three firms could state (correctly) what these initiatives are. The remaining firms either out rightly declared lack of knowledge or did not respond. It is not unlikely that those who declined to respond do not know as well.

4.6 Anti-Counterfeiting and Anti-Smuggling Regulations

The intent of this section is three fold. The first explored the level of awareness and knowledge of sampled firms of existing laws, regulations and strategic actions against counterfeiting and smuggling in the country. The second harvested the opinions of firms on the adequacy of these anti-counterfeiting and anti-smuggling laws, regulations and strategic actions. The third elicited the opinions of firms on collusion of law enforcement agents/agencies with counterfeiters and smugglers.

Beginning with the first of the intents, only 31 firms claimed awareness of any regulation against counterfeiting and smuggling. A total of 26 firms have no awareness of any regulation against counterfeiting

and smuggling. The remaining 19 firms avoided this question. The high proportion of firms that do not know about any regulation against counterfeiting and smuggling plus those that avoided the question; couple with the earlier indication that many of the firms are also not in the knowledge of any industry level initiatives against counterfeiting and smuggling all point to two possibilities. It is either they have not taken seriously the problems of counterfeiting and smuggling as they ought to or the regulations are unclear and/or piecemeal in nature.

Opinions of the 31 firms that are aware of existing regulations against counterfeiting and smuggling on the adequacy of anti-counterfeiting and smuggling regulations measures in place in the country appear similar. About 87 per cent of them consider the existing regulations inadequate. Only two (2) firms, constituting about 6 per cent pronounced the regulations adequate. Two (2) other firms expressed no opinions.

Lastly, the elicited opinions of the firms on whether or not law enforcement agents/agencies collude with counterfeiters and smugglers was quite revealing. Majority of the firms (about 51 per cent) refused to express their opinions. Of the 37 firms that responded, 10 (about 27 per cent) are of the opinion that the law enforcement agents/agencies do not collude with counterfeiters and smugglers. However, the remaining 27, the majority and constituting about 73 per cent believed that law enforcement agents/agencies collude with counterfeiters and smugglers. Some of the ways through which the law enforcement agents/agencies collude with counterfeiters and smugglers were identified. For smuggling, they include misclassification of goods and escorting them when they smuggled, falsification of documents, and mis-declaration of country of origin. For counterfeiting, offenders are either left of the hook or pay fewer fines than stipulated by law.

5. Summary, Conclusion and Policy Recommendations

This study has shown through evidence-based information that counterfeiting and smuggling are severe problems to the manufacturing sector and the economy of Nigeria with significant negative effects. Counterfeiting and smuggling have been allowed to foster by initial apathy on the part of businesses and the industry, the absence of clear and enforceable legal and regulatory framework, ineffective enforcement of regulations, and poor co-ordination amongst regulatory agencies among other. The conclusion from the study therefore, is that to make success of the fight against counterfeiting and smuggling and their undesired effects on businesses and the economy requires an integrated approach from stakeholders. In this regard, the following recommendations are suggested: (i) government and business leaders need to establish the fight against smuggling and counterfeiting as a priority, put more resources and *enhance co-operation* towards finding solutions; (ii) consider having a clear counterfeiting & smuggling policy; (iii) improve co-ordination amongst domestic agencies; (iv) have a clear and enforceable legal and regulatory framework with stiffer penalties; (v) ensure effective enforcement; (vi) foster international co-operation, bilateral, plurilateral and multilateral; (vii) increase awareness amongst government officials and consumers; (viii) enhance co-operation with industry; and (ix) monitor progress through programme evaluation and measurement.

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