

# KENYA'S ANTI-COUNTERFEITING STRATEGIES

1<sup>st</sup> International Symposium on IPPE (ISIPPE)

Presentation by

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Awareness

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# Presentation Layout

1. Introduction
2. Kenya's anti-counterfeiting legal landscape
3. Kenya's anti-counterfeiting strategies
  - a) Public awareness
  - b) Stakeholder capacity building
  - c) Enforcement
  - d) Multi-agency collaboration
  - e) Research
4. Challenges
5. Conclusion

# 1. Introduction

- The Anti-Counterfeit Authority (ACA) is a state corporation under the MITI (Min of Investments, Trade and Industry).
- Falls under the State Department for Industry.
- Established by the Anti-Counterfeit Act, 2008.
- Came into operation in June 2010.
- HQs and 5 regional offices and several satellite offices
  - Nairobi, Mombasa, Kisumu, Eldoret, Nyeri

## Vision

A Counterfeit-Free Kenya



## Mission

Promote legitimate trade through the enforcement of intellectual property rights



## Motto

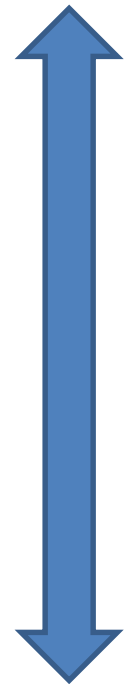
Authentic | Credible | Alert

# ACA's mandate

1. Public awareness
2. Enforcement
3. Capacity building
4. Coordination
5. Research
6. Policy advise

ACA enforces intellectual property right  
infringement

Demand



Supply

# 2. Legal Framework

- International Law

- WTO-TRIPS Agreement . Banjul protocol, 1993
- Berne convention, 1886
- WIPO treaty, 1996

- Regional Laws

- Protocol establishing the EAC Common Market (article 43)
- EAC Customs Management Act, 2004 (s.219)
- EAC Anti-Counterfeit Policy
- EAC Anti-Counterfeit Bill

# Legal Framework

- National Laws
- Constitution of Kenya, 2010:
  - Art 11(2)c); 40(5); 69(1)c)&e); 260
- Anti-Counterfeit Act, 2008
  - Establishment, powers, offences, penalties, etc
  - Sec 34A – compounding of cases
  - Sec 34B – IP recordation
  - Anti-Counterfeit Regulations, 2010
    - Sec 18 – appointment of agents, code of conduct
    - Sec 20A – compounding of cases
  - Anti-Counterfeit (Recordation) Regulations, 2021

# Categories of inspectors

Two categories of inspectors under the Act:

1. **Appointed inspectors** - S. 22 (1) empowers the ACA Board to appoint inspectors for purposes of enforcing the provisions of the Act. The Inspectors appointed by the Board have full police powers (s.22 (2) (b)) in the exercise of their duties under the Act.
2. **Designated inspectors** – [S. 22 (3)] In addition to the appointed inspectors, the following are designated as inspectors for purposes of the Act:



# Designated inspectors

➤ any member of the ACA Board	➤ any public health inspector
➤ any police officer	➤ inspectors appointed under the Standards Act
➤ any authorized customs officer	➤ inspectors appointed under the Weights and Measures Act
➤ any trade development officer	➤ inspectors appointed under the Copyright Act
➤ any industrial development officer	➤ inspectors appointed under the Food, Drugs and Chemical Substances Act
➤ any trade mark and patent examiner	➤ inspectors appointed under the Pharmacy and Poisons Act
➤ any seed and plant inspector	➤ inspectors appointed under the Pest Control Products Act

# Powers of inspectors

- Powers to inspect (s. 23):
  - Power to inspect or search any place, premise, vehicle or person found in these places;
  - Power to terminate manufacture, production or making of counterfeit goods;
  - Power to seize and detain counterfeit goods;
  - Power to seize and detain any tools (machinery, equipment) used in manufacturing, production, making or packaging of those goods.
  - May arrest a person without a warrant;

# 3. Anti-Counterfeiting Strategies

- Public awareness

- Open forums, road shows and talk shows
- Educational institutions
- Special days – AID, WIPD, WACD, etc
- Exhibitions & trade fairs
- Community engagements – border communities
- Media – legacy and social media

# Anti-Counterfeiting Strategies

- Stakeholder capacity building
  - For law enforcement agencies – Police, Judiciary, etc
  - For private sector – IPR holders/agents, business associations
  - County sensitization – 33 counties
  - Product knowledge training
  - Anti-counterfeit curriculum (accreditation) –
    - ✓ Module 1 – consumers
    - ✓ Module 2 – supply chain players, MCDAs, edu institutions
    - ✓ Module 3 – IPR owners/agents
    - ✓ Module 4 – Law enforcement agencies
    - ✓ Module 5 –judiciary and prosecutors

# Anti-Counterfeiting Strategies

## ● Enforcement

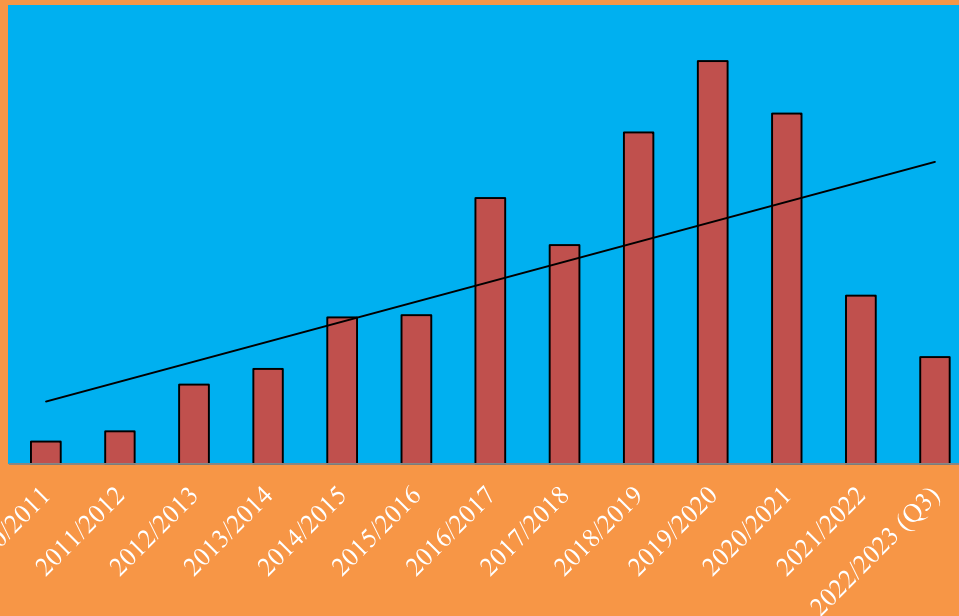
- Intelligence collection
- Market surveillance
- Inspect premises & goods
- Facilitate prosecution
- Compounding of offences (ADR)
- Destruction
- Automation of processes – AIMS, IPR recordation

# Anti-Counterfeiting Strategies

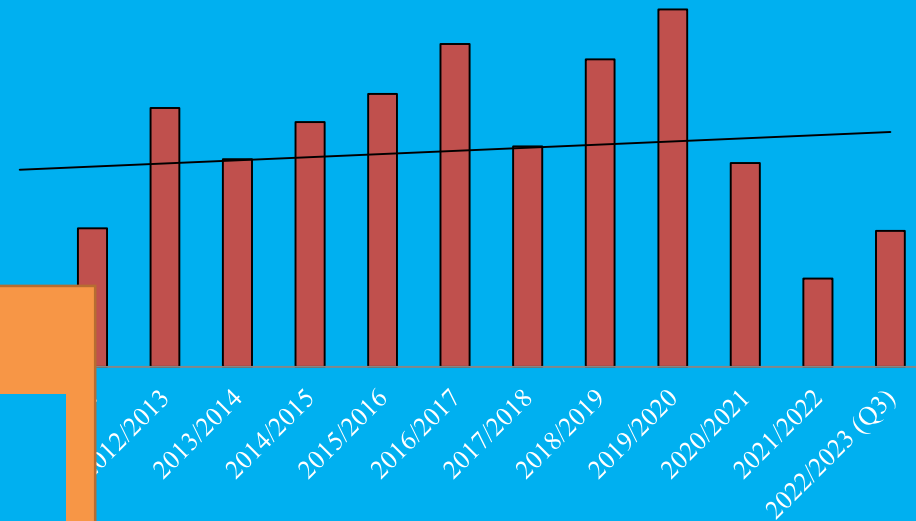
- Enforcement

3617

No. of Consumer Complaints Received



No. of Complaints Received from IPR owners



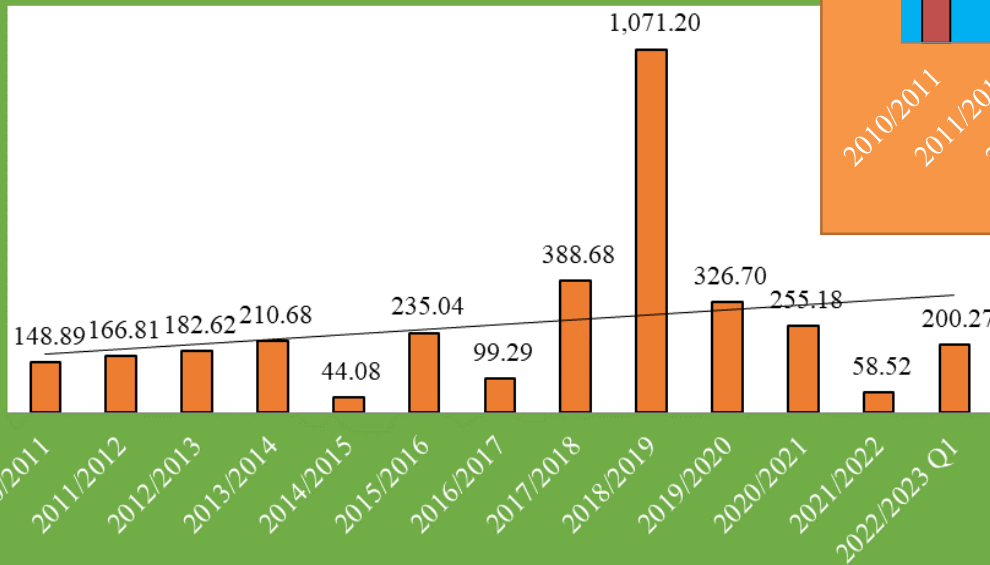
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# Anti-Counterfeiting Strategies

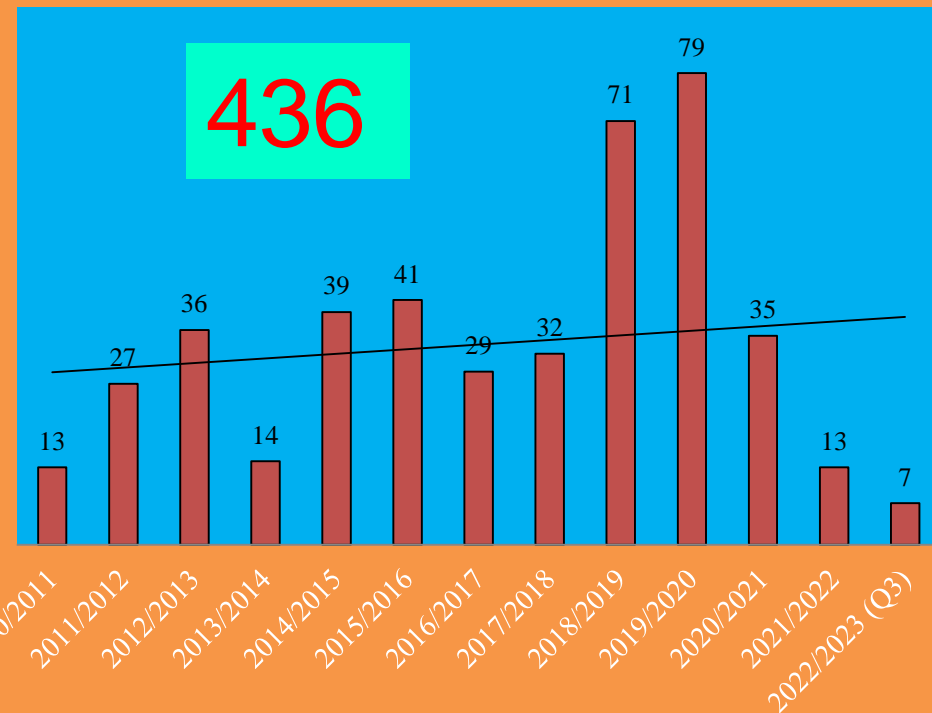
- Enforcement

Kshs 3.4 bn

Value of Seized Goods  
(Million Kshs)



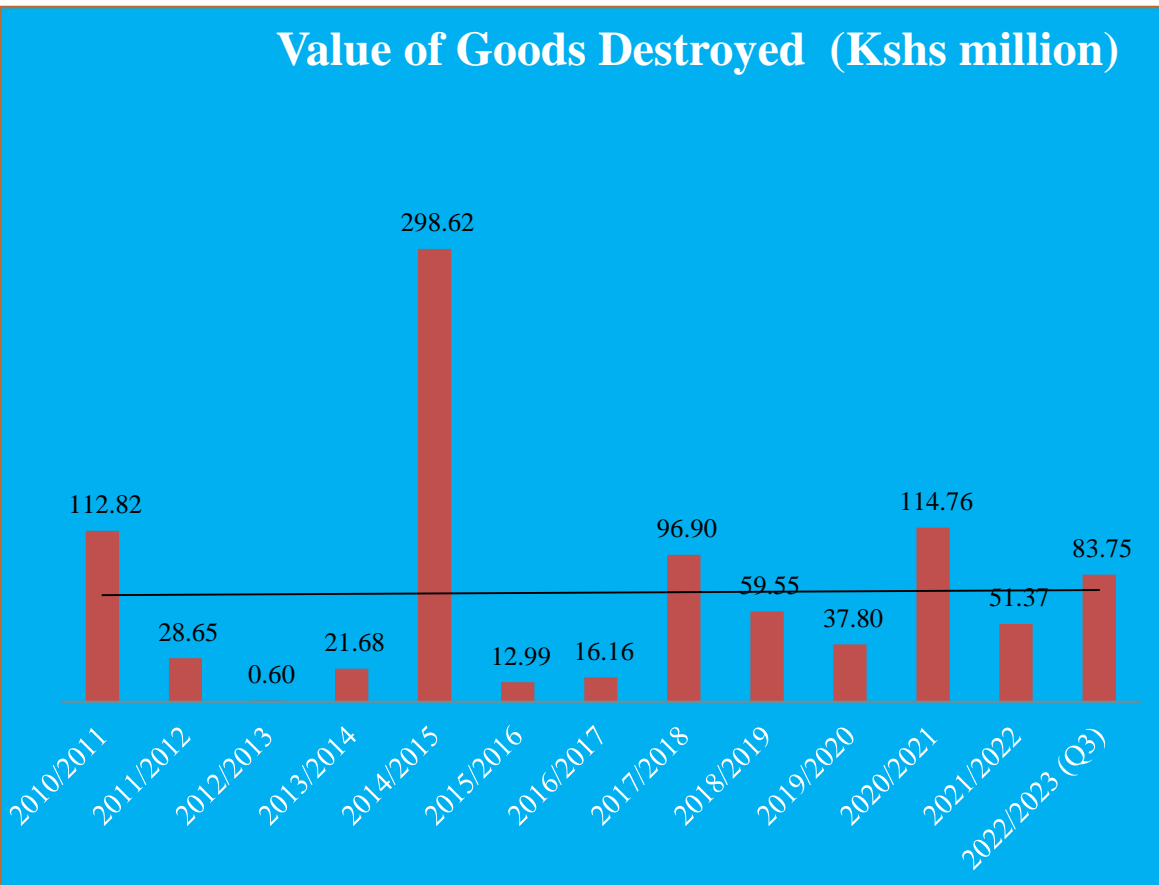
Cases Registered in Court



# Anti-Counterfeiting Strategies

- Enforcement

Value of Goods Destroyed (Kshs million)



Kshs 935 mn



# Anti-Counterfeiting Strategies

- Multi-agency collaboration

- Gazette Notice No. 7270 of 20 July 2018 established the Inter-Agency Anti-Illicit Trade Executive Forum with two working groups.
  - Enforcement WG
  - Outreach WG
- Presidential directive of 2018 – multi-agency enforcement coordination
  - Led from the Office of the President (deputy head of public service)

# Anti-Counterfeiting Strategies

- Multi-agency collaboration
  - Developed a 4 year strategy



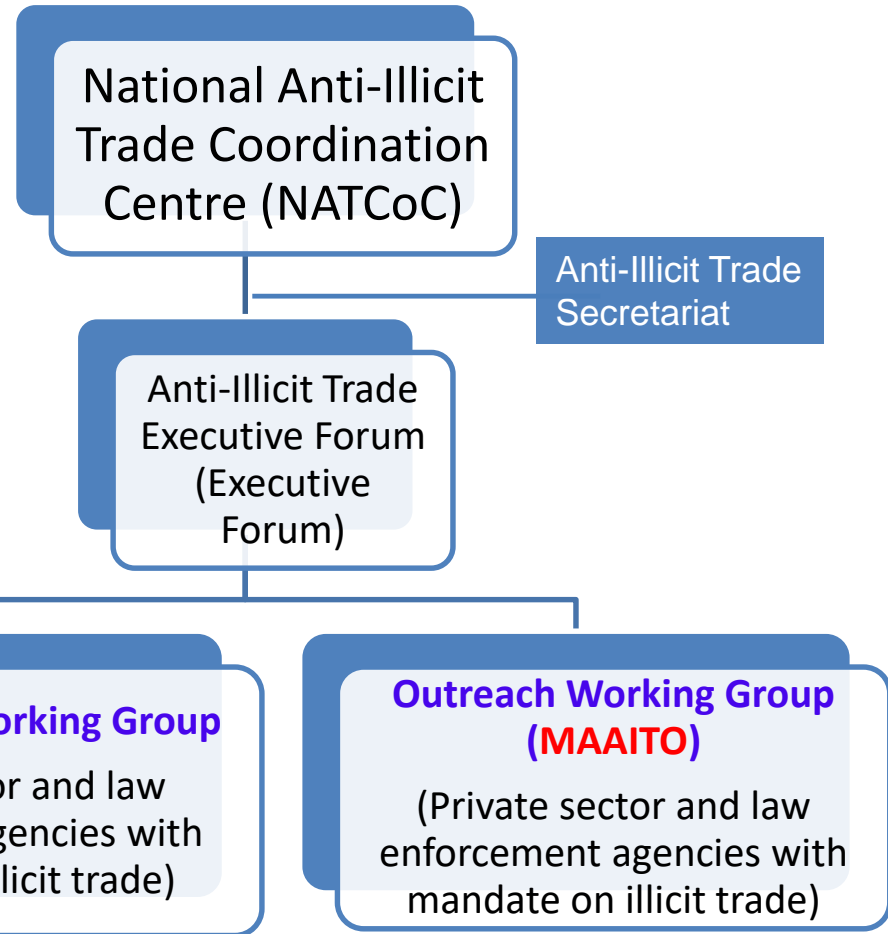
# Kenya's Anti-Illicit Trade Coordination Structure

- Members – **PSs** (combatting illicit trade) & Private sector
- Chair – Presidential appointee
- To report to Cabinet

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- Members – **CEOs**
- Chair – Public/Private sector
- To report to NATCoC

**Executive  
Forum**



## Technical Working Groups

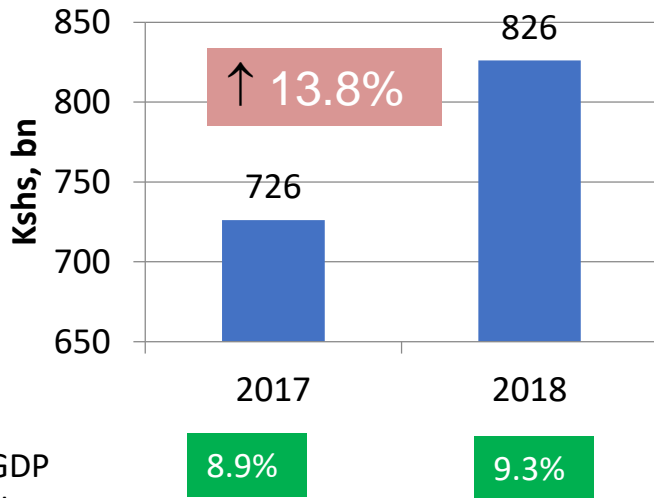
- Members – **Technical officers**
- Chair – Public/Private sector
- To report to EF

# Anti-Counterfeiting Strategies

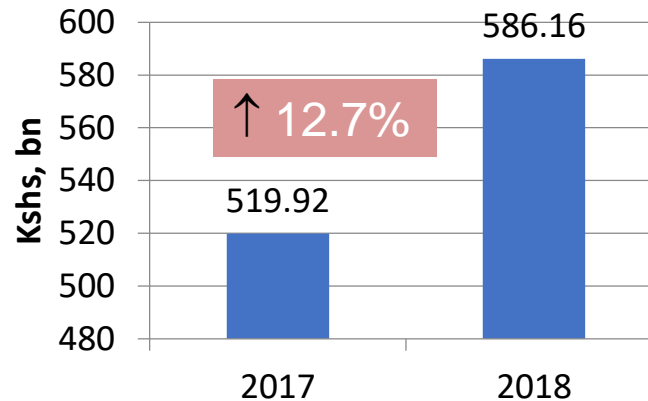
## • Research

- **ACA national baseline survey on illicit trade (2020)**
- **Overall National Magnitude of Illicit Trade - All Chapters and 16 Target Sectors (Kshs, bn)**

**All sectors (Chapt 1-97)**



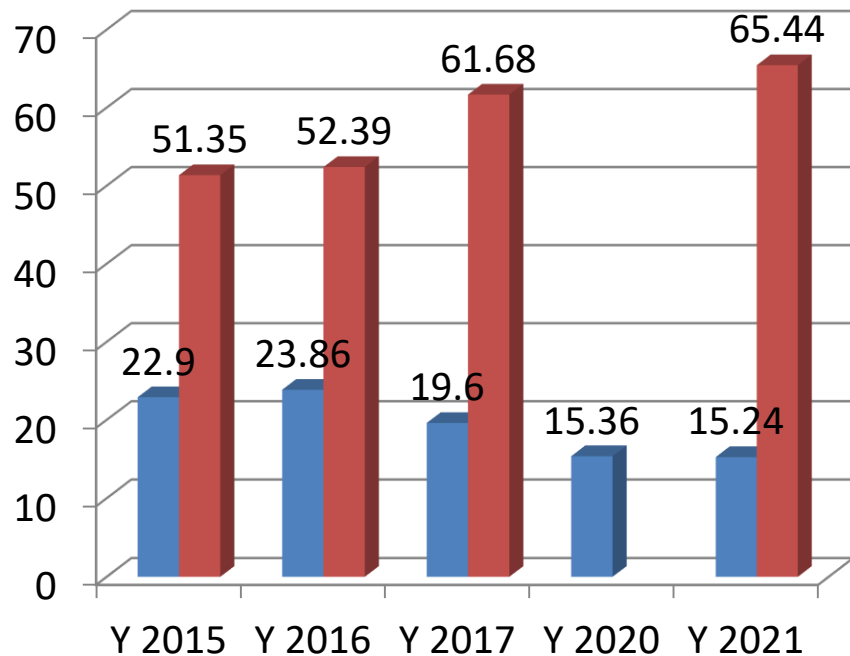
**Target 16 sectors**



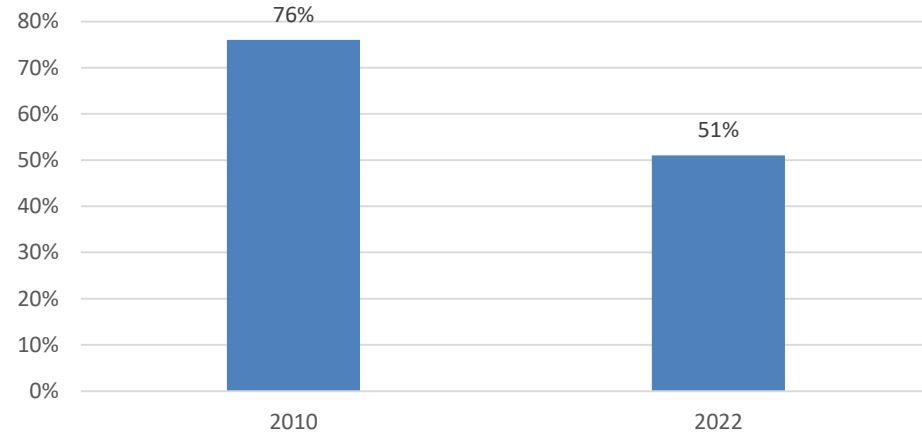
→ Illicit trade's share in GDP mirrors that of the manufacturing sector.  
 → Can wipe out manufacturing sector!

# Anti-Counterfeiting Strategies

- Research



% of consumers who purchased counterfeit goods

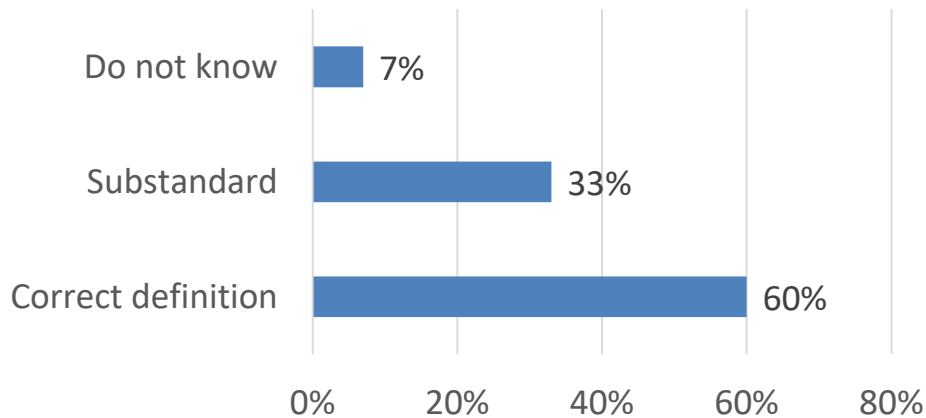


■ Level of counterfeiting (%)  
 ■ Level of public awareness (%)

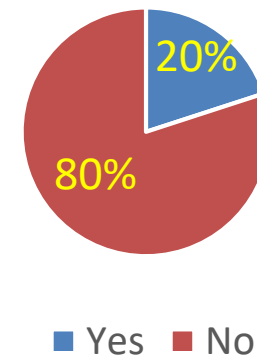
# Anti-Counterfeiting Strategies

- Research

% of consumers who correctly defined counterfeit goods %



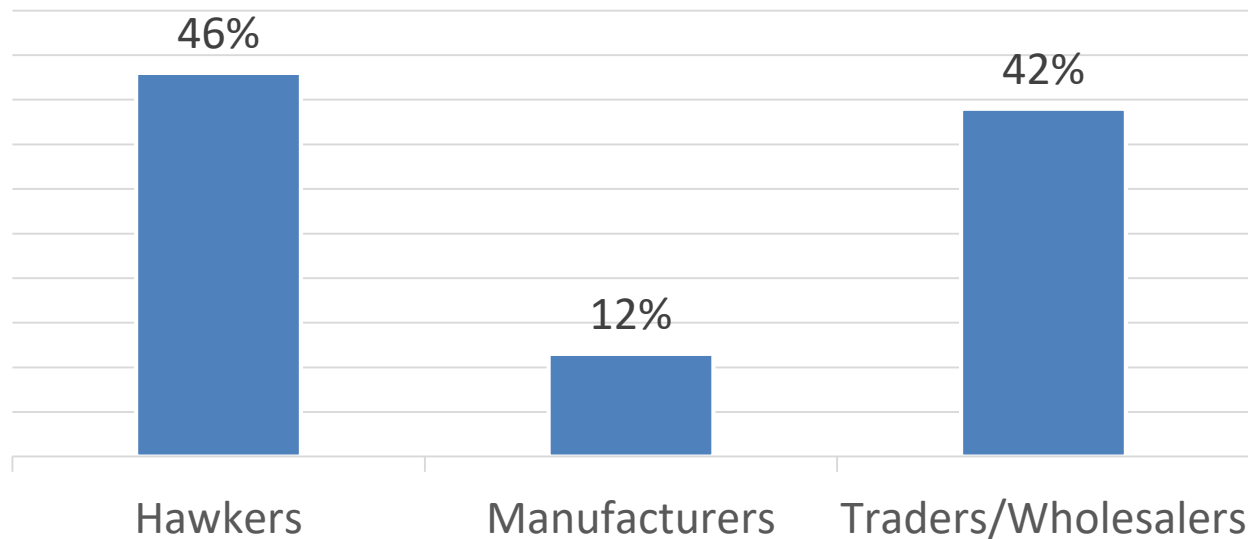
Purchased counterfeit goods online in the last 6 months %



# Anti-Counterfeiting Strategies

- Research

Major distributors of imported counterfeits  
within the country



## 4. Challenges

- 1) Budgetary constraints – affects operations.
- 2) Inadequate mechanisms for storage and safe disposal of seized counterfeit goods.
- 3) High security risk to ACA operational staff.
- 4) Rising online trade has made it difficult to detect and investigate counterfeiting offences.
- 5) Misunderstanding of ACA's role by influential counterfeiters which give ACA a negative image.
- 6) Hazardous materials in counterfeit goods.
- 7) High poverty levels lead consumers to consume cheap counterfeited goods.



## 5. Conclusion

- Combating counterfeit and illicit trade requires concerted and sustained efforts from all stakeholders.
- Stakeholders need to **communicate**, **collaborate**, and **cooperate** in this war in terms of:
  - Intelligence gathering/sharing – national/int'l;
  - Investigations and prosecution (multiple counts);
  - Public awareness;
  - Strengthening relevant laws;
  - Compliance by the private sector;
  - Sharing best practices; etc

# Thank You!

## Our Offices

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