

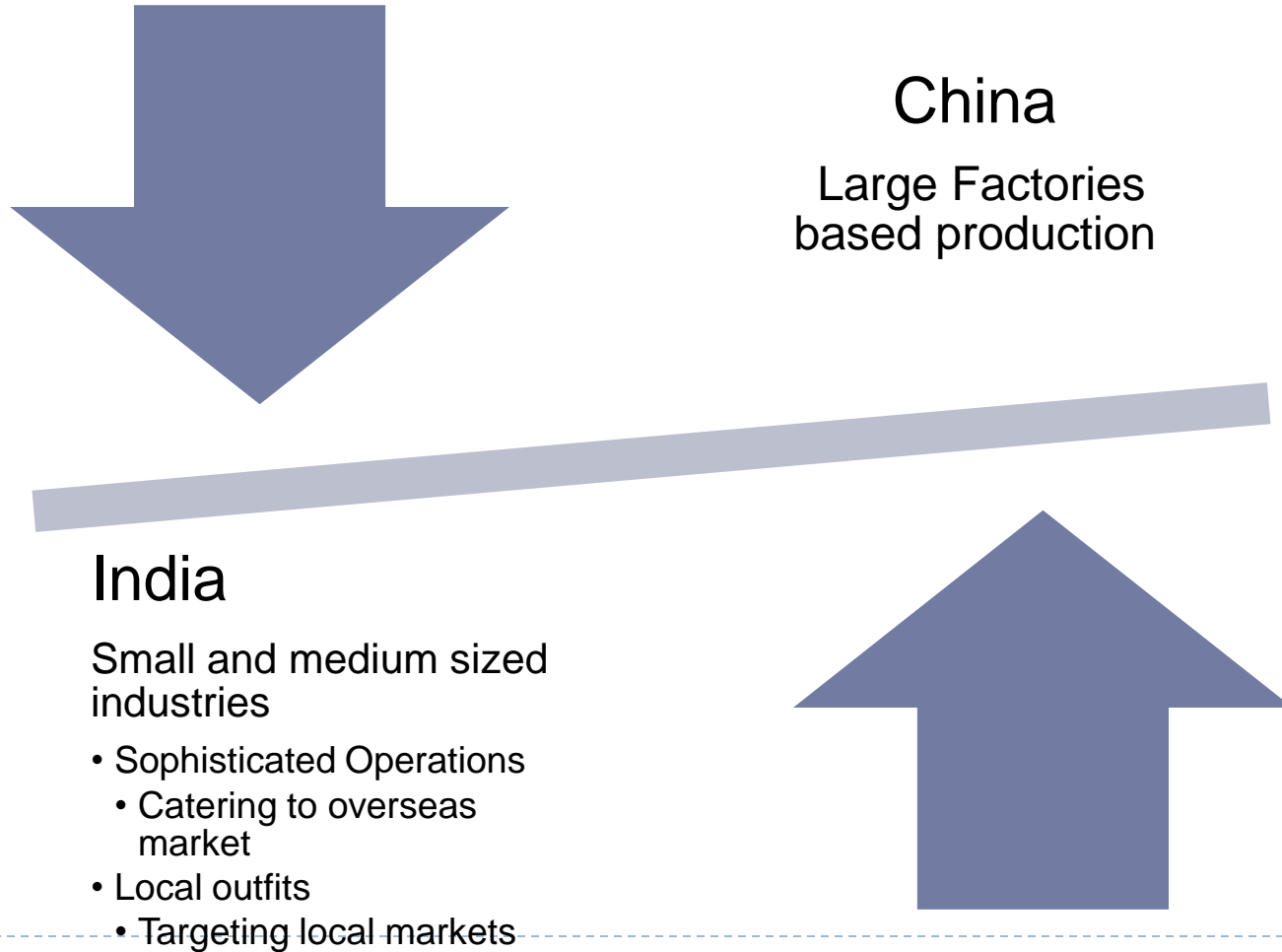
Session III
Private Sector Perspective:

**Strengthening Supply Chain Integrity to Combat Illicit
Trade**



Counterfeiting Landscape in India

Counterfeiting Landscape in India



Scale of the Problem

- ▶ Auto Component Manufacturers' Association of India (ACMA) estimates Indian automotive components aftermarket to be around Rs. 250 billion.
- ▶ Composition (%age of value):
- ▶ Other manufacturer :15%
- ▶ Imported parts :8 %
- ▶ Counterfeit parts : 36 %
- ▶ OEMs : 22%
- ▶ OESs : 19 %
- ▶ *Source : ACMA report 2012*

Pharmaceuticals

“People often seem to confuse counterfeit, substandard and generic medicines – using the terms interchangeably. But they are very separate issues and clearly defining their differences is critical to any discussion”.



Surveys on 'Spurious' and 'Sub-standard' drugs

- ▶ Central Drugs Standard Control Organization (CDSCO)
- ▶ 'Counterfeit Drugs' in India from 2006 to 2010

Year	Drugs samples tested	% of sub-standard drugs	% of spurious drugs	Prosecution for crime	Persons arrested
2006-07	34738	5.8	0.22	115	12
2007-08	39117	6.2	0.19	120	122
2008-09	45145	5.7	0.34	220	133
2009-10	39248	4.95	0.29	138	147
TOTAL	158248	5.66	0.26	593	414

	Criterion	CDSCO Report	WHO Report
1	Sample Size	24,136	10,743
2	Counterfeits Suspects	0.05%	3.10%
3	Laboratory Analysis results	0.2% to 0.4% (40,000 sample size)	0.30%
4	Coverage Area	Metro, Big Cities, District Headquarters,	Metro, Big Cities, District Headquarters



Legal Landscape

Trademarks Act 1999

Copyright Act 1957

Patents Act 1970

Designs Act

Geographical Indications Act 1999

Drugs and Cosmetics Act 1940

Prevention of Food Adulteration Act 1954

Consumer Protection Act 1986

Indian Penal Code

IT Act 2000

Customs Act 1962



Trademarks Act 1999

- ▶ Provides remedies for infringement and passing off in relation to both registered and unregistered rights
 - ▶ Widens the scope of infringement
 - ▶ Makes counterfeiting and piracy cognizable offences
- ▶ **Civil remedies**
 - ▶ Section 29 defines 'infringement' as unauthorized use that is likely to cause confusion on the part of the public.
 - ▶ Section 135 provides for civil relief, including injunctions, damages, rendition of account of profits and delivery up of infringing labels and marks for destruction or erasure.
- ▶ **Criminal remedies**
 - ▶ Section 102 defines the offence of falsifying a mark and applying a false mark
 - ▶ Section 103 sets out penalties, including imprisonment for up to three years and fines of up to Rs200,000 (approximately GBP 5,000)

The Copyright Act 1957

▶ Civil remedy

- ▶ copyright owner can bring an infringement action where it has sufficient evidence to prove it has been aggrieved.
- ▶ Section 55 provides for various remedies, including injunctions, damages and account of profits

▶ Criminal remedies

- ▶ Section 64 empowers police officers – not below the rank of a sub-inspector – to seize all copies of infringing works and plates used in their creation.
- ▶ Section 53 authorises the registrar of copyrights to prevent the import of infringing copies, and to enter any ship dock or premises where such infringing copies are alleged to be found and order their confiscation.
- ▶ Section 63 provides for punishment of up to three years' imprisonment and fines of up to Rs200,000 (approximately 5,000)



Customs Act 1962

- ▶ Provisions prohibiting the import and export of infringing goods
 - ▶ Defines Goods made, reproduced, put into circulation or otherwise used in breach of IP laws within or outside India, without the consent of the rights holder or its duly authorised agent
- ▶ Intellectual Property Rights (Imported Goods) Enforcement Rules 2007
 - ▶ Automated Recordation and Targeting of IPR Protection (ARTS)
 - ▶ Use of Information Technology and Communication tools to share information

<http://ipr.icegate.gov.in/IPR/index.jsp>

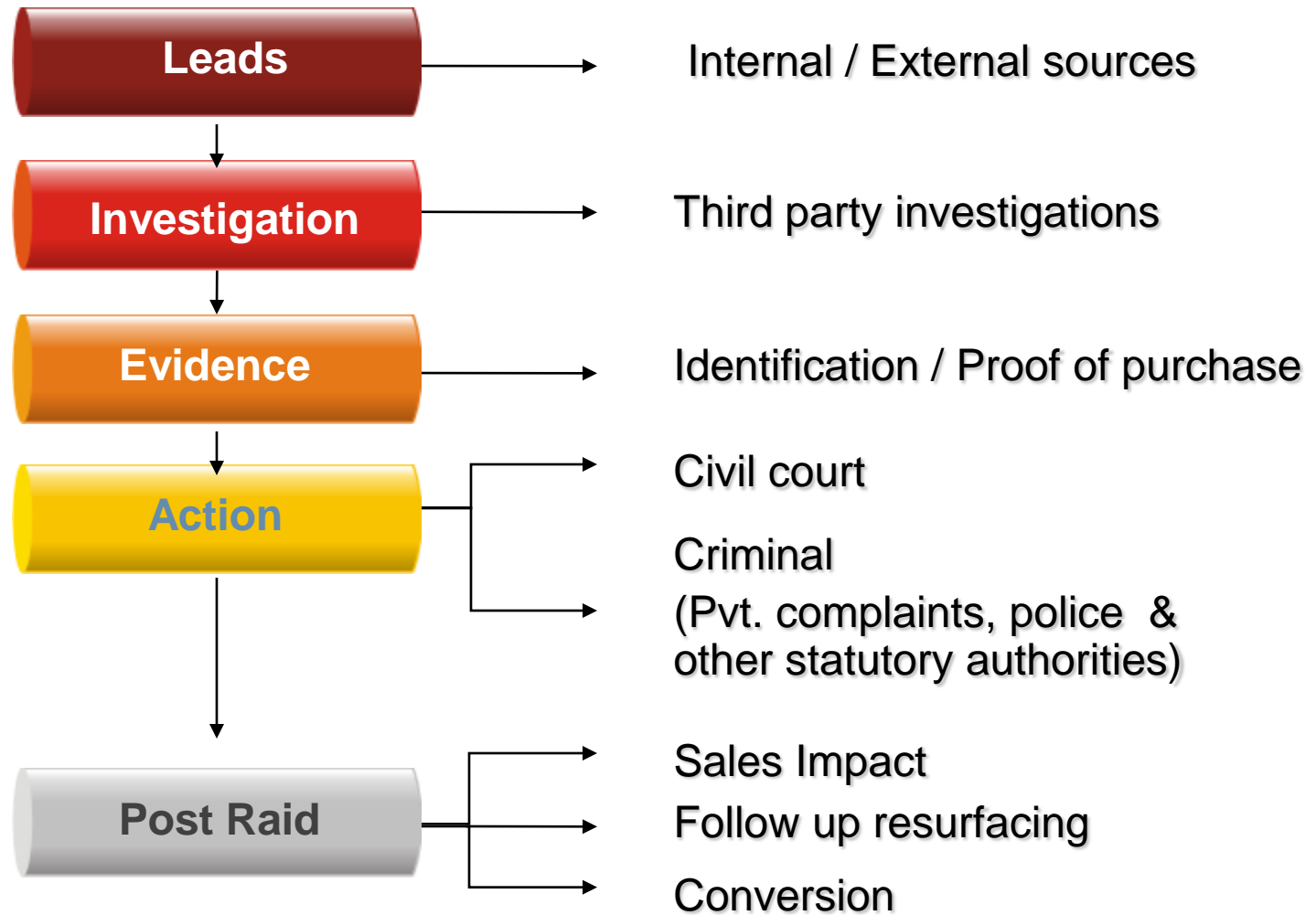


Private Sector Supply Chain Integrity Strategies

- ▶ **Pfizer India- Co-opting Intermediaries**
 - ▶ Dedicated Investigative wing gathers discrete information
 - ▶ Due diligence
 - ▶ Know your sub-contractor, distributor and retailer
 - ▶ Enforcement Action through exchange of information with Police officials
- ▶ **BP Castrol – Co-opting Employees**
- ▶ **HP- Innovation in products**
 - ▶ End User Verification
- ▶ **Microsoft**
 - ▶ End User Verification
 - ▶ Remedies to duped customer in exchange for information of source



Process Flow Chart



Co-opting Consumers

- ▶ Maruti Suzuki India Limited
 - ▶ Complete Control of Supply Chain
 - ▶ Manufacturing- Distribution- Retail
- ▶ Creation of separate Brand
 - ▶ “Maruti Genuine Parts” MGP
- ▶ Co-opting the consumer
 - ▶ Aggressive consumer Awareness Campaign



Committee

**Against Smuggling and Counterfeiting
Activities**

Destroying the Economy



Federation of Indian Chambers of Commerce and Industry (FICCI) Initiative

- ▶ **Private Sector Representatives from across Industry sectors**
 - ▶ Pharmaceuticals
 - ▶ Automobiles
 - ▶ Computers, Hardware, Software, Mobile
 - ▶ FMCG
 - ▶ Electric Equipment
 - ▶ Lubricants
 - ▶ Tobacco
 - ▶ Liquor
 - ▶ Jewellery



Agenda

- ▶ **Generating awareness**
 - ▶ Interactions with the law enforcement authorities to emphasize on the importance of continued awareness and seriousness of the impact of counterfeit goods
 - ▶ Capacity building of law enforcement agencies including Judges, Police and Customs Officers
 - ▶ Research and proposing law reforms
 - ▶ Sharing the best practices followed

Initiatives

- ▶ Joint Publicity Campaign with Ministry of Consumer Affairs to create awareness amongst the consumer.
 - ▶ Released in more than 160 newspapers nationally
- ▶ **“HUM KISHORE FESTIVAL 2012”**
 - ▶ Cultural youth festival on theme “Fight Smuggling and Counterfeiting”
 - ▶ Delhi (30 April- 4May 2012)
- ▶ **World Anti-counterfeiting Day** on 13 June 2012
 - ▶ **“Developing a Proactive Strategy to Curb Counterfeiting”**



Sharing Information with Customs

- ▶ **Training Workshop with Customs Officials**
 - ▶ Delhi and Chennai
 - ▶ Information sharing by BMW and Toyota Representatives
 - ▶ Confidential Features exchanged
 - ▶ Customs solicited extent of the problem
 - ▶ Urged use of Customs Recordal System
 - ▶ Urged due diligence and notification to customs
 - ▶ Complained non-prosecution after seizures on the part of Industry
 - ▶ System not yet smooth and cumbersome complainant



Pan India -State Awareness Seminars

- ▶ Interaction with State Level Policy makers
 - ▶ Governor of State, Ministers
 - ▶ Police Officials
 - ▶ Urge industry and citizens to come forward
 - ▶ Complain lack of resources and hence lesser in priority
 - ▶ Complain prosecution never takes place
 - ▶ Ground Staff lack understanding of subject
 - ▶ Insensitive to the seriousness of the problem
 - ▶ Customs and Excise Officials
 - ▶ Most receptive
 - ▶ Urge exchange of information and due diligence
 - ▶ Eager to act on complaints



Consumer Focus program

- ▶ **Sharing Information with Consumers through workshops**
 - ▶ Interactive sharing of information between
 - ▶ Local Police
 - ▶ Excise officials
 - ▶ Legal experts
- ▶ **Assessing the Grey Market**
 - ▶ In-depth research to gather reliable information on the impact of illicit trade in counterfeit goods in core sectors of industry on subject
 - ▶ To be Released November 2012
 - ▶ Policy Recommendations



FICCI CASCADE Web Site

- ▶ Piloting and Information Clearing House
- ▶ Initial support from Ministry of Consumer Affairs
 - ▶ To address Consumer complaints
- ▶ Further plan to share with Police, customs and excise
- ▶ Build a repository of real life data on counterfeits
- ▶ Mechanism to proactively address the problem

▶ www.ficci-cascade.com