



# Enforcement of Intellectual Property Rights, Jamaican Law Enforcement Perspective

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**March 19, 2019**

**Kingston, Jamaica**

## Aim

- Promote an understanding of Intellectual Property Rights
- Look at Jamaica's Role in Enforcing Intellectual Property Rights
- Look at Drivers that fuels the IP Trade
- Successes

# What is IP?



Intellectual property refers to  
the creative expressions of the  
human mind...  
*(Tangible & Intangible)*





What Rights are Derived?



**Intellectual Property Rights should not be confused with IP. It's a right vested in the asset, not the asset itself**

e.g.:

- ❑ an idea / invention is IP, a patent registration is an IPR
- ❑ a customer / price list is IP, a right of confidentiality is an IPR
- ❑ a secret production method is IP, a right to a trade secret is an IPR
- ❑ a particular way of representation is IP, copyright or a design registration is an IPR
- ❑ a brand / trade name is IP, a trade mark registration is an IPR

# Usual Suspects



# International Legal Framework



- Protection for industrial property
- Trade mark
- Patent
- Unfair competition
- Governed by domestic legislation



# International Legal Framework



- Protection of Literary and Artistic Work
- Governed by National Legislation

# International Legal Framework

## TRIPS

Trade **Related** Intellectual Property **Rights**

- Additional to Paris and Berne.
- Minimum requirement.
- Strong enforcement procedure.

# Domestic Legal Framework

- Trademark Act –Sec.69
- Copyright Act –Sec. 46(1) (B), 134(1)D (11)
- Town and Community Act-Sec. 5(a)
- Excise Duty Act-Sec. 102
- Food and Drugs Act- Sec. 55
- Pharmacy Act- Sec. 26
- Consumer Protection Act- Sec 28
- Patent Act
- Geographical Indications Act

# Trademark Act-Section 69

Subject to subsection(4)- **Trademark must be registered and has a reputation in Jamaica. Any use would create an unfair advantage to the Trademark, or would be detrimental to the distinctive character or reputation of the Trademark.**

**Commits an offence - Intent+ Gain (Himself or Another)= Cause loss and without consent of the Rights Holder applies :**

- (A) to goods a sign identical with, or likely to be mistaken for, a registered trade mark; or
- (B) sells or lets for hire, offers or exposes for sale or hire or distributes goods which bear, or the packaging of which bears, such a sign; or
- (C) has in his possession, custody or control in the course of a business

# Trademark-Sec.69

***Penalty*** –Resident Magistrate Court (Parish Court)... a fine not exceeding **one million dollars** or to a term of imprisonment not exceeding twelve months or to both such fine and imprisonment;

*(b)* on conviction before the Circuit Court to a fine or to imprisonment not exceeding five years or to both such fine and imprisonment.

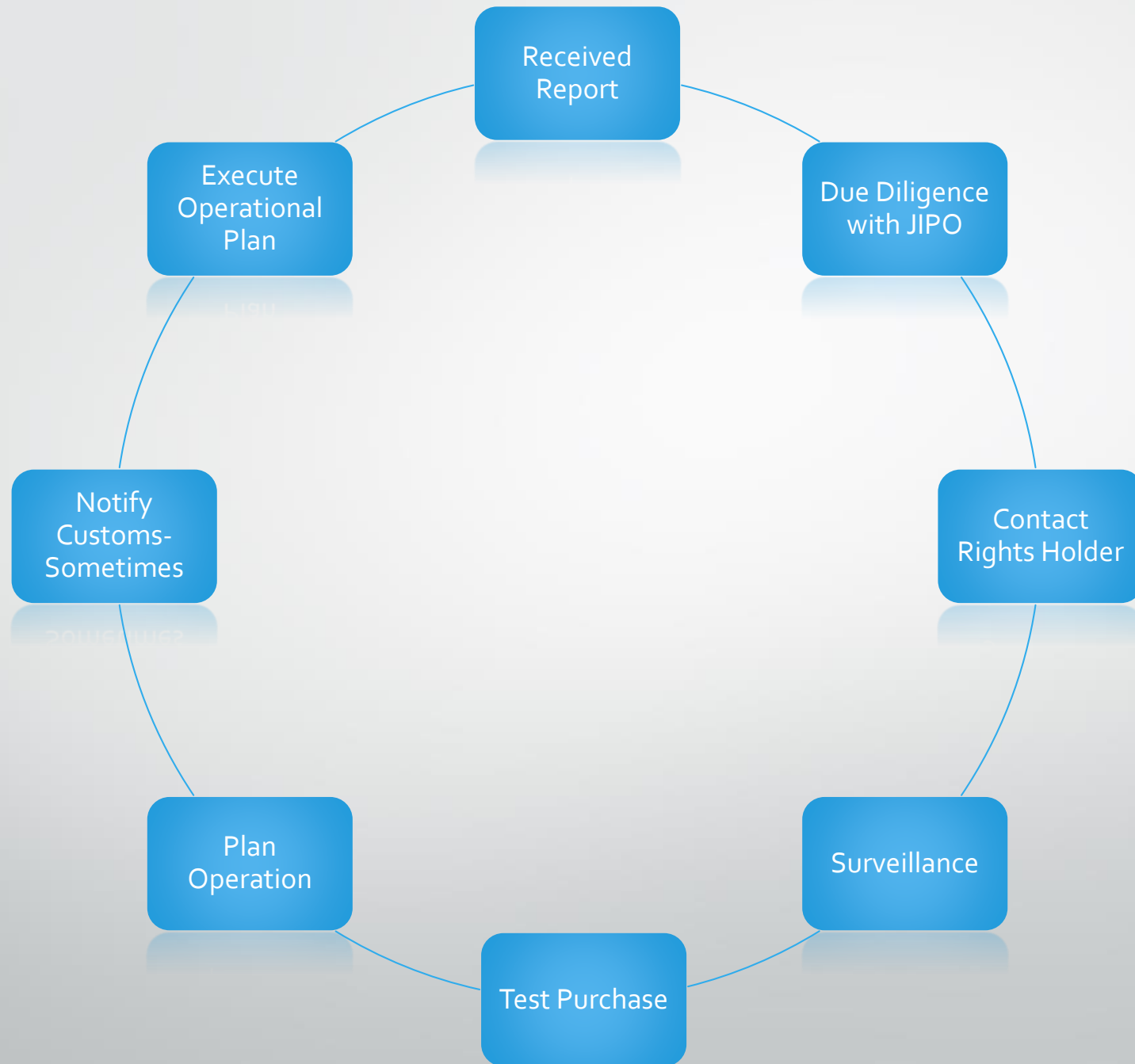
# Two Types of IP Crimes

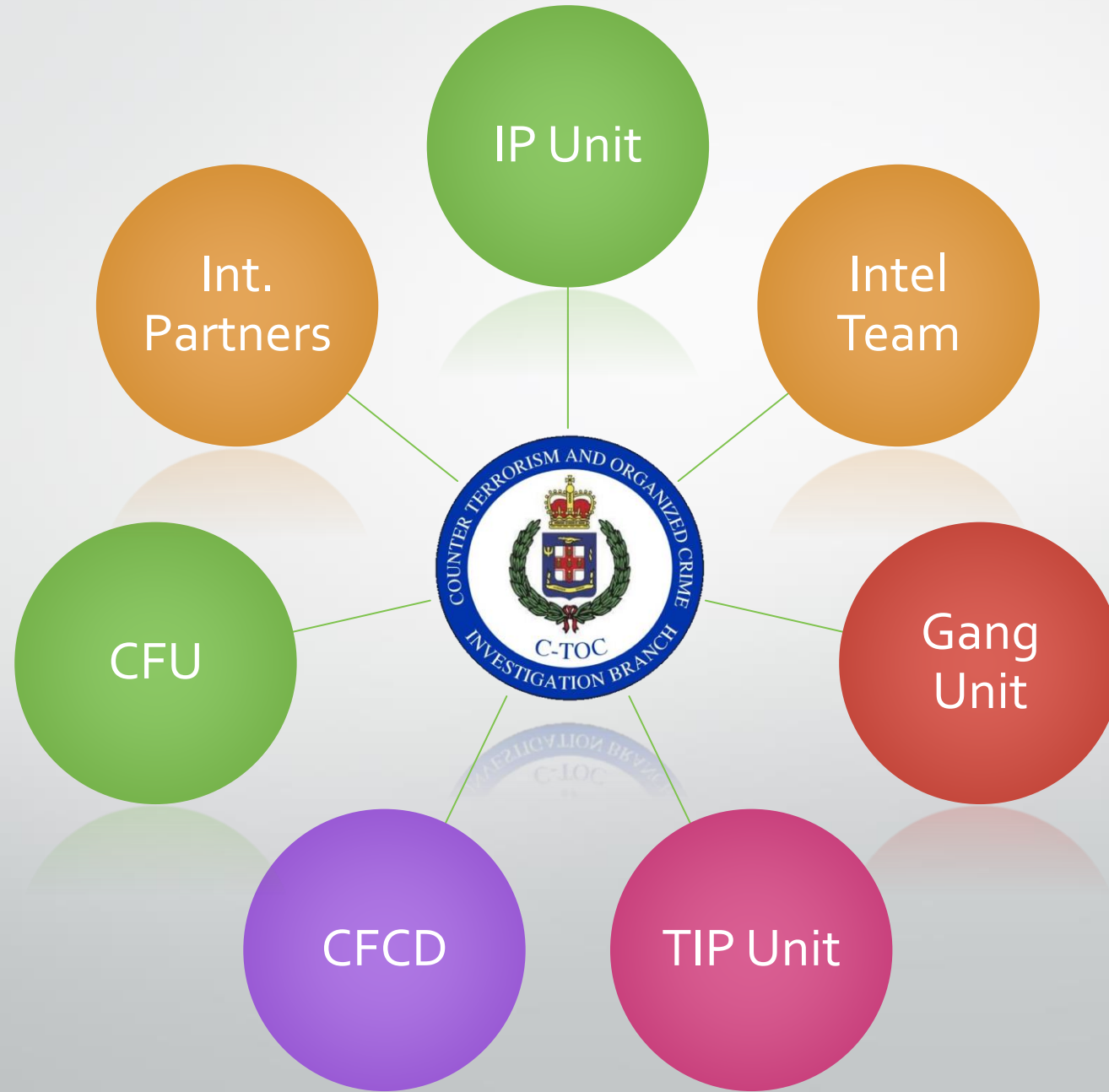
## Counterfeit

- Counterfeit has to do with the fraudulent imitation of something.

## Piracy

- While Piracy refers to the illegal copying, distribution or use of...







# Drivers Enabling the Counterfeit Trade

- ❖ New element - the Internet
- ❖ Economic motive – poverty, and looking for “bargain” products
- ❖ Not recognized as an international threat
- ❖ Loopholes or ambiguity in national legislations
- ❖ Illicit trade in counterfeit/substandard products attract criminal networks due to **high profits** and **low risks** associated with **modest penalties** of IP crime.





## Closer Look at Counterfeit

COUNTERFEITING DOES NOT ONLY  
TAKE PLACE LOCALLY...  
THE PROFITS FROM THE SALES OF  
COUNTERFEIT PRODUCTS ARE USED  
TO FUND *CRIMINAL UNDERGROUND  
NETWORKS.*

# Taking the Profits Proceeds of Crime legislation-POCA



- Shift the balance between risk and reward.
- Depriving criminals of their illicit profits can have a much greater punitive effect than imprisonment.
- Confiscation of criminal assets- FID



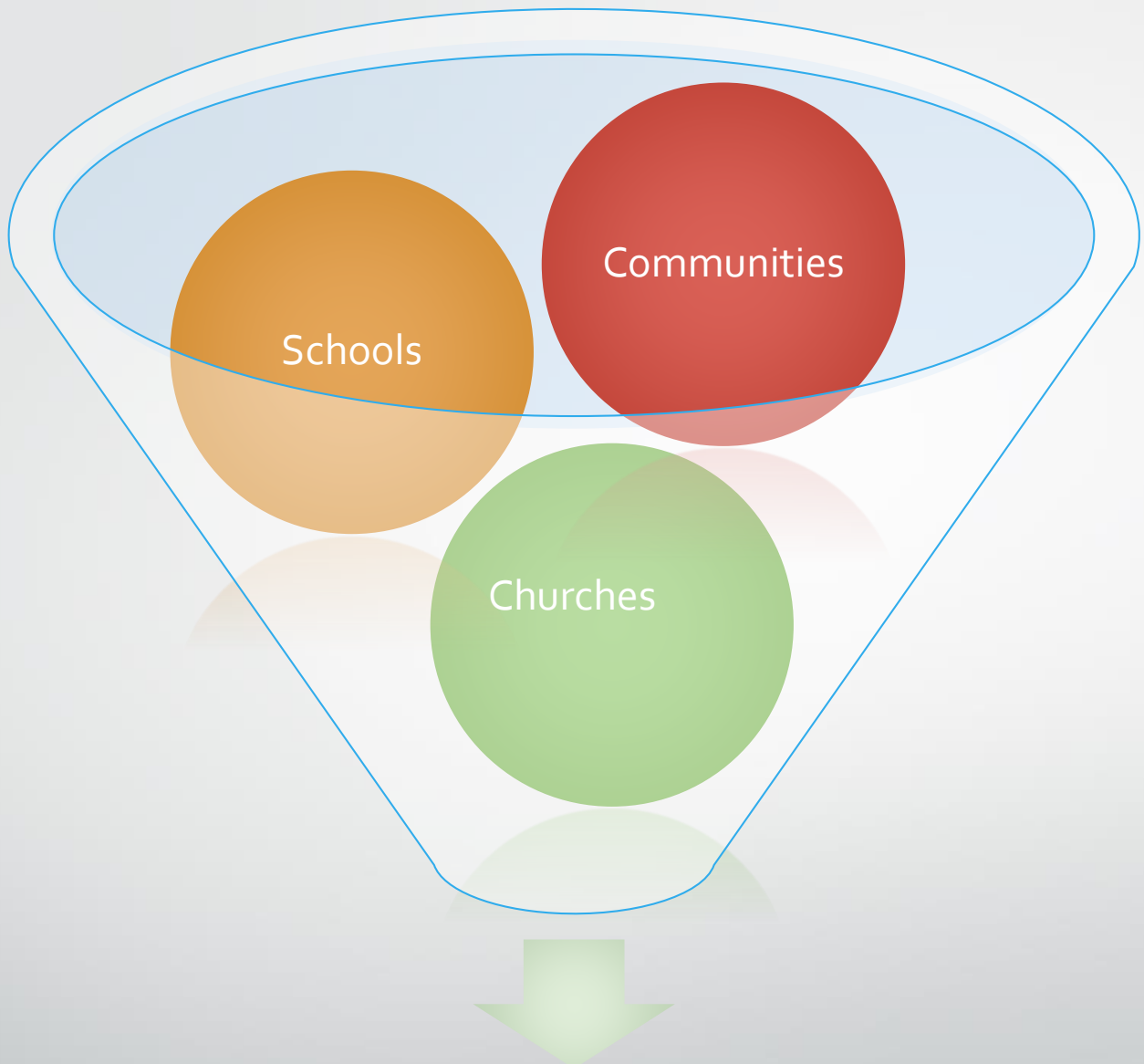
# News

## Gov't seeks \$203m forfeiture from businesswoman over counterfeit goods

Monday, July 02, 2018



- KINGSTON, Jamaica — The Assets Recovery Agency is seeking the forfeiture of over \$203 million from Chinese-Jamaica businesswoman Lan Yan as her alleged benefit from the retailing of counterfeit goods.
- According to a release from the Ministry of Finance and the Public Service, the agency has filed a **Pecuniary Penalty Order** against her pursuant to section 5 of the Proceeds of Crime Act (POCA) in the Home Circuit Court.



Awareness Campaign

# Enforcement Successes -2018

## \$1.5 Billion Jamaican Dollars



[jamaica-gleaner.com/.../9-million-worth-counterfeit-goods-seized-downtown-kingston](http://jamaica-gleaner.com/.../9-million-worth-counterfeit-goods-seized-downtown-kingston)

Dec 18, 2018 - **Counterfeit goods** valued at \$9 million have been seized by investigators from the police's Counter Terrorism and Organised Crime Branch (**CTOC**). ... C-TOC said the seizure was made during a special operation conducted between 12:10 p.m and 7:00 p.m at a premises on Mark Lane in ...

[CTOC Seizes \\$9m in Counterfeit Goods amidst Christmas Shopping ...](#)

[nationwideradiojm.com/ctoc-seizes-9m-in-counterfeit-goods-amidst-christmas-shoppi...](http://nationwideradiojm.com/ctoc-seizes-9m-in-counterfeit-goods-amidst-christmas-shoppi...)

Dec 20, 2018 - With Christmas Day only six days away, the Constabulary's Counter-Terrorism and Organized Crime Investigation Branch (C-TOC) swooped ...

[\\$300-m 'fake' goods bust - Jamaica Observer](#)

[www.jamaicaobserver.com/front-page/-300-m\\_129755?profile=1606](http://www.jamaicaobserver.com/front-page/-300-m_129755?profile=1606)

Apr 5, 2018 - Police seized the goods which they estimated to be valued at more than ... by **CTOC** to clamp down on **counterfeit goods** across the island.

[C-TOC makes big 'counterfeit' haul at downtown Kingston wholesales ...](#)

[www.loopjamaica.com/.../c-toc-makes-big-counterfeit-haul-downtown-kingston-whol...](http://www.loopjamaica.com/.../c-toc-makes-big-counterfeit-haul-downtown-kingston-whol...)

Apr 4, 2018 - Reports are that C-TOC teams have locked down two wholesales along Princess Street, and have seized **counterfeit goods** valued at millions ...

[CTOC Seizes Illegal Items worth \\$1.5 Billion - Jamaica Information ...](#)

<https://jis.gov.jm/ctoc-seizes-illegal-items-worth-1-5-billion/>

# Unified Approach

**Consumer:** greater awareness of risks

**Government:**

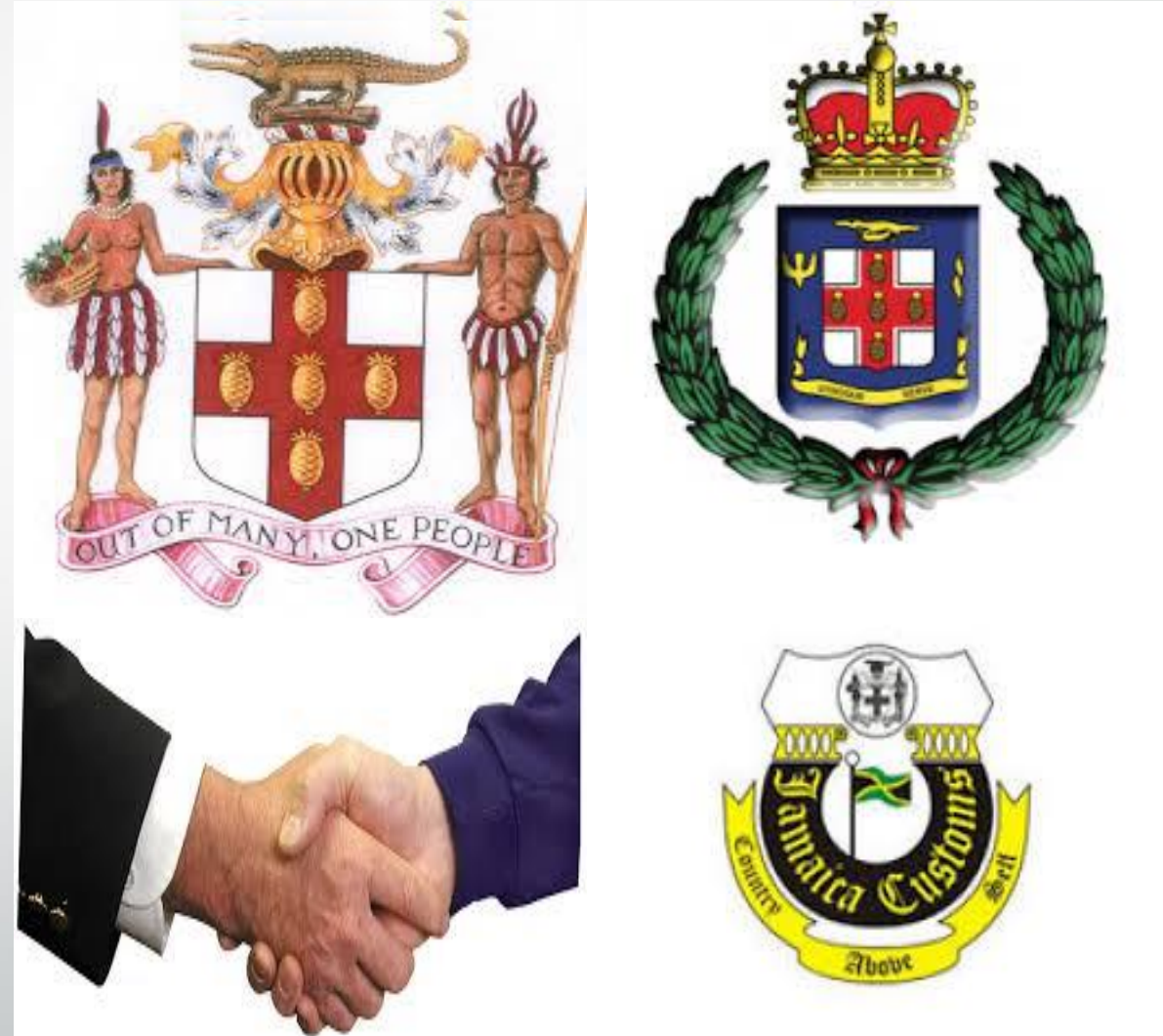
- Elevate priority and raise penalties
- Interagency coordination (Police, Customs and Regulatory )

**Industry:** use existing laws in place; use technology to foil counterfeiting; lobby new laws


**Wholesalers:** higher standards of association

**Pharmacists:** know supply chain

**Everyone:** *Work to reduce reliance on counterfeit Products*







“Teamwork is the ability to work together towards a common vision. The ability to direct individual accomplishments towards organizational objectives. It is the fuel that allows common people to attain uncommon results.” --*Andrew Carnegie*



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