

Contribution to the Work Programme of the OECD Task Force on Countering Illicit Trade

Public-Private Partnerships Critical to Fight Illicit Trade Across Strategic Markets FINAL Version (17 March 2020)

Overview

In January 2020, *Business at OECD* (BIAC) took decisive action through a high-level commitment to fight illicit trade globally including elevating this important issue at the OECD and providing support for effective public-private partnerships (PPPs).

The recently established *Business at OECD* Expert Group on Anti-Illicit Trade (AITEG)¹ allows businesses and the *Business at OECD* national federations to provide evidence-based and structured input into OECD activities on illicit trade. It provides business leadership and market insights through written comments on related OECD policy drafts, active participation in meetings of the OECD Task Force on Countering Illicit Trade (TF-CIT) and relevant OECD conferences, and co-hosts with relevant partners, as appropriate, events and projects on key issues for members.

In October 2019, *Business at OECD* finalized and approved the [2020-2021 Anti-Illicit Trade \(GO@IT\) Roadmap](#).

AITEG ROAD MAP (GO@IT) AND 2020 PRIORITIES

- Promote the OECD TF-CIT to external stakeholders as a trusted source of reference on illicit trade;
- Assist governments in implementing [OECD Recommendations on Enhancing Transparency in Free Trade Zones \(FTZs\)](#);
- Develop guidance for addressing “Small Parcels” trade in contraband and illicit commodities and the role of e-commerce and on-line markets in fueling illicit trade;
- Work with critical sectors, governments, non-governmental organizations (NGOs) and other key players to counter illicit trade and harness blockchain, artificial intelligence (AI) and other technologies;
- Support continued research and analytical papers on counterfeit (e.g. pharmaceuticals, alcohol, tobacco, food, toys and apparel as initial sectoral focus) and other illicit products
- Integrate convergence crime elements into work of the TF-CIT including corruption, money laundering, etc.; and
- Support regional OECD TF-CIT dialogues in strategic markets, critical FTZs, and in partnership with other international organizations.

Through effective PPPs and holistic approaches to fight illicit trade, Business at OECD’s AITEG will participate in the March 2020 TF-CIT meetings, and will work with all interested stakeholders and communities in advancing and implementing the following agenda points, priorities, and recommendations and/or recommended actions:

¹ Until January 2020, this anti-illicit trade mechanism was an informal contact group under the *Business at OECD* umbrella.

1. Role of E-Commerce and Online Markets in Fueling Illicit Trade. Addressing “Small Parcels” Trade in Contraband and Illicit Commodities.

E-commerce is a major driver of global trade and it is expected to continue to expand significantly. The value of e-commerce was estimated to be \$2.86 trillion in 2018 which accounts for 15.2% of all retail trade globally². The value of the digital economy is expected to be \$4.8 trillion with 2.1 billion people buying goods and services online by 2021.

E-commerce has become global, and it has fueled an unprecedented spread of micro-payments and small parcels deliveries across the globe. It has also brought a high degree of unpredictability as global demand and offer is changing quickly, thus redrawing the map of traditional trade flows. At the same time, encryption and privacy tools have created instruments for criminals to hide their identities easily.

Nowadays e-commerce is comprised of multiple actors, including brand owners, sellers, buyers, search engines, social media, online marketplaces, and also intermediaries (e.g., electronic payment service providers, carriers including - integrated express carriers, non-integrated express carriers, truck and rail carriers, etc.).

Today’s illicit markets are booming and generating hundreds of billions of dollars for transnational criminal organizations, complicit corrupt facilitators, and other bad actors and illicit networks. As more shopping has moved to the internet, criminals are profiting immensely from selling illicit commodities across global e-commerce and online marketplaces.

Monitoring and enforcement by governments in this area is lacking and in some respects has also become very challenging. The policies of online operators alone are often insufficiently effective to prevent determined offenders. The lack of effective solutions leads to wider availability of fake and smuggled goods, which might put consumers at risk, damage brand equity for both manufacturers and e-commerce providers alike and fuel organized crime.

Focus on the growing threat of illicit trade through online marketplaces is one important part of addressing these issues in ecommerce generally as well as in the context of all channels of commerce in today’s economy on and off line, recalling that over 90% of goods are still sold offline, and that ecommerce has multiple business models³. All stakeholder groups, government and the private sector alike would benefit from better regulation and effective enforcement. Illicit products sold online damage economies, markets, and businesses; have a negative impact on innovation, jobs, revenues, and profits; and often present significant risks to the health and safety of consumers.

One of the areas that has garnered increased attention in recent years has been the use by counterfeiters and other illicit traders of small parcels to cloak their activities. This creates significant challenges for governments and has led to calls for increased attention at the international level.

Coordinated inputs of business community would facilitate stronger protection of Intellectual Property Rights (IPR) online, development of standards and policy recommendations,

² <https://www.digitalcommerce360.com/article/global-ecommerce-sales/>

³ European Commission [Inception Impact Assessment Proposal on contract rules for online purchase of digital content and tangible goods](#) (July 2015); Ecommerce Foundation [European Ecommerce Report 2019](#) (June 2019); Ecommerce New Europe [Annual retail sales via internet are up](#) (February 2019); European Commission, “[Digital Economy and Society Index Report 2018 – Use of Internet Services](#)”; Eurostat [E-Commerce Statistics](#) (December 2018)

development of smart border-control solutions and independent supply chain verifications technologies.

Government action alone is not enough to address the challenges of illicit trade related to e-commerce and online marketplaces. The private sector and rights holders have an important role to play. Only through open dialogue, cooperation and the sharing of best practices between parties in the public and private sectors, we can continuously improve and advance our efforts against illicit trade and the criminal networks benefiting from it.

A number of initiatives have been taken to address online illicit trade and Intellectual Property (IP) infringements, which are included in a non-exhaustive list in the Annex.⁴

Business at OECD Recommendations to the TF-CIT:

- Best-Provisions of Current Legislation: The Task Force should take action to collect from OECD members their parcel-related e-commerce policy, legal, and regulatory frameworks addressing counterfeit and pirated goods. On the basis of these findings, the TF should also request that OECD evaluate and publish “best-provisions” of current legislation in the OECD members in a TF-CIT report.
- OECD TF-CIT Report: Misuse of Small Parcels for Trade in Counterfeit Goods⁵: The TF-CIT should translate the findings from this report into policy and regulatory direction for use by OECD members and non-members.

2. Implementation of the OECD Recommendations on Enhancing Transparency in FTZs

FTZs can have a catalytic effect on economies, including attracting Foreign Direct Investment and helping to expand economic growth. They offer businesses advantageous tariffs and lighter regulation on financing, ownership, labor and immigration, and taxes, have helped emerging economies to attract foreign investment and generate jobs and growth. But in too many parts of the world, FTZs are also exploited on a daily basis by some to facilitate illicit activities that produce broader market reputational harm and put the physical security of many communities in danger.

In too many parts of the world, FTZs can and do also contribute to trade in fake goods and other illicit activities, becoming a preferred place of doing business for smugglers and illicit manufacturing.

The OECD Recommendations on Enhancing Transparency in Free Trade Zones⁶, adopted by the OECD Council on 21 October 2019, were an important achievement and milestone designed to ensure transparency in FTZs is framed as part of the broader effort to counter illicit trade.

⁴ Please note that these neither constitute a *Business at OECD* position nor endorsement.

⁵ <https://www.oecd.org/governance/misuse-of-small-parcels-for-trade-in-counterfeit-goods-9789264307858-en.htm>

⁶ <https://search.oecd.org/gov/risk/recommendation-enhancing-transparency-free-trade-zones.htm>

It is important to leverage this achievement and advance the implementation as outlined in the 2020-2021 Go@IT Road Map and facilitate coordinated input of business community to support:

- the Recommendations as a tool to measure and/or assess the risks of illicit trade through FTZs
- a mechanism to assess compliance of FTZ with the Code of Conduct
- capacity-building for compliance with OECD Code of Conduct for FTZs
- strategic communications campaign, supported by the Business at OECD, to spread the word around governments and international organizations on the importance of the OECD FTZs Recommendations

Business at OECD and the private sector are pleased that the OECD Recommendation includes our ongoing concerns about the risks and vulnerabilities of FTZs, and that the Code of Conduct reflects many of the improvements and controls we have promoted. Consequently, we are of the view that it is time to shift our focus to supporting OECD's implementation and enforcement of the FTZs guidelines and Code of Conduct.

Business at OECD Recommendations to the TF-CIT:

- Code of Conduct Applicability and Implementation: Define which FTZs are subject to the Code of Conduct. For example, is the Code of Conduct applicable to all FTZs in a Member State? Determine if there should be roll-out or staggered approach to adoption of the Code of Conduct. Consider whether or not a pilot should be undertaken with a handful of FTZs – especially those already recognizably vulnerable to illicit trade – to begin work on implementation.
- Pre-Assessment: There should be prioritization of implementation and roll-out should be focused on the Pre-Assessment. It is essential to understand the extent to which FTZs currently comply (or do not comply) with the Code of Conduct. Without a prior assessment of the current status and an understanding of the needs in each FTZ, it could be futile to propose additional measures. This pre-assessment could be conducted through an informal survey be conducted by a responsible third party with experience in this area, such as the EIU or Gallup Poll.
- Awareness and Education: In many instances, FTZs operators and industries operating within FTZs are not aware of the illicit trade activities nor do they consider them a major issue. The development of educational and informational materials related to the existence of international standards and instruments to mitigate illicit trade should be disseminated to FTZ operators and industries.
- Training and Capacity Building: Elaboration of toolkits, handbooks and capacity building to all relevant stakeholders required to comply with the Code of Conduct. This will be important as deficiencies in the awareness and capabilities of FTZs to implement the OECD become known through the aforementioned recommendations.
- Raising Awareness on the FTZ Recommendations: A concerted effort is needed to raise awareness among members and non-members that the OECD has adopted the FTZ Recommendation. And it is important to bear in mind that effective implementation may require a change in policy and/or statute at the Member level.

An advocacy campaign should be developed and disseminated to, among others, trade ministers and the director generals of customs at the national level.

3. Countering Illicit Trade in Fake Medicines, Including Launch of the OECD - EUIPO Report "Trade in Counterfeit Pharmaceutical Products"

Business at OECD is supportive of OECD work on fake pharmaceuticals, but we would like to encourage it to move beyond quantitative studies so as to produce more qualitative policy guidelines.

Additionally, the mandate to the TF - CIT is specifically to “*Design and promote good practices in public policies as a means to reduce and deter trafficking and smuggling activities, [...] and to map policies and practices and develop metrics on the governance gaps that foster illicit trade to enable cross country comparisons.*”

We endorse the new report, "Trade in counterfeit pharmaceutical products". This report is a significant expansion on understanding the issues initially conveyed in the TF-CIT's 2016 publication, "[Illicit Trade: Converging Criminal Networks](#)," and specifically Chapter 4: Illicit trade in counterfeit medicines.”

With respect to the TF-CIT mandate as defined by the OECD High Level Risk Forum (HLRF),⁷ *Business at OECD* calls upon the TF-CIT to *identify, analyze and disseminate effective policy and good practices to assist OECD member states to better regulate illicit trade in pharmaceuticals.*

Business at OECD Recommendations to the TF-CIT:

- **Report Trade in Counterfeit Pharmaceutical Products:** In addition to the treatment of counterfeit pharmaceuticals, the scope of current work should be expanded to include substandard, falsified, unregistered and unlicensed medical products so as to more comprehensively account for the impacts to patients, healthcare systems and wider society. This could take the form of a future TF-CIT report.
- **Best Practices:** Identify, analyze and disseminate effective policy and good practices: work to identify and build a set of “best practices” or “models” for: Policy and regulatory recommendations (Annex I); Public sector models (Annex II); Private sector initiatives and partnerships (Annex III). This work could consider the TRACIT paper⁸, as a starting point.
- **Most Vulnerable Sectors:** Call upon the TF-CIT to produce similar policy recommendations in an additional sector most vulnerable to illicit trade that have been underscored at the TFCIT meetings in recent years including trade in illicit products such as electronics, apparel, toys, alcohol, tobacco, and other contraband. *Business at OECD* notes that the OECD Council has already adopted two products

⁷ GOV/PGC/HLRF(2018)3, p3, Objective 2: Design and promote good practices in public policies as a means to reduce and deter trafficking and smuggling activities; Working methods 3: Map policies and practices and develop metrics on the governance gaps that foster illicit trade to enable cross country comparisons.

⁸ TRACIT paper: Addressing Illicit Trade in Pharmaceuticals and Medical Devices: Strengthening Governance through the Identification and Dissemination of Good Practices.

based on work completed in the area of illegal trade in pesticides: (i) Recommendation on Countering the Illegal Trade of Pesticides⁹ and the related (ii) Best Practice Guidance.¹⁰ We believe that these products, taken together with the HLRF mandate, establish a valuable precedent for this work.

4. Misuse of Container Ships for Illicit Trade - as a concern closely connected to the implementation of the OECD Recommendations on Enhancing Transparency in FTZs

The maritime industry plays an important role in the movement of cargo containers by focusing on the best routes to connect one port to the other and deliver, in the most direct way, cargo.

Among the risk factors associated with the maritime mode of transportation are the total volume and sheer number of goods moving by sea. About 90% of all trade moves via maritime cargo containers. Across the supply chain, more than 500 million containers are shipped annually, and of which less than 2% are inspected.¹¹

The incredible volume of shipping containers travelling the seas from country-to-country, make them important targets for actors in the illicit trade. The cost of moving illicit goods from country-of-origin (origination) to destination is often insignificant compared to the financial gains that can be made in illegitimate channels. With shipping costs not being a concern, the main objective of criminals, when moving their illegal products is to avoid detection. Thus, shipments of illicit goods take longer shipping routes, transit or are transshipped through multiple ports and/or FTZs around the world.

The global dependency on maritime trade, combined with sophisticated concealment methods employed by counterfeiters and diverse trafficking routes, make successful intervention difficult. The situation, therefore, poses a serious threat to international supply chains as shipping containers can be easily exploited by those engaged in illicit trade. Consequently, standards must be established to improve controls on illicit product moving through container shipments.

In this regard, TRACIT and UNCTAD have jointly submitted an intervention for the April meeting of the IMO Facilitation Committee, calling on IMO to recognize that maritime transport is a critical facilitator of illicit trade. This process starts with encouraging IMO to address the cross-industry nature of illicit trade by expanding the scope of existing instruments to address the varied and proliferating forms of illicit trade.

Business at OECD Recommendations to the TF-CIT:

- **Research:** Conduct research on this issue, identify the policy and governments gaps, and develop recommendations that will help to tackle these problems and address the gaps that lead to facilitating the misuse of container shipping. In doing so, the TF--CIT should include all forms of illicit trade that are enabled by maritime transport.

⁹ <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0446>

¹⁰ ENV/JM/MONO(2018)35 found at

[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=env/jm/mono\(2018\)35&doclanguage=en](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=env/jm/mono(2018)35&doclanguage=en)

¹¹ <https://www.unodc.org/unodc/en/ccp/ccp-programme-details.html>

- **Work of Other Organizations:** Consideration must be given to the considerable work being undertaken by WCO, UNODC (Container Control Program) and IMO concerning security and trade facilitation. The TF-CIT should engage in a dialogue with other international organizations to determine areas where good work can be improved through collaboration, or to identify areas where policy gaps exist in which TF-CIT could add value.

5. Targeting Corruption and Money Laundering that help Fuel Illicit Trade

Corruption, money laundering or trade-based money laundering (TBML) are threat multipliers that help finance greater harms that impact OECD and non-OECD members alike.

Corruption and money laundering currently provide several trillions of dollars to the global illegal economy that enable illicit networks to corrupt critical institutions and enforcement systems, undermining the rule of law and exacerbating an already dire security situation in many parts of the world.¹² The reality is that dirty money derived from illicit commerce remains the lifeblood of today's kleptocrats, criminal organizations, and terrorist groups.

The International Monetary Fund (IMF) has estimated that money laundering constitutes approximately 2 to 5 percent of the world's gross domestic product (GDP) each year, or approximately US\$1.5 trillion to US\$3.7 trillion in 2015.¹³

TBML, and other illicit finance vehicles and methods enable these bad actors to disguise and clean their dirty money by purchasing goods, both licit and illicit, moving such merchandise across borders, falsifying its value, quality, or quantity, and mis-invoicing or misrepresenting trade-related financial transactions.

- *Trade transparency is one of the most effective countermeasures to combat illicit trade, including when trading partners agree to exchange transaction-level trade data between individuals or trading companies of the two countries in order to identify irregularities and detect and combat wrongdoing. For the vast majority of global trade, government authorities are only able to see one side of cross-border trade transactions. Importers and exporters are subject to reporting in the jurisdiction where they operate, but not in the jurisdictions where their counterparties operate. This practice means that parties on either side of a cross-border transaction are able to report different information to their respective authorities, without the authorities of either jurisdiction being aware of the discrepancies. By providing government authorities access to information reported on both sides of a trade transaction, anomalies can be spotted. The anomalies, like the mis-invoicing of price, value, quantity, or quality of goods, could be indicative of simple customs fraud, TBML, or even underground financial systems.*¹⁴

In many cases, the profits generated through trade-based money laundering finance other converging criminal activities including the illicit trafficking of arms; counterfeit and pirated

¹² https://thefactcoalition.org/anonymous-companies-help-finance-illicit-commerce-and-harm-american-businesses-and-citizens?utm_medium=policy-analysis/reports/fact-reports

¹³ <http://www.fatf-gafi.org/faq/moneylaundering/>

¹⁴ <https://www.judiciary.senate.gov/imo/media/doc/Cassara%20Testimony.pdf>

goods; humans; narcotics and opioids; wildlife (endangered); other contraband; and in some instances, terrorism.

Business at OECD Recommendations to the TF - CIT:

- TBML Research: Support research and analysis of how illicit finance vehicles such as TBML help to finance illicit commerce.
- Beneficial Ownership: Encourage governments to require basic information on the economic operators allowed to operate in FTZs, including legal and beneficial ownership information and ownership structure, so as to deter and prevent the misuse of corporate vehicles and money laundering.

The Importance of Public-Private Partnerships: In joining forces with other committed partners, the AITEG will collaborate, as appropriate, with the OECD TF-CIT and other important partners, to mobilize greater energies towards collective action to decisively counter illicit trade and disrupt illicit markets in strategic markets.

Public-Private Partnerships are critically important to leverage key expertise across sectors in the work of the OECD TF-CIT, including co-sharing of market risks, co-financing of projects, and on enforcement and transparency efforts to build greater integrity and accountability in the fight against illicit trade around the world.

AITEG will work with OECD, TF-CIT, and other interested partners, to explore ways to develop a Capacity Anti-Illicit Trade Program (CAP) Fund, and to identify, leverage, and mobilize resources and financial streams to elevate the fight against illicit trade globally.

Business at OECD Recommendations to the TF-CIT:

- Collective Action through PPPs: Build robust partnerships and leverage strategic alliances to harness new energies by working across communities to mitigate the harms and costs posed by illicit trade and illicit markets through joint events, training, and workshops with such alliances and partners across strategic markets.
- CAP Fund: Use CAP to support regional dialogues, training workshops, and CAP pilots in strategic markets, critical FTZs, and partnerships with other international fora.

Business at OECD is an international business network with a global membership representing over 7 million companies of all sizes. A cross-industry diverse group with a common mission, *Business at OECD* advocates for open markets and private sector-led growth. We are a trusted partner to the OECD and other international institutions. Our policy groups bring together business peers from the international business community, build positions on policy initiatives that OECD and member governments are addressing for international and local implementation, and connect with policymakers affecting aspects of their national and global economies.

ANNEX: Non-exhaustive list on initiatives undertaken to address online illicit trade and IP infringements¹⁵

- [Report to the President of the United States “Combating Trafficking in Counterfeit and Pirated Goods” by the Homeland Security of the United States of America, January 24, 2020.](#)¹⁶

According to the Report, “Government action alone is not enough to bring about the needed paradigm shift and ultimately stem the tide of counterfeit and pirated goods. All relevant private-sector stakeholders have critical roles to play and must adopt identified best practices, while redoubling efforts to police their own businesses and supply chains.”

As suggested in the Report, Best Practices for E-Commerce Platforms and Third-Party Marketplaces are:

- Comprehensive "Terms of Service" Agreements
 - Significantly Enhanced Vetting of Third-Party Sellers
 - Limitations on High Risk Products
 - Rapid Notice and Takedown Procedures
 - Enhanced Post-Discovery Actions
 - Indemnity Requirements for Foreign Sellers
 - Clear Transactions Through Banks that Comply with U.S. Enforcement Requests for Information (RFI)
 - Pre-Sale Identification of Third-Party Sellers
 - Establish Marketplace Seller ID
 - Clearly Identifiable Country of Origin Disclosures
- [Memorandum of Understanding on the Sale of Counterfeit Goods via the Internet \(MoU\) facilitated by the European Commission \(EC\) to prevent offers of counterfeit goods from appearing in online marketplaces](#)¹⁷.

This MoU aims to facilitate dialogues between right owners and internet platforms to have collaborative approaches to effectively prevent and take down online sales of counterfeit products. Currently, the MoU includes 13 right owners, 7 industry associations, and 6 internet platforms (Allegro, Alibaba, Amazon, eBay, Facebook, and Rakuten).

[The Report on the functioning of the MoU](#)¹⁸ released by the EC in 2017 showed that the MoU brought positive results and improved cooperation between rights holders and internet platforms. One of the challenges is the evolution of legislation that happens at a slower pace than the modern digital environment and actors, resulting in the lack of a robust legal framework to tackle e-commerce-related crime.

¹⁵ As noted above, these are listed for information purpose but do neither constitute a *Business at OECD* position nor endorsement.

¹⁶ https://www.dhs.gov/sites/default/files/publications/20_0124_pley_counterfeit-pirated-goods-report_01.pdf

¹⁷ https://ec.europa.eu/growth/industry/intellectual-property/enforcement/memorandum-understanding-sale-counterfeit-goods-internet_en

¹⁸ <https://ec.europa.eu/docsroom/documents/26602>

- **[The International Trade Mark Association \(INTA\) updated its best practices guide, *Addressing the Sale of Counterfeits on the Internet*¹⁹, to tackle the evolution of the internet and social media.](#)**

Some of the recommendations made by INTA are:

- Search advertising services should have a clear and effective complaint process publicly available to report counterfeit ads;
 - Online trading platforms should strengthen and streamline procedures for identifying and taking more effective action against repeat offenders, as well as tighten repeat offender policies;
 - Payment service providers should have in place policies prohibiting the use of their services for the purchase and sale of goods that are determined to be counterfeit under applicable law;
 - Social media sites should have a clear and effective process publicly available to deal with the sale and offering of counterfeit products;
 - Logistics companies should have simple procedures in conformity with the applicable laws of the respective jurisdiction for the sharing of information with enforcement agencies and trademark owners investigating counterfeiting activities, as well as mechanisms in place for blacklisting consignors/consignees found to be involved in counterfeiting activities.
- **Example of collaboration – the work of the Alibaba Anti-Counterfeiting Alliance (AACAA)²⁰ formed in January 2017**

AACA looks to combine Alibaba’s capabilities and resources as a commerce and technology leader with the knowledge, enforcement expertise and resources of right holders. It aims to establish an environment of multi-party cooperation to strengthen IPR protection for the benefit of right holders, e-commerce platforms and consumer alike. As of December 31, 2018, AACA had expanded from its 30 original right holders to 121 member companies. These right holders represented 16 countries and regions, with 33% from Europe, 27% from the Americas, and 24% from China.

- **[The Economist Intelligence Unit \(EIU\): The Global Illicit Trade Environment Index and TRACIT Policy Recommendations \(Checklist\).](#)**

The Global Illicit Trade Environment Index is commissioned by the Transnational Alliance to Combat Illicit Trade (TRACIT) and produced by The Economist Intelligence Unit (EIU). The Index evaluates 84 countries on their structural capability to guard against illicit trade, highlighting specific strengths and weaknesses. The objective of the *Global Index* is to improve the knowledge and understanding of the regulatory environment and economic circumstances that enable illicit trade. The research findings are valuable to (1) inform governments on the effectiveness of their efforts to fight illicit trade; (2) establish policy priorities and identify areas that merit greater attention; (3) encourage governments to strengthen their legislative and enforcement measures to combat illicit trade; and (4) provide companies and organizations with tools and messages to raise awareness and mobilize resources against illicit trade.

¹⁹ https://www.inta.org/INTABulletin/Pages/Anticounterfeiting_Update_7303.aspx

²⁰ <https://aaca.alibabagroup.com/>