

ORGANIZED CRIME INDEX
BACKGROUND PAPER



**GLOBAL
INITIATIVE**
AGAINST TRANSNATIONAL
ORGANIZED CRIME

MEASURING THE SCOPE AND SCALE OF ILLICIT TRADE AND COUNTERFEIT GOODS

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August 2023

ABOUT THE SERIES

In the run-up to the launch of the second iteration of the Global Organized Crime Index in September 2023, we are publishing a series of 13 discussion papers. These cover each illicit market considered during the development of the Index. The papers, written by international experts, have been commissioned to help move forward the debate around definitions and measurements used in analyzing transnational organized crime markets, and thus support responses to organized crime.

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INTRODUCTION

Illicit trade has been a developing blanket concept for various kinds of illegal conduct, products and sectors that have an adverse impact on both private and public interests. Various regulatory instruments, adopted at both the national and international level, contain definitions pertaining to specific illicit trade manifestations and sectors. Despite efforts to accurately assess the scale and magnitude of this criminal market, especially owing to the pervasiveness of such criminal activities around the globe and their economic impact, the methodologies have considerable shortcomings and limitations, which prevents an accurate and comprehensive assessment of the scale and magnitude of illicit trade. However, by using specific manifestations of this criminal market during the assessment and a combination of certain methodologies as complementary sources to corroborate the findings, it is possible to achieve a reasonably accurate understanding of this market's scope and scale.



DEFINING ILLICIT TRADE AND COUNTERFEIT GOODS

Cross-cutting definitions

Understanding illicit trade as a unitary concept that spans different trafficking patterns and types of goods is a relatively recent development. While some UN agencies (e.g. UNCTAD) are just beginning to plan their institutional and capacity-building work based on illicit trade as a discrete phenomenon,¹ others, notably UNODC, tend to organize their work not by referring to illicit trade as such but rather to its specific manifestations.

Existing definitions of illicit trade as an autonomous concept are found, for example, in legal instruments, policy reports and academic studies. Some definitions aim to capture its essence across sectors, whereas others focus on specific manifestations and types of goods.

- According to INTERPOL, the term 'illicit trade' cannot be easily defined because it depends on the cultural context and legal framework established by individual states and organizations. 'Generally speaking, illicit trade can be regarded as a process involving several activities or conducts where the ultimate goal is the delivery of goods to consumers in violation of applicable laws.'²
- In 2016, the OECD succinctly defined illicit trade as 'an exchange in the control/possession of a good or service that a legislature deems illegal, because the object of exchange is dangerous or morally repugnant.'³ Within this framework, and in line with some scholars' contributions,⁴ the OECD understands illicit trade as including at least four separate categories of commodities and services:

- prohibited goods or services such as narcotics and commercial sex
 - irregular sale of regulated commodities, such as antiquities or fauna and flora, goods that infringe on intellectual property (IP) rights, and goods that do not conform to applicable local standards
 - the sale of excise goods outside their intended destination market without paying the local excise tax, such as cigarettes and alcohol
 - the sale of stolen goods, such as cars and electronics.⁵
- The Siracusa International Institute for Criminal Justice and Human Rights understands illicit trade as 'any transnational practice or conduct prohibited by law and relating to the production, shipment, receipt, possession, distribution, sale or purchase of goods or services, including any practice or conduct intended to facilitate such activity'.⁶

The three mentioned definitions each has limitations.

- The INTERPOL definition correctly emphasizes illicit trade as a process involving several steps and activities, yet it reduces the market to a process aimed at delivering goods to consumers, without considering that illicit trade may well involve business-to-business practices or transactions – including government-endorsed – aimed at bypassing applicable regulatory frameworks (e.g. illegally disposing toxic waste across borders).
- By limiting illicit trade to goods or services that are 'dangerous or morally repugnant' the OECD definition seems too narrow in scope. Trafficking in counterfeit products, for example, does not necessarily involve dangerous or morally repugnant products. However, it does infringe IP laws.
- The Siracusa Institute arguably offers the most accurate definition of illicit trade as a cross-cutting phenomenon, although it does not include conduct that occurs solely within national borders.

Sector-specific definitions

Illicit trade is also defined in relation to specific categories of goods or services, with the most authoritative definitions in a number of international legal instruments as described here. To the extent that the next edition of the Global Initiative Index features one or more specific manifestations of illicit trade as new criminal markets, these definitions may serve as a source of inspiration.

The following are excerpts from existing international definitions:

2012 Protocol to Eliminate Illicit Trade in Tobacco Products

Article 14 - Unlawful conduct including criminal offences

1. Each Party shall adopt, subject to the basic principles of its domestic law, such legislative and other measures as may be necessary to establish all of the following conduct as unlawful under its domestic law:
 - (a) manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment contrary to the provisions of this Protocol;
- (...)

2010 Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes Involving Threats to Public Health

Article 5 - Manufacturing of counterfeits

1. Each Party shall take the necessary legislative and other measures to establish as offences under its domestic law, the intentional manufacturing of counterfeit medical products, active substances, excipients, parts, materials and accessories.
2. As regards medicinal products and, as appropriate, medical devices, active substances and excipients, paragraph 1 shall also apply to any adulteration thereof.

Article 6 - Supplying, offering to supply, and trafficking in counterfeits

1. Each Party shall take the necessary legislative and other measures to establish as offences under its domestic law, when committed intentionally, the supplying or the offering to supply, including brokering, the trafficking, including keeping in stock, importing and exporting of counterfeit medical products, active substances, excipients, parts, materials and accessories.

1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal

Article 1 - Definitions

'Transboundary movement' means any movement of hazardous wastes or other wastes from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement (...).

Article 9 - Illegal traffic

For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes:

- (a) without notification pursuant to the provisions of this Convention to all States concerned;
or
- (b) without the consent pursuant to the provisions of this Convention of a State concerned;
or
- (c) with consent obtained from States concerned through falsification, misrepresentation or fraud; or
- (d) that does not conform in a material way with the documents; or
- (e) that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law, shall be deemed to be illegal traffic.

Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (supplementing the Palermo Convention)

Article 3 - Use of terms

(...)

- (e) 'Illicit trafficking' shall mean the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 8 of this Protocol (...).

Article 5 - Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally:
 - (a) Illicit manufacturing of firearms, their parts and components and ammunition;
 - (b) Illicit trafficking in firearms, their parts and components and ammunition;
 - (c) Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms required by article 8 of this Protocol.

Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement)

Article 61

Members shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale (...) Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

Article 51 (footnote 14)

- (a) 'counterfeit trademark goods' shall mean 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;
- (b) 'pirated copyright goods' shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

Proposed definitions

Illicit trade is an umbrella expression that covers a wide range of illegal conduct and supply chains. Depending on the type of goods involved, illicit trade markets impact on different sets of public and private interests. This section presents four broad options to consider when determining what constitutes illicit trade, and how to include it in the Global Organized Crime Index, or any market-based index for that matter.

Option 1: Consider 'illicit trade and counterfeit goods' as a single criminal market

The main advantage of this approach is its broad scope, which would allow for a significantly expanded range of criminal conduct involving organized crime groups to be covered. However, this 'catch-all' nature is also its biggest disadvantage, as it can lead to generic and poorly focused assessments.

Another difficulty, especially in the context of a market-based index, is that some manifestations of illicit trade might overlap with this category, e.g. arms trafficking, flora crimes, fauna crimes and non-renewable resource crimes. Adopting Option 1 could create substantial overlap across different categories and, consequently, inefficiencies in the evaluation process and duplicative outcomes.

Option 2: Consider 'counterfeit goods' and 'illicit trade in legal goods' as two separate criminal markets

This approach has the notable advantage of highlighting 'counterfeiting' as a distinctive and serious manifestation of illicit trade, which warrants it to be described as a dedicated category. This makes sense considering the very specific role of brand owners in: detecting fake products through their own investigations and by training customs officials in distinguishing fakes from originals; outlining timelines, rights and prerogatives of various private and public stakeholders in relation to the seizure of counterfeit goods; and considering national and regional policy initiatives to create country watchlists and assessments that focus on counterfeiting.

At the same time, approaching 'illicit trade in legal goods' as a separate category would, as in Option 1, create significant overlap with other criminal markets and possibly lead to a lack of focus during assessments.

Option 2 comes with two sub-options:

- **Sub-option A:** Give counterfeiting offences even higher visibility by creating subcategories for different products, e.g. medicines, luxury goods, etc. A product-specific approach would replicate the one followed in the current edition of the Index for drug-related criminal markets. However, given that an assessment of the counterfeit market has not been included in such a context before, it is probably advisable to deal with 'counterfeit goods' in general first and then review the approach on subsequent iterations to decide whether creating product-specific subcategories is meaningful.
- **Sub-option B:** Expand the 'counterfeit goods' category to encompass all IP crimes, not just trademark infringements. This would ensure that 'piracy' is considered a discrete form of IP crime in which organized crime groups are notoriously involved. An autonomous IP crime category can be advantageous in that counterfeiting and piracy are often dealt with by the same national entities, whether for regulatory or law enforcement purposes. Sub-option B

deserves consideration as in many countries the evaluation process would arguably benefit from data and interviews stemming from these entities. Moreover, counterfeiting and piracy (as well as other IP crimes) also have in common not only that they are all violations of IP laws but also that they are often simultaneously reflected in the same good.⁷

Option 3: Consider ‘counterfeit goods’ as one criminal market as well as one or more additional markets to reflect manifestations of illicit trade in goods that cannot, by definition, be counterfeited

For the reasons outlined at Option 2, the advantage of Option 3 is that it emphasizes counterfeiting as an autonomous, standalone and cross-sectoral market category.

In addition, Option 3 creates one or more new categories for goods that are illicitly traded (e.g. through smuggling or diversion), but that cannot, by definition, be counterfeited. This ensures that there will be no overlap with the ‘counterfeit goods’ category.⁸

Option 4: Consider one or more criminal markets to reflect specific manifestations of illicit trade

Unlike the other options, this one does not capture ‘counterfeit goods’ as an autonomous criminal market. However, this does not mean that counterfeiting is not accounted for; in fact, within Option 4 the analysis of counterfeiting markets is carried out through an assessment of illicit trade in specific types of goods. For example, a new category on illicit trade in alcohol would assess the full spectrum of illegal conduct involving alcoholic beverages, including, but not limited to, counterfeiting (e.g. smuggling of genuine products, trade in substandard alcohol, etc.)

A key advantage of this option is that it allows for a comprehensive evaluation of the size and dynamics of illicit trade affecting specific goods. The counterfeiting phenomenon is not ignored, but rather analyzed in the context of each product-specific assessment.

If this option is chosen, determining which manifestation(s) of illicit trade should be added as criminal markets will depend on what the priority areas are for investing research time and resources.

Following the COVID-19 pandemic and ongoing discussions about new potential health crises to come, the creation of a self-standing category on illicit trade in health/pharmaceutical products would deserve special consideration in view of major concerns expressed by international and domestic agencies about the spread and impact of illicit trade in hand sanitizers, hospital equipment, vaccines, antiretroviral drugs, etc. This category may therefore substantially help shed light on the degree to which connections may exist between the involvement of organized crime and health crises, involving individual countries, regions or the entire world.

Other forms of illicit trade that might be prioritized are those that have detrimental effects on the environment, particularly those contributing directly to climate change, e.g. illicit trade in forestry products or illegal substances that contribute to the greenhouse effect.



MEASURING ILLICIT TRADE AND COUNTERFEIT GOODS

Main takeaways from existing assessment projects

The analysis of existing illicit trade-related assessments leads to the following general observations:

- Most available assessments would be interesting complementary sources for a possible evaluation processes. However, their usefulness will be mitigated by the growing obsolescence of some findings, most of which date from 2015 to 2017.
- Methodologically, most projects use customs data as the leading indicator of illicit trade activity. Data is compared over time to infer changes in illicit trade patterns affecting a country, a region or a specific product. However, information offered by customs seizures should not be taken as conclusive evidence about increasing or decreasing illicit trade patterns, but only as a factor to be interpreted in the context of other indicators.
- Conscious of the limitations posed by exclusive reliance on customs data, a number of projects have sought to refine the assessment by incorporating additional data sets (e.g. Corruption Perceptions Index by Transparency International and GDP data from the UN Statistics Division). They have also developed methodologies for evaluating the magnitude of purely domestic counterfeiting markets, which cannot be captured by customs data.
- Several available studies are sector specific, most of which focus on counterfeiting or piracy. This can be explained in part by the pervasiveness of IP rights violations and in part by the availability of project funding by industry actors for which trademark or copyright violations are a primary source of economic loss. The two most assessed sectors are illicit trade in tobacco and alcohol products. This again reflects sponsoring by industry.
- A limited number of assessments studies focus on the links between organized crime groups and illicit trade, although their scope is geographically limited to Europe. The methodologies underpinning these projects employ a mix of qualitative and quantitative research.

Overview of global assessment projects and their shortcomings

Several projects have been implemented to assess the scale and magnitude of illicit trade, often in relation to specific product categories. This section does not provide an exhaustive list of all such projects, but rather offers a selection of nine that appear to be of particular relevance in light of the methodology employed.

ILLICIT TRADE REPORT	
SOURCE	World Customs Organization (WCO) ⁹ (2019)
DESCRIPTION	<p>An annual publication¹⁰ with statistics on illicit trade flows based on the analysis of seizure data contained in the WCO Customs Enforcement Network – a global database to which national customs administrations contribute on a voluntary basis. The data is presented under specific illicit trade clusters (cultural heritage; drugs; environment; IP rights/health/safety; revenue; security) and includes:</p> <ul style="list-style-type: none"> • number of reported cases by country or region • number of seizures by category • number of reported cases by conveyance method • differences on reported cases across the years.
COMMENT	<p>The report relies entirely on customs seizures communicated by WCO member states. Customs seizures are also used in other projects as the most important indicator of illicit trade flows. However, it is recognized that this data source has important constraints, in particular owing to customs administrations' limited ability in intercepting illicit trade flows. Reported data may underestimate the true magnitude of these flows.</p> <p>Conversely, significant upticks in reported data are not necessarily a sign of increased illicit trade activity, as these may be attributable to an improved ability by a custom administration to detect illicit flows (e.g. thanks to the implementation of a more effective risk management system). The accuracy of illicit trade reports from the WCO may also be compromised by not all member states reporting data for statistical purposes.</p>

REVIEW OF NOTORIOUS MARKETS FOR COUNTERFEITING AND PIRACY	
SOURCE	Office of the United States Trade Representative ¹¹ (2022)
DESCRIPTION	Based on the outcome of a wide public consultation. The review highlights prominent and illustrative examples of online (39) and physical (17) markets in specific countries that reportedly engage in or facilitate substantial piracy or counterfeiting.
COMMENT	By outlining a number of problematic physical and online markets, the review implements a light form of 'name and shame' system. Although the list is not a comprehensive one, it may be a useful complementary resource in the context of a global assessment index, for example to corroborate findings obtained through other data sources.

GLOBAL TRADE IN FAKES	
SOURCE	Organisation for Economic Co-operation and Development ¹² (2021)
DESCRIPTION	<p>Using data from 2019, this report is the latest one in a series of studies that, since 2016, have presented evidence on the scale and magnitude of illicit trade in counterfeit and pirated goods.¹³ It also provides a snapshot of recent trends during the COVID-19 pandemic, based on a set of online dialogues and structured interviews with experts from the law enforcement community and the private sector.</p> <p>The sources used for the analysis are:¹⁴</p> <ul style="list-style-type: none"> • customs seizures recorded by the WCO and supplemented with regional data submitted by the European Commission's Directorate-General for Taxation and Customs Union, the US Customs and Border Protection Agency and the US Immigration and Customs Enforcement • trade data collected from the United Nations Comtrade database, which covers the majority of world trade by registering products based on the WCO's international commodity classification system and assigning them their landed customs value.¹⁵ <p>Data from these databases have been exploited using a methodology called the general trade-related index of counterfeiting (GTRIC) for products (GTRIC-p) and economies (GTRIC-e). In short the index estimates:</p> <ul style="list-style-type: none"> • the relative likelihood for products in one category to be counterfeit compared with another • the relative likelihood for a given provenance economy to export fakes in comparison with other economies. <p>Based on the GTRIC methodology, the report provides information on:</p> <ul style="list-style-type: none"> • top provenance economies of counterfeit and pirated goods in terms of customs seizures, as well as the propensity to export counterfeit products (2017–2019) • top product categories of counterfeit and pirated good (2017–2019) • conveyance methods for counterfeit and pirated products (2017–2019), expressed as the share of global seized value and also share of global customs seizures • the mentioned measurements in relation to specific goods (i.e. perfumery and cosmetics, leather articles, footwear, toys and games, jewelry, and clothing).
COMMENT	<p>The GTRIC methodology assigns the relative likelihood of there being counterfeit products in each product category and from each provenance economy. However, it does not provide any information about the absolute magnitude of counterfeiting and piracy in world trade. Despite some drawbacks, the GTRIC methodology has been refined over time and forms the basis of quantification efforts by several other projects.</p>

INTERNATIONAL IP INDEX	
SOURCE	US Chamber of Commerce ¹⁶ (2023)
DESCRIPTION	<p>Now in its eleventh edition, the index measures how equipped 55 countries are to uphold IP rights across 50 indicators. One such indicator (physical counterfeiting rates) assesses the prevalence of IP rights infringement. To obtain a unique estimate for each of the countries under consideration, the index uses a proprietary metric that applies three weighted factors in order to provide a holistic take on the propensity for counterfeiting.</p> <p>The first factor contributes 50% to the total score for this indicator and considers:</p> <ul style="list-style-type: none"> • whether civil and procedural remedies exist, such as injunctions, damages for injuries and destruction of infringing and counterfeit goods, as well as their effective application • whether pre-established damages or mechanisms for determining the amount of damages generated by infringement exist • criminal standards, including minimum imprisonment and minimum fines in place and their application • effective border measures (measured by the extent to which goods in transit suspected of infringement may be detained or suspended, as well as the existence of an ex officio authority) • transparency and public reporting by customs authorities of trade-related IP infringements. <p>The second factor reflects the GTRIC-e benchmark developed for the 2021 Global Trade in Fakes (see earlier).</p> <p>The third factor incorporates the rate of perceived corruption within a country as measured by Transparency International's Corruption Perceptions Index. Together, the second and third factor account for the remaining 50% of the total score.</p>
COMMENT	<p>This index seeks to remedy a perceived inefficiency of the OECD-based GTRIC methodology in that the latter does not take into account domestically produced counterfeit products or pirated digital products. The most original aspect of the IP index is that Transparency International's Corruption Perceptions Index is incorporated into its methodology. The underlying assumption (not necessarily based on solid evidence) is that a strong correlation exists between levels of corruption and levels of counterfeiting. The report argues that 'authorities in economies that struggle with corruption tend to also overlook or place less emphasis on combating criminal activities, including counterfeiting'.</p>

ECONOMIC IMPACTS OF COUNTERFEITING AND PIRACY	
SOURCE	Frontier Economics ¹⁷ (2015)
DESCRIPTION	<p>The assessment considers four dimensions:</p> <ul style="list-style-type: none"> • Internationally traded counterfeit and pirated goods • Estimation of the value of domestically produced and consumed counterfeit and pirated goods • Piracy distributed through the internet, mainly by peer-to-peer sharing and streaming • Building on the magnitudes calculated under the first three points the wider economic and social impacts, such as: foregone economic growth; effects of the displacement by counterfeiting and pirating activities of legitimate activities on employment; foreign direct investment; tax revenues; and estimated costs of criminality related to counterfeiting and pirating activities <p>Methodologically, the assessment relies on:</p> <ul style="list-style-type: none"> • The GTRIC-e and GTRIC-p indices of relative counterfeiting propensities in world trade developed by the OECD (see earlier) • GDP data from the UN Statistics Division • UN Comtrade data on the value of global imports by source economy, year and Harmonised System code • Industry studies and engagement
COMMENT	<p>Compared with the quantification reports elaborated by the OECD, the main value of this assessment lies in its seeking to quantify additional types and impacts of counterfeiting and piracy. Although its attempt to measure domestic counterfeiting and the addition of piracy to the equation offer an interesting suggestion for future analyses, the report itself dates from 2015 and has not been revised since. As a result, the data would offer limited insight into current trends in support of a future global assessment.</p>

WHO GLOBAL SURVEILLANCE AND MONITORING SYSTEM (GSMS) FOR SUBSTANDARD AND FALSIFIED MEDICAL PRODUCTS ¹⁸ AND WHO STUDY ON THE PUBLIC HEALTH AND SOCIOECONOMIC IMPACT OF SUBSTANDARD AND FALSIFIED MEDICAL PRODUCTS ¹⁹	
SOURCE	World Health Organization (WHO)
DESCRIPTION	Based on data officially reported by WHO member states' focal point, the GSMS seeks to improve the quality of reporting of substandard and falsified medical products as well as to ensure that collected data is analyzed and used to inform policy-making processes aimed at public health protection at the national, regional and global level.
COMMENT	<p>Because the GSMS collects only officially reported data, the reports regularly produced by the WHO from this data cannot be used as a source of comprehensive information about the overall magnitude of the illicit trade in pharmaceutical products.</p> <p>For this reason, the latest report on the GSMS (2020) has been accompanied by a study on the public health and socioeconomic impact of substandard and falsified medical products. That study was based on the examination of published surveys of the quality of medicines from the past decade, to provide estimates on the scope, scale and harm of substandard and falsified medical products.</p> <p>A comprehensive literature review was included, covering published papers (as sourced through the databases PubMed and MEDLINE) that reported on field studies or surveys of the quality of medicines. Overall, the search strategy identified 100 published papers that met the inclusion criteria for further consideration. In total, the 100 papers reported on 48 218 samples of medicines being tested, collected from 88 of the 194 WHO member states.</p>

ILLICIT TRADE IN TOBACCO PRODUCTS	
SOURCE	Euromonitor ²⁰ (2018)
DESCRIPTION	This study analyzes and quantifies illicit trade in tobacco products globally and by region. It is only available for purchase.
COMMENT	The analysis is sponsored by the tobacco industry, which has exposed it to criticism that the industry has an ingrained interest in inflating illicit trade data and statistics to bring more visibility and 'a sense of urgency' to the problem to draw decision makers' attention.

SIZE AND SHAPE OF THE GLOBAL ILLICIT ALCOHOL MARKET	
SOURCE	Euromonitor ²¹ (2018)
DESCRIPTION	This study seeks to understand the shape and size of the illicit alcohol market globally, in Latin America, Africa and Eastern Europe. However, its methodology is not specified. The last edition of the study dates back to 2018, and it is unknown whether any new edition is foreseen.
COMMENT	The analysis is sponsored by the alcohol industry. Some believe this may compromise its reliability, noting that the industry may have an ingrained interest in inflating illicit trade data and statistics to bring more visibility to the problem and attract decision makers' attention.

Overview of regional assessment projects and their shortcomings

SITUATION REPORT ON COUNTERFEITING AND PIRACY IN THE EUROPEAN UNION	
SOURCE	Europol ²² (2017)
DESCRIPTION	<p>The report mainly draws on:</p> <ul style="list-style-type: none"> • literature review of industry reports, intelligence updates and revised datasets that have become available since the first edition of the report was published in 2015 • the database of external border seizures of the European Commission Directorate-General for Taxation and Customs Union • Europol's Serious and Organised Crime Threat Assessment (2017) • findings of a discussion held in 2016 by The EU Intellectual Property Office (EUIPO) among EU judges on sentencing practices in order to 'ascertain the attitudes and opinions of those directly affected by product counterfeiting and piracy, either at enforcement level or as victims' • Europol/EUIPO/Eurojust joint knowledge-building seminars.
COMMENT	This is one of the few (authoritative) assessments of the links between organized crime groups in IP rights infringements, detailing dynamics by sector, smuggling routes and transportation methods, countries of provenance, types of criminal networks involved, etc. However, only two editions of the report have been issued, the latest one being in 2017. Also, the analysis is geographically limited to EU countries.

VIRAL MARKETING: COUNTERFEITS, SUBSTANDARD GOODS AND INTELLECTUAL PROPERTY CRIME IN THE COVID-19 PANDEMIC	
SOURCE	Europol ²³ (2020)
DESCRIPTION	The report outlines the activities and dynamics of counterfeiters during the first year of the COVID-19 pandemic. The analysis is based on operational or law enforcement data provided to EUROPOL by EU member states.
COMMENT	The report provides a snapshot of how dynamics in the counterfeiting market have evolved in the EU as a result of the pandemic. An update to this report has not been published.

COUNTERFEIT AND PIRACY WATCH LIST	
SOURCE	European Commission ²⁴ (2022)
DESCRIPTION	<p>Based on a public consultation²⁵ held between December 2021 and February 2022, the Watch List is a selection of marketplaces and online service providers that are, directly or indirectly, linked to the counterfeiting or piracy of EU IP-protected goods. All selected marketplaces and service providers are located outside the EU.</p> <p>Each marketplace and online service provider is accompanied by a summary of the allegations of reporting stakeholders and, to the extent possible, the reaction of the listed entities to those allegations.²⁶</p>
COMMENT	This initiative is the EU equivalent of the 'US Notorious Markets' list (see previous section). It highlights prominent examples of online and physical markets that stakeholders have associated with frequent instances of counterfeiting and piracy. In the context of a global assessment, it could provide useful elements to back up information obtained through existing databases and confirm the outcome of expert interviews.

ON TAP EUROPE: ORGANISED CRIME AND THE ILLICIT TRADE IN TOBACCO, ALCOHOL AND PHARMACEUTICALS	
SOURCE	Royal United Services Institute (RUSI) ²⁷ (2017)
DESCRIPTION	<p>Based on desk research and semi-structured interviews with law enforcement officials and experts, this project seeks to:</p> <ul style="list-style-type: none"> • explore the routes and methods used by organized criminals in smuggling operations • assess the dynamics of organized criminal activity in multiple EU countries as well as national differences in the scale and impact of illicit trade.
COMMENT	The main value of this project – in the context of a future global assessment – lies in its offering a direct assessment of the involvement of organized crime groups in illicit trade. However, its scope is limited both geographically and substantively (it focuses only on three illicit trade sectors). Its findings date back to 2017. The report has been financed by the tobacco industry.

ILLICIT TRADE IN TOBACCO PRODUCTS IN EUROPE AND BEYOND	
SOURCE	Transcrime ²⁸ (2019)
DESCRIPTION	<p>This report seeks to measure the illicit flows of cigarettes across EU countries, by also examining the role of and connections with countries in North Africa, the Middle East and Central Asia. A three-stage methodology underpins the assessment:²⁹</p> <ul style="list-style-type: none"> • Phase 1: Assessment of the overall consumption of cigarettes, both licit and illicit, in the referenced markets by employing a supply-side estimation approach, followed by an estimation of the share of legitimate and illicit cigarettes (i.e. counterfeits, illicit whites and smuggled legitimate cigarettes) within the overall number of cigarettes consumed in each country • Phase 2: Mapping the path followed by illicit cigarettes when moving across countries • Phase 3: Identification of the contextual factors that affect illicit cigarette flows, followed by an estimation on their influence on the traffic itself and based on information pertaining to six macro dimensions (political; geographical; regulation and enforcement; socio-economic; cultural; criminal). Within each macro dimension, two types of analyses are conducted: <ul style="list-style-type: none"> ♦ a quantitative analysis that exploits both country-level and relational variables within the various macro dimensions to run a statistical model that estimates the impact of these variables on illicit cigarette flows ♦ a qualitative analysis relying on information collected from academic literature, grey literature, open sources (e.g. press releases or news) and interviews. Evidence yielded by the two sets of analyses is then merged to provide an overall interpretation of the explanatory factors behind the transnational trafficking of cigarettes.
COMMENT	The methodology underpinning this study is one of the most structured and sophisticated used in the area. It could potentially be replicated at a global level and in relation to other illicit trade sectors.

ILLICIT CIGARETTE CONSUMPTION IN THE EU, UK, NORWAY, SWITZERLAND, MOLDOVA AND UKRAINE	
SOURCE	KPMG ³⁰ (2022)
DESCRIPTION	This report is the 2022 output from a study (so far conducted annually) that assesses the scale and dynamics of the illicit cigarette market in the EU, UK, Norway, Switzerland, Moldova and Ukraine. The assessment relies on a combination of hard data (e.g. travel data and legal sales of cigarettes), publicly available data points (e.g. smoking prevalence and average prices of cigarettes), 'empty pack' surveys ³¹ commissioned by tobacco manufacturers and undertaken by independent market research agencies, as well as interviews with law enforcement officials and experts.
COMMENT	<p>The analysis has run for a few years already and it is likely to be repeated in the coming years. However, it only covers a limited number of countries.³² Also, despite the study emphasizing the independence of the underlying research and related outcomes, it has been criticized for not guaranteeing an impartial overview of the situation owing to the tobacco industry being its sponsor. Methodologically, the report draws a substantial amount of data from 'empty pack' surveys. As has been highlighted, 'this method is not without flaws, and its accuracy has been called into question. For example, collection activities are focused in urban areas, therefore providing a somewhat distorted view of the market. It must also be remembered that the surveys do not collect data on loose or hand-rolled tobacco, and therefore can produce estimates only of the illicit cigarette market, rather than the illicit tobacco market as a whole. Nevertheless, such surveys are able to provide useful data on trends in illicit cigarettes over time, including the popularity of products and their origin.'³³</p> <p>However, despite its drawbacks, the report arguably remains one of the most solid, evidence-based and large-scale assessments in the illicit trade space to date.</p>

ASIA ILLICIT TOBACCO INDICATOR	
SOURCE	Oxford Economics ³⁴ (2012–2017)
DESCRIPTION	The report, which was updated each year until 2017, provides an overview of the nature of the illicit trade of cigarettes across a selection of Asian markets (including Australia and New Zealand). It establishes estimates of consumption of illicit cigarettes and the impact this has on tobacco tax revenue. In addition to 'empty pack' surveys, the report also relies on consumer surveys.
COMMENT	The methodology used by Oxford Economics is focused on the assessment of the illicit tobacco market. It makes extensive use of 'empty pack' and consumer surveys as key sources of primary data.

Overview of single-country and bilateral assessment projects and their shortcomings

NATIONAL REPORTS – ON TAP EUROPE: ORGANISED CRIME AND THE ILLICIT TRADE IN TOBACCO, ALCOHOL AND PHARMACEUTICALS	
SOURCE	Royal United Services Institute (RUSI) ³⁵ (2015–2017)
DESCRIPTION	In this project, RUSI sought to understand the scale and nature of illicit trade (with a focus on tobacco, alcohol and pharmaceuticals) and the role of organized crime in Romania, Spain, Poland, Italy, Greece and the UK. The six national reports are based on desk research, semi-structured interviews with experts from the public sector, private sector and academia, as well as a series of workshops to validate key findings.
COMMENT	An important asset of this project is that it analyzes the size and modalities of illicit trade with a focus on organized crime groups' involvement. However, its geographical scope is limited to selected EU countries and is substantially focused on tobacco, alcohol and medicines. Also, the analysis dates from 2015 and there is no indication that any update is in the pipeline.

ILLICIT TRADE REPORTS BASED ON TRADE DATA COMPARISONS	
SOURCE	Environmental Investigation Agency (EIA)
DESCRIPTION	The EIA has conducted assessments of the size of specific illicit trade sectors by using, as a leading measurement criterion, comparisons of trade data released for the same type of goods by export and import countries in their bilateral exchanges. Detected discrepancies are used to infer volumes of undeclared movements of goods and thus estimate the magnitude of illicit trade flows. For example, in 2013 the EIA applied this methodology to assess levels of illicit trade of forestry products flowing from Mozambique to China. ³⁶ In 2018, a similar exercise focused on customs data, indicating a significant oversupply of hydrofluorocarbons to the European market. ³⁷
COMMENT	By highlighting discrepancies in trade data at import and export, the EIA employs an interesting and innovative methodology for the analysis of illicit trade flows at the bilateral level.

Elements for a possible ‘best model’

With regard to the quantitative analysis, an important, albeit imperfect, source of data derives from customs seizures. Existing databases and methodological approaches currently employed for global studies (e.g. GTRIC by the OECD) could be usefully leveraged as supporting evidence for putting together a global assessment instrument.

Consumer surveys could represent an additional interesting source of quantitative data in relation to destination markets, especially, although not exclusively, for the analysis of the size of the counterfeiting phenomenon, products involved and channels used to supply them. Consumer surveys have been run in the context of assessments of illicit trade in tobacco products (see Oxford Economics, Asia Illicit Tobacco Indicator). These experiences could potentially be replicated in other sectors, leading to the exploitation of primary data.

The quantification effort could benefit from existing analyses (whenever available) that aim to compare trade data with a view to highlighting discrepancies at export and import between two countries.

The collection and analysis of qualitative data will be critical to compensate for the inevitable lack of accuracy in quantitative assessments. A key challenge is the identification of notable human sources. In countries of origin, representatives of law enforcement agencies could provide useful perspectives about the frequency, size and outcomes of operations aimed at disrupting illegal manufacturing facilities or movements of goods within the country. In destination markets, law enforcement agencies could provide similar information about raids conducted at physical markets. In destination countries, interesting information about trends, dynamics and perception of the size of the phenomenon could also be acquired from operatives of multi-agency port control units and air cargo control units established under the UNODC–WCO Container Control Programme.³⁸

Critical data for an assessment of illicit trade markets lies in the private sector’s hands. Several multinationals operate branches in most regions or countries. Their expertise of local dynamics and knowledge of their own markets should be leveraged, especially if manifestations of illicit trade affecting their own business sectors are included. In addition, several companies in affected sectors run dedicated – and often generously staffed – brand integrity or IP offices that monitor online platforms and physical markets. Frequently, these companies rely on external partners to carry out investigations. Although these investigations are often confidential, it should be possible to obtain redacted versions of reports with a view to elucidating the nature and size of local criminal markets. In considering data stemming from private-sector stakeholders, the potential for biases should be kept in mind.



DISCUSSION

The evidence base

National and international reports – based on quantitative and qualitative assessments of the illicit trade phenomenon in its various manifestations – overwhelmingly emphasize the pervasiveness of illicit trade patterns across the world. For example, in 2017, the report by Global Financial Integrity estimated the revenues generated from 11 types of crime related to illicit trade to range between US\$1.6 trillion and \$2.2 trillion per year.³⁹

Examples of current estimates of illicit trade on a global scale

Although illicit trade patterns change depending on local contexts, no country appears to be spared, whether developed or developing. Moreover, most analyses have highlighted that illicit trade volumes have steadily increased over the past 10 years and show no sign of abating. The following are extracts from assessments conducted in specific sectors by various intergovernmental organizations, private-sector or consulting groups, civil society organizations and academic research centres.

COUNTERFEITING/ PIRACY	<p>According to Europol, counterfeiting crimes only (without piracy) represent as much as 2.5% of world trade, or US\$461 billion.⁴⁰</p> <p>In 2021, the OECD assessed that 'trade in counterfeit and pirated goods amounted to up to 2.5% of world trade in 2019; when considering only imports into the EU, fake goods amounted to up to 5.8% of imports [...]. [...] In previous OECD-EUIPO studies, which relied on the same methodology, trade in counterfeit and pirated goods was estimated at up to 2.5% of world trade in 2013, equivalent to up to US\$461 billion, and 3.3% of world trade in 2016, or US\$509 billion. Thus, in nominal terms, in absolute terms and in terms of its share in total trade, the volume of trade in fakes has remained significant, representing amounts close to the GDPs of advanced OECD economies such as Austria or Belgium.'⁴¹</p>
PESTICIDES	<p>A 2015 report by the Organisation for Security and Cooperation in Europe estimated the share of illegal pesticides on the global market to be as high as 25%.⁴²</p>
ALCOHOL	<p>According to Euromonitor's 2018 Global Study on Illicit Alcohol, one in four bottles of alcohol are illicit, representing 25.8% of all global consumption.⁴³ These findings correspond to analyses from the WHO, which estimate that unrecorded alcohol accounted for 25.5% of total worldwide adult alcohol consumption in 2018.⁴⁴</p>
ILLEGAL LOGGING	<p>According to UNEP and INTERPOL, forestry crimes such as illegal logging generate an estimated US\$51–152 billion in illicit revenues, which are unaccounted for and untaxed in the legitimate economy.⁴⁵ The impact of illegal logging on carbon emissions appears to be particularly strong in tropical regions, where deforestation accounts for 10–20% of global carbon emissions.⁴⁶ Illegal logging accounts for 50–90% of all forestry activities in key producer tropical forests, such as those of the Amazon Basin, Central Africa and Southeast Asia.⁴⁷</p>
ILLEGAL, UNREPORTED AND UNREGULATED (IUU) FISHING	<p>Global losses to IUU fishing have been estimated at US\$15–36 billion, representing 14–33% of global marine capture value.⁴⁸ In West African waters, which face some of the highest levels of IUU fishing in the world, IUU fishing may account for as much as 37% of all fish caught.⁴⁹</p>
PHARMACEUTICAL PRODUCTS	<p>INTERPOL reported that falsified medical products could account for as much as 30% of the market in some countries in Asia, Africa and Latin America.⁵⁰ In the transitional economies of former Soviet republics, there are estimates of above 20% of market value.⁵¹</p>
TOBACCO	<p>According to WHO estimates, governments lose around US\$40.5 billion tax-based revenue a year owing to unreported illicit trade of tobacco products. In some countries, notably from the Eastern Mediterranean, illicit trade can be as high as 40–50% of the overall tobacco market.⁵²</p>

Gaps in the existing evidence base

The current evidence base for illicit trade conduct presents a number of gaps, as follows:

- Several studies have observed that free trade zones (FTZs) are frequently exploited by traffickers to hide goods' origin, real volumes and nature by means of practices such as transshipment and repackaging.⁵³ Although FTZs are an integral part of the countries that host, these zones' vulnerability to illicit trade is due to transactions are notoriously subject to opaque regulatory frameworks and poor oversight. Reportedly, customs agencies often show a tendency to be more lenient in exercising their law enforcement prerogatives in these areas. As a result, customs and other data related to FTZs may be significantly more difficult to collect, generating a sort of 'black hole' in the assessment of some countries, especially those where FTZs represent a significant share of the national economy.
- Data on illicit trade referring to 2020 and the beginning of 2021 are often poorly indicative of general trends in illicit trade flows as both legal and illegal supply chains have been massively influenced by lockdowns and other measures taken by national governments to counter the COVID-19 pandemic. When carrying out individual country assessments, collected data will thus need to be examined in light of the effect that any exceptional or temporary legal measure may have had on illicit trade flows in that period. For example, in certain countries the black market for alcoholic beverages has increased markedly following severe restrictions on the sale and consumption of alcohol.
- The involvement of organized crime groups in various manifestations of illicit trade has been repeatedly confirmed. This ranges from resorting to low-level smuggling activities as a gateway to more serious crimes to criminal networks handling particular stages of illegal supply chains (e.g. procuring chemical precursors for drug manufacturing) or groups resorting to 'poly-criminal' conduct (e.g. exploiting consolidated maritime or land routes for the trafficking of multiple assets simultaneously, such as drugs, weapons and people).
- At the same time, the degree and characteristics of organized crime groups' involvement in illicit trade has not been thoroughly examined. On the one hand, this points to the relevance and usefulness of introducing new categories for illicit trade in a global index, while on the other hand, a possible challenge is that there will be a limited amount of granular information with regard to the interplay between illicit trade and organized crime groups.
- There is a risk that available data on illicit trade does not reflect reality owing to underreporting. For example, according to the Pharmaceutical Security Initiative, 'regions with seemingly low incident totals are not necessarily unaffected by, or at a lower risk of, pharmaceutical crime. Due to competing law enforcement priorities, lack of funding, or inadequate regulatory structures, in certain regions of the world, counterfeit medicines often go undetected.'⁵⁴ The same factors identified in relation to illicit trade in pharmaceutical products may well lead to an underestimation of illicit trade volumes in other sectors.
- There may be significant differences in data availability across different manifestations of illicit trade within the same country. For example, research by RUSI on various forms of illicit trade in the EU found 'substantial disparities in the quantity and type of information available for different products in each country; the data regarding illicit tobacco, both in terms of volume and detail, greatly exceed those for illicit alcohol and pharmaceuticals'.⁵⁵

- Some existing assessments may put data about illicit trade and informal markets in the same basket. For example, WHO provides estimates of 'unrecorded' alcohol in various countries around the world. While the notion of 'unrecorded' alcohol clearly includes illegal activities such as smuggled and counterfeit items, it also covers forms of alcohol that are legally produced, distributed and sold outside formal channels, including instances of alcohol produced at home for personal consumption.

Future trends and challenges

Traffickers are expected to increasingly exploit online platforms for the advertisement and sale of illicitly traded goods. This tendency has only been exacerbated by the COVID-19 pandemic, as consumers in locked-down countries have turned to online markets to fulfil their needs in even bigger numbers.

The considerable growth of e-commerce has gone hand in hand with the increasing use of small parcels to deliver goods directly to consumers. A significant challenge with detecting illicit trade via small parcels lies in the sheer amount of packages circulating worldwide. In addition, as highlighted by the OECD in 2018, 'currently, only simplified documentation is required to send small volume items shipped by post. The information contained in the documents is certified by the sender and is not usually verified, which creates scope for legitimate errors as well as fraud. The information has traditionally been provided in paper form and thus was not available electronically. It was usually only available to customs authorities in destination countries, upon arrival of the item. While progress has been made in implementing electronic data exchanges, much still needs to be done in this regard. This creates a dilemma for customs, which have to process imports on an expedited basis, while properly assessing duties and monitoring imports with a view towards countering illicit trade.'⁵⁶

The misuse of small parcels account for an important limitation in efforts to quantify illicit trade markets. The more information-exchange agreements concluded between express couriers and customs authorities in the coming years, the more accurate the understanding of the magnitude and flows of this form of illicit trade will become.



CONCLUSION

Illicit trade is a catch-all expression covering a variety of illegal practices aimed at manufacturing, distributing and selling goods to the public in violation of international and national laws adopted to protect, inter alia, consumers' health, the environment and intellectual property rights. While the methodologies currently employed to assess the magnitude of illicit trade - often in relation to specific sectors and regions - have so far only provided rough estimates of the problem, there is widespread consensus that the phenomenon is growing in size and affecting all economies, particularly - albeit not exclusively - fragile ones in developing countries characterized by weak governance and high levels of corruption. A global assessment of the problem is thus worth pursuing, also in light of mounting evidence of illicit trade in its various manifestations causing severe social and economic distress and being a major source of revenue for organized criminal groups.

This has been particularly evident during and after the Covid-19 crisis, which brought about a dramatic increase of illicit trade volumes via online platforms and the abuse of supply chains' most vulnerable points, such as illegal deliveries through small parcels.

A global assessment could draw useful data from the outcome of existing quantification efforts, which often rely on customs data and discrepancies observed between official trade data at import and export. Private-sector stakeholders should be leveraged as critical sources of information due to their systematically monitoring illegal conduct affecting their business sectors.

NOTES

- 1 It was only in 2021 that UNCTAD's ministerial meeting officially recognized the threat of illicit trade as a whole to sustainable development. This declaration followed the first Illicit Trade Forum organized by the UNCTAD secretariat (in cooperation with the Transnational Alliance to Combat Illicit Trade) in Geneva in February 2020.
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- 8 As seen under Option 2, the 'counterfeit goods' category could also be expanded to become a new 'IP crime' category under Option 3.
- 9 The WCO issues its 2019 Illicit Trade Report, World Customs Organisation, 30 July 202, <http://www.wcoomd.org/en/media/newsroom/2020/july/the-wco-issues-its-2019-illicit-trade-report.aspx>.
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- 14 As acknowledged by the authors of the report, 'a detailed analysis of these data revealed a set of limitations. Some of them are to do with discrepancies between the datasets, other product classification levels or outliers in terms of seized goods or provenance economies'.
- 15 Landed customs value includes the transaction value as appearing on accompanying invoices plus insurance and freight charges incurred during transport.
- 16 International IP Index, see: https://www.theglobalipcenter.com/wp-content/uploads/2021/03/GIPC_IPIndex2021_FullReport_v3.pdf.
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- 18 WHO Global Surveillance and Monitoring System for Substandard and Falsified Medical Products, WHO, 2017, <https://apps.who.int/iris/bitstream/handle/10665/326708/9789241513425-eng.pdf?sequence=1&isAllowed=y>.
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- 29 The detailed methodology is described at: <https://www.transcrime.it/wp-content/uploads/2019/07/Nexus.Booklet7-Methodology-WEB.pdf>.
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This report was funded in part by a grant from the United States Department of State. The opinions, findings and conclusions stated herein are those of the author(s) and do not necessarily reflect those of the United States Department of State.