

Background and Discussion Paper on Mitigating Illicit Trade in Panama

Panama Customs Authority (ANA)

Transnational Alliance to Combat Illicit Trade (TRACIT)

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Activity description

Under the MoU signed in 2022, ANA and TRACIT agreed to a set of activities to mitigate illicit trade, prevent smuggling, and reduce customs fraud.

Parties opted for an initial work program to address: 1) the abuse of air cargo transportation to traffic illicit products in small parcels through Panama's Tocumen International Airport (PTY); 2) Illicit trade via maritime cargo in ports and in free trade zones (FTZs).

The main sectors affected by illicit trade include counterfeits, falsified medicines, agrichemicals, tobacco, alcohol, and wildlife.

Overview

- Over the past few decades, organized crime has increased in the Latin American and Caribbean Region, including illicit trade in wildlife, forestry, petroleum, tobacco, alcohol, pharmaceuticals, counterfeiting and piracy. Moreover, the links between illicit trade and organized crime are well established, from human trafficking networks and tobacco smuggling to fuel theft by drug cartels and the involvement of organized criminal groups in the trade of counterfeit and sub-standard goods. Communities and economies are further destabilized when billions of dollars of criminal profits are reinvested into other illicit activities.
- Economic factors such as widely developed informal markets, lack of employment opportunities and tax differentials across jurisdictions have provided powerful incentives for these forms of illicit trade and the associated criminal activity. The potential for traffickers to gain significantly high profits, coupled with the low risk of detection and prosecution, has made illicit trade an irresistible temptation.
- Organized criminal groups and/or illicit traders exploit vulnerabilities in Customs controls for trafficking purposes. Customs deficiencies often derive from inadequate resources allocated to them, lack of training as well as the absence of coordinated policies at national and international levels. This situation becomes particularly apparent in certain hotspots, such as FTZs, as these hubs, which play a crucial role in the region's economy, are particularly exposed to criminal activity.

- The sheer amount of goods circulating worldwide has made it critical for Customs to develop highly sophisticated risk-management methodologies for the effective detection of high-risk consignments worth of thorough inspection. This is costly in terms of technological solutions to be adopted and requires that customs officials develop specific capacities and expertise.
- Due to its geographical location, Panama has become the main country of transit in the Americas. The Panama Canal, combined with several port facilities and The Colon FTZ – the largest FTZ in the Western Hemisphere - have facilitated the trading of all kinds of goods.
- Over the past years, ANA’s work has become particularly demanding, as both public and private stakeholders habitually request more efficient, high-speed and rigorous controls of cargos.

Most common shortcomings in LATAM and the Caribbean

TRACIT has identified the following needs and shortcomings in the LATAM and Caribbean region:

- Need for better risk-profiling information; lack of Authorized Economic Operators Programs (e.g., lists of authorized distributors); inability of countries to come up with accurate identification of high-risk cargos (e.g., red flags); and lack of information-exchange practices with other countries.
- Limited manpower.
- Lack of training and capacity building for customs and border officials.
- Difficulty in unloading a suspicious container due to time, manpower, placement on the ship and even limited space in some checkpoints.
- Burdensome rules and/or inadequate/outdated laws. For instance:
 - on some occasions Customs cannot certify if a product violates trademarks or other IP rights, as they have very tight deadlines to receive brand owners’ reports/complaints.
 - other recurrent examples relate to the regulation of FTZs, which is often not clear, creating grey areas (**see Annex I on FTZs’ vulnerabilities**).
 - sometimes the thresholds to differentiate administrative and criminal offences are not adequate, as legislation considers the trafficking of very large amounts of illicit products as simple administrative offences. By this token, criminal justice systems are not involved, with the consequent impossibility to rely on the deterrent effect of criminal sanctions.

- Limited ability to exchange strategic and/or operational information with other agencies at national and international levels (e.g., with other foreign Customs authorities or other domestic law enforcement agencies I).
- Lack of prioritization of Customs' role by policy makers, including confusion of their role and mandate vis-à-vis of other ministries and agencies.
- Inadequate Customs control system, which often enables illicit traders to divert products from formal import and transit channels.
- Uncertain role of some Customs authorities over FTZs.
- On most occasions, the seizure of products by Customs does not lead to significant investigations (e.g., for organized crime, conspiracy, corruption, etc.).
- Lack of resources/capacity to establish private/public cooperation.

Air cargo transport of small parcels

- According to an OECD/EUIPO study, trafficking fakes by small parcels is growing, becoming a significant problem in terms of enforcement. This study was released prior to the Covid-19 Pandemic, in 2018.¹ It is widely known that the use of small parcels for the commercialization of all types of products has dramatically increased during the Pandemic.
- The small parcels used by illicit traders for trafficking are shipped either through postal or express services. This creates significant challenges for customs authorities and has led to calls for increased attention at the international level. Traditionally available information such as ship manifests and the supporting role of customs brokers are often absent in small volume trade.²
- In general, “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 must process imports on an expedited basis, while properly assessing duties and monitoring imports with a view towards countering illicit trade.”³
- “The larger express companies generally provide door-to-door services that are tracked and traced electronically. Additional information concerning the shipper, product and recipient is also collected this way. This provides a potentially rich data

¹ [OECD/EUIPO \(2018\), Misuse of Small Parcels for trade in Counterfeit Goods.](#)

² *Ibid*, see OECD/EUIPO report at page 11.

³ *Ibid*, see OECD/EUIPO report at page 11.

source that, if made available to customs authorities, could greatly assist in risk assessment.”⁴

The situation in Panama

- More than 2,400 registered companies conduct business at the Colon FTZ, and approximately 100 are engaged in the importation, exportation, and distribution of jewelry to other Latin American countries.
- Importation of small consignments of jewelry and similar goods by air is the most common way of introducing counterfeit goods into the in-market. Illicit traders use third parties (courier companies) to facilitate the importation of the infringing goods.
- In particular, TRACIT has noticed a persistent increment in the illicit trade of luxury products (e.g., pens, backpacks, bags, wallets, belts), which are originated in China and arrive via air cargo to the Tocumen International Airport and are later diverted primarily into Colombia and Venezuela. Whereas the routes can be quickly changed, the above-described pattern appears to be well established.
- The situation is amplified during the Christmas shopping season in LATAM. Thus, it appears that controls would need to be enhanced during this period.
- Whereas Panama has an IPR alert system in place, recipient countries are not always responsive.

Maritime cargo, ports, and free trade zones

- According to UNODC, while some 500 million containers move across the globe each year, accounting for nearly 90 per cent of global trade, less than two per cent of these are ever physically inspected. Freight containers are constantly targeted for illicit trade activities. Traffickers and organized crime groups exploit weak, ineffective and inconsistent port controls to move illegal goods, using sophisticated and ingenious concealment methods to smuggle contraband.⁵
- Illicit traders are well aware of these recurrent issues and have learnt how to successfully exploit the situation. In addition, they adapt very quickly to new circumstances, such as the enhancement of controls in certain ports. For instance, it was reported that banning the use of ports to certain notorious cargo operators, resulted in the increment of their illegal activities in another neighboring port, which had lesser resources to monitor the shipments.
- “Existing enforcement efforts may not be tailored adequately to respond to this risk. Customs may not check for counterfeits with the same scrutiny as other illicit goods. Freight forwarders, carriers and shipping companies may also not have the right systems in place to implement anticounterfeiting policies to identify exporters and

⁴ *Ibid*, see OECD/EUIPO report at page 11.

⁵ https://www.unodc.org/islamicropublicofiran/en/crime-in-a-box_-the-international-trafficking-of-clandestine-goods-in-containers.html

importers of fakes. Due to the relatively low priority given to gathering intelligence and information on counterfeit shipping methods, counterfeits remain “low risk and high reward” for opportunistic criminal networks.”⁶

The situation in Panama

- “Colón is one of the world’s great logistical hubs, but criminal organizations use this infrastructure ...,” says Michael Chen, the president of Colón’s chamber of commerce. “Every day the situation seems to worsen ... organized crime and gangs find more creative ways of getting through what’s left of my city.”⁷
- Containers frequently arrive at the Colon FTZ with all types of products vulnerable to illicit trade, e.g., counterfeits, falsified medicines, agrichemicals, tobacco, alcohol, wildlife. From this hub, illicit products are diverted throughout all LATAM.
- Panama Customs Authority has a Risk Analysis Department that analyze bills of lading and other importation documents before containers arrive at Panamanian ports. Customs officials have been very pro-active, feeding their profile high risk portfolio (country of origin, consignee/shipper with background, how the goods are described, routes and weight). China is the main source of counterfeit goods in Panama.

⁶ <https://www.oecd.org/gov/illicit-trade/euipo-oecd-container-ships-project-proposal.pdf>

⁷ <https://www.theguardian.com/world/2023/jan/26/colon-panama-counterfeiting-contraband-cocaine>