

## EMPACT Contribution

### Introduction

We were pleased to read the EU Observatory’s paper on “How to bring IP crime back to the EMPACT priorities.”

We fully agree that IP crime should be recognized as an EMPACT priority, given its interconnections with multiple forms of illegal activities. Moreover, strategies to fight IP crime should be as “joined up” as possible, because efforts undertaken by customs or law enforcement agents to stop one form of illicit trade in the EU will benefit mitigation efforts against other (if not all) forms of illicit trade.

Europol has itself already delineated the linkages between IP Crime and wider organized criminal activities:

- The ubiquity and high profits from counterfeit and pirated goods, coupled with low risks of detection, prosecution and penalties, generates significant illicit proceeds for criminal enterprises. As a result, money laundering is frequently an indispensable element of IPR crime, with illicit proceeds also be used to finance other crimes, such as drug and human trafficking.<sup>1</sup>
- Furthermore, “trading in counterfeit products is a relatively low risk activity, involving minimal penalties whilst providing high profits, and will increasingly attract [organized crime groups] previously involved in other crime areas.”<sup>2</sup>

In addition, joint OECD and EUIPO have clearly evidenced that the global trade and value of IP crime is so vast that it cannot take place without the involvement of criminal networks, which are sophisticated, well financed and transnational.

In fact, one objective of a recent TRACIT report was to demonstrate that illicit trade must be addressed as a group of illegal activities. In other words, IP crime is deeply imbedded in a category of illegal activities that all have common negative impacts on society and sustainable development.

## IP Crime and Sustainable Development

One of the main findings of our research was to show the degree of criminality common to all forms of illicit trade, specifically their common threat to peace and justice (SDG 16).

In many ways, achieving SDG 16 is prerequisite for achieving all development goals, as it aims to deliver peaceful and inclusive societies with effective governance based on rule-of-law principles. Illicit trade—in all its forms—stands in direct juxtaposition to this goal and threatens SDG 16 and its underlying targets: Feeding violence (16.1), exploiting women and children (16.2), undermining trust in institutions and the rule of law (16.3), generating enormous illicit financial flows (16.4), breeding corruption (16.5), and financing terrorism (16A).

Moreover, the links between illicit trade and organized crime are well established,<sup>3</sup> from human trafficking networks<sup>4</sup> and tobacco smuggling<sup>5</sup>, to fuel theft by drug cartels<sup>6</sup> and the involvement of the mafia and organized criminal groups in the trade of counterfeit goods.<sup>7</sup> Communities and economies are further destabilized when billions of dollars of criminal profits are reinvested into other illicit activities.<sup>8</sup> This is particularly damaging in emerging and developing countries where IP crime groups have become more empowered and have been able to replace legitimate jobs enabling them to gain an acceptable role in governance. In so doing they have subverted international mobility to such an extent that it is estimated that, in some countries, criminal markets account for almost 50% of national income.

Perhaps most frightening are links to terrorist financing that heighten threats to national and global security.<sup>9</sup>

## IP Crimes, excerpts from TRACIT report<sup>10</sup>

### IP Crime, Peace and justice

IP crime has emerged as a lucrative and growing business opportunity for organized criminal networks — largely due to the high profits, low risk of discovery, and inadequate or minor penalties when and if caught.<sup>11</sup> As noted by the United Nations Interregional Crime and Justice Research Institute (UNICRI), counterfeiting and piracy play a key role in the operations of transnational criminal organizations and *“helps fund other criminal activities such as extortion, illegal drugs and human trafficking, compromises the international financial system for money laundering purposes and, ultimately, makes it more difficult for existing law enforcement measures to be effective.”*<sup>12</sup> The involvement of organized crime in trademark counterfeiting and copyright piracy accordingly undermines the underlying principles of SDG 16 (Peace, justice and strong institutions) and target 16.4 in particular, which calls on countries to significantly reduce illicit financial flows and combat all forms of organized crime.

## IP Crime and risks to public health and safety

The prevalence of counterfeit goods poses direct and indirect health and safety risks to consumers and the broader society.

Legal manufacturers abide by regulations and invest heavily in innovation and product development, with brands serving as guarantees of quality and safety. In contrast, counterfeiters make their money by sidestepping product safety regulations, environmental controls and labor laws — and by free-riding on the research and development (R&D) of others. As a result, counterfeit goods are often of sub-standard quality or of unknown and sometimes dubious chemical/material composition.<sup>13</sup> Examples include counterfeit batteries and cigarette lighters that explode, toys with paint toxicity, baby formula that provides no nourishment, and counterfeit electronic goods that may cause serious injury and even death through explosions, unregulated heat burns and electric shock. Semi-conductors, for example, are integral parts of modern electronics. But counterfeit versions have been found in everything from automated external defibrillators, potentially leading to the electrocution of a patient, to airport landing lights and microcontrollers intended for use in brake systems in high-speed trains in Europe.<sup>14</sup>

Even relatively innocuous goods, such as watches, apparel and handbags can pose health risks for consumers when counterfeiters use potentially harmful materials (allergenic and/or toxic).<sup>15</sup> Examples include the use of prohibited carcinogenic dyes to color fabrics and children’s clothing made from highly flammable fabrics that burn quickly and intensively.<sup>16</sup> Counterfeit cosmetics and personal care products containing dangerous levels of lead, mercury, cyanide and other carcinogens can cause severe allergic reactions and pose a particular threat to pregnant women and their unborn babies.<sup>17</sup>

Counterfeits also pose risks to specific health targets. For example:

- SDG target 3.6 aims to halve the number of global deaths and injuries from road traffic accidents. However, the rapid growth<sup>18</sup> in counterfeit auto parts, including substandard, malfunctioning airbags<sup>19</sup> and brake pads,<sup>20</sup> poses real dangers to drivers.<sup>21</sup>
- SDG target 3.9 aims to reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination. However, counterfeit inputs, such as industrial chemicals and electronic components have been found to include harmful toxic substances such as lead, mercury, cadmium, and arsenic.

## IP Crime and environmental impacts

The environmental cost of counterfeit and pirated goods can extend from cradle to grave: From manufacture to final destruction and disposal, counterfeit and pirated goods pose an ongoing threat to the environment and the various SDGs dedicated to environmental protection.

The importance of proper waste management and sustainable consumption and production patterns are enshrined in SDG 6 (clean water and sanitation) and SDG 12 (responsible

consumption and production). Specifically, SDG targets 6.3 (reduce water pollution by eliminating dumping and minimizing release of hazardous chemicals and materials), 12.4 (achieve the environmentally sound management of chemicals and all wastes throughout their life cycle) and 12.5 (substantially reduce waste generation through prevention, reduction, recycling and reuse) call for a life-cycle approach to sustainable production, consumption and disposal.

Legitimate business responds to these challenges by increasingly incorporating environmental sustainability into core business models, with companies making substantial investments in waste management and adopting zero-waste strategies.

In contrast, counterfeiters have no responsibilities for compliance with environmental standards and regulations and no incentive to keep toxic chemicals out of their products. Examples of violations include the unlawful disposal of hazardous toxic substances into air and water<sup>22</sup> and the use of harmful chemicals and other contaminants in clothing.<sup>23</sup> Counterfeit electronics created from e-waste introduce potentially hazardous waste streams into water ways, creating health and environmental hazards for workers and nearby communities.<sup>24</sup>

The of sub-standard quality and/or dubious and unknown composition of counterfeits introduces additional environmental risks—and costs—associated with their destruction and disposal (e.g., high heat incineration or encapsulation for hazardous materials).<sup>25</sup> In some cases, the cost of destruction can exceed the cost of original production.<sup>26</sup> The situation is particularly acute in countries where technical capacity, appropriate storage and waste facilities, and regulatory controls are limited.

Common methods of destruction such as open burning, disposal into open landfills or improper recycling may result in the release of toxic gases, such as persistent organic pollutants (POPs) and other toxins linked to serious adverse effects on human health (SDG 3).<sup>27</sup> Improper storage and destruction also may pollute soils, groundwater or watercourses, with potentially devastating and long-term effects on soil fertility, clean water supplies, marine life and other natural resources vital for human wellbeing (SDGs 6, 15).<sup>28</sup>

The health and environmental impacts from the inappropriate destruction or disposal of counterfeits may thus prove to be equal to or even more damaging than the negative economic impacts.

### Counterfeit Alcohol

SDG Target 16.4, calls on countries to “combat all forms of organized crime.” The involvement of organized criminal groups (OCGs) in illicit trade in alcohol has been well documented in a number of countries.<sup>29</sup> Furthermore, experts note that “drug markets have a resemblance to counterfeit alcohol markets in that they share the illicit nature of the product and the need to distribute the product at the ‘street’ level.”<sup>30</sup> This is evident when viewing criminal activities in terms of *source*, *transit*, and *market*,<sup>31</sup> where the transit stage functions as a middle market.

In light of this, and despite the complex and varying nature of operating models employed by OCGs, middle market operations play a crucial role in the criminal supply chain. In the context of illicit markets including *inter alia* antiquities,<sup>32</sup> drugs,<sup>33</sup> and alcohol,<sup>34</sup> the middle market displays strong criminal tendencies as networks of criminal groups operate to facilitate illicit flows. To exemplify this, the middle market functions as a ‘bridging node’ which is able to facilitate the purchase and movement of illicit alcohol from one network to another.<sup>35</sup> And while illicit trade in alcohol can be carried out by single individuals, there is clear evidence suggesting that large-scale production and smuggling operations are carried out by OCGs.

For example, OCGs in the UK appear to be active in all stages of the supply chain, “from the suppliers to those holding goods in duty suspense, haulers, excise warehouses, lock-ups and cash-and-carry stores, corner shops and other outlets.”<sup>36</sup> In this regard, the structure of counterfeit alcohol markets relies on actors capable of developing networks of commercial collaborators, who by virtue of their position are able to conceal their illicit actions.<sup>37</sup>

SDG Target 16.5 also demands that countries “substantially reduce corruption and bribery in all their forms.” The available literature links illicit trade in all its forms – including alcohol – to corruption in law enforcement, customs and tax collection.<sup>38</sup>

### **Counterfeit Pesticides**

According to a 2016 report by the United Nations Interregional Crime and Justice Research Institute (UNICRI), “illicit pesticides represent a lucrative activity for organized crime and a concrete threat to security, development, health and the environment.” Similarly, Europol notes that, “The trade in illegal and counterfeit pesticides is organized by highly sophisticated criminal networks. Criminals have developed complex global supply chains and exploit legal companies to camouflage their activities. The global revenues associated with this crime are estimated to be billions of euros a year.”

Additionally, threats to peace and justice are increased when the lack of traceability of illegal pesticides makes available the chemical input components for use as homemade explosives.<sup>39</sup> Consequently, the trade in illegal pesticides undermines SDG Target 16.4 (combat all forms of organized crime), and SDG Target 16.1 (significantly reduce all forms of violence and related death rates everywhere).

### **Counterfeit Pharmaceuticals**

Driven by financial gain, criminal elements have become involved in all facets of the chain of supply of illicit medicines, from manufacturing to distribution. As reported by INTERPOL, organized criminal networks across the globe are also involved in pharmaceutical crime throughout the supply chain and have also been found to use the profits from falsified medicine operations to subsidize other clandestine activities. Criminals involved in pharmaceutical crime have been tied to a number of other crimes, including money laundering, human trafficking for sexual exploitation and weapons smuggling.<sup>40</sup> The involvement of organized crime in illicit trade

in pharmaceuticals is a direct threat to SDG target 16.4, which calls on countries to “combat all forms of organized crime.”

In particular, the rapid growth in online sales and illicit online pharmacies has provided criminals with new entry points into even the best regulated markets. In 2018, 116 countries were involved in Interpol’s annual operation Pangea XI, leading to 859 arrests worldwide and the seizure of USD 14 million worth of potentially dangerous pharmaceuticals. Focusing on delivery services manipulated by organized criminal networks, the operation saw 3,671 web links closed down, including websites, social media pages, and online marketplaces.<sup>41</sup>

While much attention has been focused on the falsification of high-priced medicines, even low-priced medicines can make money for criminals as long as the sales volume is high enough. For example, antibiotics, which are relatively cheap, account for 17% of the falsified products reported to the WHO substandard and falsified medical products surveillance database.<sup>42</sup>

### Counterfeit Tobacco Products

Illicit trade in tobacco is rampant and is perhaps the most widespread and well-documented sector vulnerable to illicit trade.<sup>43</sup> It has been estimated that 1 in every 10 cigarettes and tobacco products consumed globally is illicit.<sup>44</sup>

There are a number of factors contributing to the pervasiveness of illicit tobacco trade. While large price and tax differences between countries or jurisdictions create the financial incentives for tax evasion, other enabling factors include weak governance, high levels of corruption, poor government commitment to combatting illicit tobacco, ineffective customs and tax administration, abuse of free trade zones, lack of enforcement and out-of-date regulatory frameworks to address illicit trade, as well as the presence of informal distribution channels for tobacco products.<sup>45,46,47,48</sup> Moreover, tobacco products are easily transported and disguised, and the laws and penalties involved are relatively low, thereby making it a *high-profit, low-risk* opportunity.<sup>49</sup>

Illicit tobacco can also erode the rule of law and upset peaceful existence by financing the operations of criminal networks. This is viewed as a major security threat by governments and consequently the attainment of SDG 16 (Peace, justice and strong institutions).<sup>50</sup> Large-scale illicit tobacco trade, which is generally conducted by organized criminal networks, thrives in environments characterized by weak governance, high levels of corruption, and lax law enforcement. Smuggling of other commodities is also common in these countries and regions.<sup>51</sup>

This illegal activity generates large illicit financial flows (SDG Target 16.4), enables corruption (SDG Target 16.5) and facilitates other transnational organized crimes such as money laundering and/or human trafficking (SDG Target 16.2).<sup>52</sup> Numerous case studies show that the proceeds from illicit trade in tobacco products are being laundered by organized criminal networks and redirected to fund other criminal activities, including terrorism.<sup>53</sup>

Second only to trafficking in drugs, trafficking in illicit cigarettes has been cited as one of the main sources of funding for terrorist activities in the sub-Saharan region of Africa where traffickers closely cooperate with regional terrorist groups.<sup>54</sup> In Central and Eastern Africa, “rebels accused of serious human right violations have been shown to use the illegal tobacco trade to finance their activities.”<sup>55</sup>

## UK IP Crime Report

The UK’s Annual IP Crime Report delineates dozens of examples of IP crime throughout the country. It also reports that Intellectual Property Crime is linked to fraud, drug dealing, money laundering, terrorism, labour exploitation and modern slavery.

<https://www.gov.uk/government/publications/annual-ip-crime-and-enforcement-report-2018-to-2019>

Notably, the UK’s Trading Standards Report demonstrates a 5 year time line where IP Crimes are linked to other forms of criminality, including: organized criminal groups, benefit fraud, money laundering, drug dealing, trafficking in persons, child sexual exploitation, loan sharking, and violence.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/829272/trading-standards-successes-report-2018-19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829272/trading-standards-successes-report-2018-19.pdf)

## Global Financial Integrity

The GFI’s report on Transnational Crime in the Developing World contains several sections documenting the connection between IP Crimes and other crime.

- Well-known organized crime groups (OCGs), such as the Camorra, ‘Ndrangheta, and Chinese Triads, have long been connected to counterfeiting and piracy, supplied by both domestic and international production.
- The Camorra’s control of certain legal commercial activities has allowed it to easily insert counterfeit and pirated goods into the legal market.
- The immense profits and weak penalties have attracted greater participation by OCGs and terrorist organizations since the mid-2000s. It is estimated that Italian OCGs involved in food fraud, dubbed the “Agromafia,” earn US\$16 billion annually from this market alone.

[https://secureservercdn.net/45.40.149.159/34n.8bd.myftpupload.com/wp-content/uploads/2017/03/Transnational\\_Crime-final.pdf?time=1585589170](https://secureservercdn.net/45.40.149.159/34n.8bd.myftpupload.com/wp-content/uploads/2017/03/Transnational_Crime-final.pdf?time=1585589170)

## Other resources

### **USAID, Bureau for Africa, Criminal Market Convergence, 2020**

On a general level, this paper illustrates the notion of the increasing convergence among criminal markets, with counterfeiting naturally being part of the criminal game!

<https://globalinitiative.net/wp-content/uploads/2020/03/ROL-and-OC-White-Paper-4-Criminal-Market-Convergence-March-2020.pdf>

### **UNICRI report on counterfeiting and organized crime, 2011:**

A little bit old, but well-drafted and with several good examples of links between counterfeiting and other crimes, see Section 3.2.2.

[http://www.unicri.it/topics/counterfeiting/organized\\_crime/reports/CTF\\_2011\\_Unedited\\_Edition\\_Final.pdf](http://www.unicri.it/topics/counterfeiting/organized_crime/reports/CTF_2011_Unedited_Edition_Final.pdf)

### **Thomson Reuters, Counterfeit Goods: Money Laundering in Plain Sight (Part I – the Risks)**

This one mentions proceeds of illicit activities being used to sell counterfeit goods, 2018 (links between counterfeiting and money laundering)

<https://www.legalexecutiveinstitute.com/counterfeit-goods-money-laundering-part-1/>

### **Insight crime article**

Mexican drug cartel involved in software piracy, from 2011

<https://www.insightcrime.org/news/analysis/microsoft-familia-michoacana-selling-pirated-software/>

### **From Europol, SOCTA 2017:**

POLY-CRIMINAL OCG INVOLVED IN THE TRADE IN COUNTERFEIT GOODS AND DRUG TRAFFICKING

In 2015 and 2016, Europol supported an operation targeting an Italian OCG selling counterfeit champagne in various Member States. Investigations in Italy and Germany revealed that some of the suspects were also involved in the trafficking of cocaine. During house searches in Germany, investigators seized more than 12,000 bottles of fake champagne. The investigation also uncovered links to VAT and excise fraud.

<https://www.europol.europa.eu/socta/2017/intellectual-property-crime.html>

### **UNODC Report, see page 4**

Smuggled migrants coerced to sell counterfeit goods

[https://www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit\\_focussheet\\_EN\\_HIRES.pdf](https://www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet_EN_HIRES.pdf)



## Global Initiative Conference Report, Dialogue on organized crime, p.4

"Panellists highlighted how inconsistent governance arrangements across infrastructure hubs are exploited by criminal actors. Illicit flows take circuitous cross-continental routes through borders and infrastructure points with weaker governance arrangements towards regional hubs for extra-continental shipment. Unregistered runways across the continent – estimated currently to be in excess of 12 000 – were also identified as posing a particular challenge to governance efforts. Responses that are tailored to tackle the increasingly cross-commodity flows through such hubs – which combine stolen vehicles, cash shipments and counterfeit goods (such as cigarettes) with arms, illicit drugs and illicit wildlife goods – must adopt a similarly multi-commodity approach."

[https://globalinitiative.net/wp-content/uploads/2019/12/DD-Brussels.17.12.web\\_.pdf](https://globalinitiative.net/wp-content/uploads/2019/12/DD-Brussels.17.12.web_.pdf)

## NOTES

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