

Executive Summary

Transnational criminal networks profit from trafficking and illegal trade in narcotics, arms, persons, tobacco, counterfeit consumer goods, and wildlife. Billions of dollars from these activities flow through the global economy each year, distorting local economies, diminishing legitimate business revenues, eroding social conditions and fuelling conflicts. This report on governance frameworks to counter illicit trade was prepared under the OECD Task Force on Countering Illicit Trade (TF-CIT). It promotes tractable policy reforms and fosters international cooperation aimed at the reduction and deterrence of the risk of illicit trade. It draws on a network of specialists from multiple countries and economies, as part of the OECD High Level Risk Forum (HLRF), which works with governments to better understand the full range of complex risks and threats.

Effective action to counter illicit trade and support for governance frameworks to lower the incidence of such trade are key policy concerns for governments as they support the promotion of economic prosperity. The growth of world trade that has been facilitated by the reduction of tariffs, trade barriers and regulatory burdens and by technological and logistical advances has provided benefits for both business and consumers. At the same time, freer trade has provided opportunities for criminals engaged in illicit trade to expand their operations. Their activities undermine economies by reducing government tax revenues, lowering firms' profits and their innovation incentives, while also jeopardising public health and security.

Governments have taken actions to counter illicit trade, but they are often uncoordinated and/or poorly implemented. In addition, criminal networks have been able to react quickly and dynamically to avoid detection and circumvent law enforcement. As a result, governments need to re-examine their institutional capacities to counter the illicit trade.

The first part of this report provides a general overview of enforcement challenges, analysing the adequacy and effectiveness of sanctions, investigating in more depth the issue of small shipments and focusing on the misuse of free trade zones as hubs for managing trade in illicit products. The second part of the report focuses on some enforcement practices in BRICS economies. Emerging economies, including BRICS, are important players and their active engagement in developing governance strategies to counter illicit trade is essential.

Part One: countering illicit trade, enforcement challenges

The first part of this report provides an overview of key institutional capacities, before assessing in more detail three areas where the strengthening of institutional capacities is urgently needed to improve efforts to counter illicit trade. The three areas include:

- (i) enhancing the effectiveness of penalties and sanctions for countering illicit trade,
- (ii) finding ways to improve the screening of the rising volume of small shipments for illicit products, and

(iii) eliminating criminal activities related to illicit trade that are carried out in free trade zones.

In each area the report identifies policy actions that need to be taken to improve the ability of governments to assess the risk of illicit trade in various guises, and to target, deter, and eventually interdict the activities of criminal networks.

Penalties and sanctions are key deterrents for illicit actors, as these actors will prefer to trade in goods where rewards are highest, and the risks are lowest. Criminal networks, particularly those associated with transnational organised crime, respond to changes in the risk-reward structures. Such structures are affected by international legal frameworks, national legislation and enforcement policies. The environment is one of a constantly evolving “interdiction-adaptation” cycle, where customs and criminal networks respond to the changing tactics of each other to gain an upper hand. Success depends on the i) sanctions available for offences, ii) the ability of law enforcement to enforce legislation and iii) the capacity to investigate and, where appropriate, cooperate with foreign authorities.

Regarding the policies to enhance the effectiveness of penalties and sanctions these actions include:

- Strengthening co-operation and expanding the scope of international frameworks, including existing international treaties to counter illicit trade.
- Raising the risk/reward ratio by expanding the scope of penalties to include ancillary legislation.
- Developing and implementing national strategies to counter illicit trade.

The sharp growth in the use of **postal and courier streams** as a delivery method for smuggling small packages containing prohibited or restricted goods has significantly impacted the institutional capacities of governments to effectively screen and interdict the goods.

Online sales of products have further complicated the situation, providing a means to boost trade in small shipments as consumers are able to purchase items directly from suppliers, in small, individualised quantities. In effect, the importance of large firms and retailers as importing agents has declined, with consumers becoming far more active in this regard. This shift has affected the regulatory and policy framework for law enforcement, and the ability of customs, police and other relevant government agencies to stop illicit trade.

There are a number of policy actions that could be taken by governments to counter trade in illicit products via small shipments, by, for example:

- Engaging courier and postal intermediaries in efforts to detect and interdict trade in illicit products.
- Building on best practices identified in pilot projects to improve i) the quality of small shipment data available to customs authorities, and ii) risk assessment techniques.
- Expanding capacity for accessing, integrating and evaluating datasets from stakeholders.
- Engaging e-commerce platform operators in efforts to detect online transactions in illicit products.
- Strengthening efforts to move against parties engaged in online trade of illicit products.

Free trade zones facilitate trade by providing advantages to business with respect to tariffs, financing, ownership, taxes and other regulatory measures that would otherwise be applicable in the host country. The reduction in regulatory and legal burdens, “red-tape” and tariffs are key in this regard. The limited institutional capacities to oversee FTZs activities in many countries can often lead to growth of illicit trade, and other forms of criminality, such as fraud and money laundering. These activities benefit from the lack of sufficient oversight within FTZs, enabling illicit businesses to reap the financial benefits of zones, with lower risks of measures being taken to curb their activities. Without further actions from governments to increase oversight and transparency in FTZs, criminal elements will continue to use zones to exploit the shortcomings in institutional law enforcement capacities. The analysis identifies a number of policy areas to combat illicit trade and related criminal activities in FTZs, including:

- Formalising the definition of FTZs.
- Improving zone supervision, by i) expanding information requirements for goods moving through zones, ii) penalising misuse of zones, iii) enhancing security screenings, and iv) maintaining adequate numbers of officials with ex-officio¹ authority to supervise or control FTZs (or free zones) within their customs territory and according to the applicable provisions.
- Strengthening cooperation with stakeholders and encouraging of development codes of conduct for FTZs.
- Enhancing formal responsibilities of zone operators.
- Streamlining customs procedures.
- Ensuring wide participation of countries in FTZ-related discussions.

Part two: Survey of some enforcement practices in BRICS economies

The second part of the report focuses on some enforcement practices in BRICS economies related to intellectual property (IP). Ensuring effective enforcement of intellectual property laws and support for governance frameworks are key policy concerns for promoting innovation-driven economic prosperity and for disrupting criminal networks. The intangible assets embodied in patents, trade secrets, copyrights and trademarks that support economic development are vulnerable to unauthorised use even though they are protected by laws enforcing intellectual property rights. Effective governance frameworks that enable efficient IP management and protection and enforcement are therefore critically important.

While efforts to implement effective IP governance frameworks are underway worldwide, counterfeiting and piracy continue to pose threats to rights holders, businesses, and consumers. Economies have worked together, multilaterally and through international organisations, to develop IP frameworks that balance, protect and enforce the interests of rights holders with those of other stakeholders within and across jurisdictions. Despite these efforts, infringement of IP rights remains a significant problem. According to a 2016 OECD - EUIPO report that assesses the magnitude and scope of counterfeiting and piracy worldwide, the total volume of trade in fakes was estimated at up to USD 461 billion, or 2.5 % of world imports in 2013.

This is a global and rapidly evolving challenge. The 2016 OECD-EUIPO report shows that counterfeit and pirated products are prevalent in virtually all economies, on all continents. These products are delivered through complex trade routes, with numerous intermediaries. Counterfeiters are exploiting modern logistical technologies in their

operations, and are taking advantage of e-commerce platforms to enhance their commercial activities.

Emerging economies, including BRICS, are important global players and their active engagement is essential in responding to this threat. The OECD-EUIPO report highlights that middle-income and emerging economies tend to be the most important players in these markets for fake goods. Consequently their active engagement in developing governance strategies against counterfeit trade is essential. The five BRICS economies are involved to varying extents. China is by far the largest source economy of counterfeit and pirated products in the world, both in terms of value and volume, far ahead of all other economies. Between 2011 and 2013, some 67% of the total value of counterfeit and pirated world imports, and 63% of the number of global customs seizures originated in China. India ranked 6th, accounting for 6% of the total seized value of counterfeit and pirated goods worldwide, and 2% of the total number of customs seizures. Russia ranked 36th; Brazil, 60th; and South Africa, 86th.

Weak enforcement of IP laws, the low risk of detection, combined with the high profitability of counterfeiting and piracy operations and relatively low penalties are key factors undermining effective counterfeiting-related IP protection and enforcement. The assessments of the effectiveness of the IP regimes carried out by governments and industry indicate there is scope for considerable improvement in most of these jurisdictions. The US government and the European Commission have identified four of the countries (Brazil, China, India and the Russian Federation) for close monitoring, and they are supporting continuous engagement with them to improve their performance in combatting counterfeiting and piracy. Strengthening performance requires multiple actions, including:

- Examining the adequacy of enforcement. This includes the continuing review of the level of resources devoted to enforcement systems and the tools available to governments and private right holders. International sharing of experiences on this front could help improve the situation significantly.
- Reviewing the deterrents to counterfeiting, including the effectiveness of penalties and the implementation of these penalties through criminal justice systems.
- Exploring ways to step up public reporting on counterfeiting and piracy-related IP infringement.
- Promoting accession and effective implementation of international IP agreements by the countries covered in the report.
- Examining ways to expand education and public awareness campaigns.

In recent years some progress has been made in all the BRICS economies in enhancing IP legal frameworks. Efforts have been made in the BRICS economies to *i*) enhance the role of IP in promoting innovation and *ii*) strengthen measures to protect IP from infringement. Relative to the other BRICS countries, China has been at the forefront in initial efforts of developing and implementing programmes to boost development of IP frameworks and to strengthen institutions for protecting and enforcing IP rights.

In general, legal systems in the BRICS countries provide *de jure* authority for parties whose IP rights have been infringed to seek to have the infringing acts stopped and the counterfeit and pirated goods confiscated and, eventually, destroyed. In addition, laws generally provide that compensation can be sought through civil actions. Where statutory damages can be sought in lieu of actual damages, however, the levels of compensation are far lower than those provided for in, for example, the United States. The *de facto*

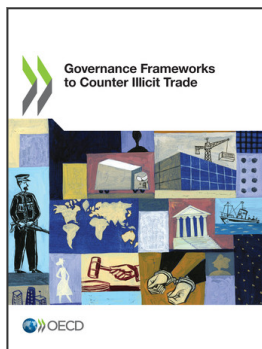
reality in BRICS countries is that parties are often unable to effectively enforce their IP rights in the courts or other government administrative fora, and are often left without effective remedies.

The developments of legal frameworks are complemented by educational campaigns. Each of the economies covered is taking steps to promote the role of intellectual property in their jurisdictions. Attention is being paid to raising public awareness of the negative effects of counterfeiting and piracy. Campaigns have been carried out to raise awareness of the importance of buying original products and the penalties arising from the purchase of pirated and counterfeit products.

Despite the progress made there is scope for further action. While appreciation of the economic importance of IP is growing in the economies covered, and measures are being taken to better protect IP rights, there is clearly scope for further action.

Note

¹ The term ex-officio here refers to the inherent authority of a public office in its remit to initiate an investigation of a violation of law, as opposed to possessing authority to act only when notified by a third party.



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