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**Commission on Crime Prevention  
and Criminal Justice****Thirtieth session**

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Item 6 (d) of the provisional agenda

**Other crime prevention and criminal justice  
matters****Countering the smuggling of commercial goods in cases  
falling within the scope of the United Nations Convention  
against Transnational Organized Crime****I. Introduction**

1. The present report has been prepared pursuant to resolution 28/2 of the Commission on Crime Prevention and Criminal Justice, entitled “Countering the smuggling of commercial goods in cases falling within the scope of the United Nations Convention against Transnational Organized Crime”. In that resolution, the Commission invited Member States to provide their views and inputs on how the Commission could contribute to addressing the smuggling of commercial goods as a form of transnational organized crime, and requested the Secretariat to report thereon at its twenty-ninth session, through existing reporting requirements.
2. In accordance with this request, the present conference room paper has been prepared on the basis of information submitted by States in response to note verbale CU 2019/463(A)/DTA/OCB/CSS of 4 December 2019.
3. Within the deadline of 15 January 2020, contributions were received from 21 Member States: Angola, Argentina, Belgium, Bosnia and Herzegovina, Colombia, Dominican Republic, Ecuador, Germany, Greece, Hungary, Italy, Mexico, Morocco, Myanmar, Panama, Peru, Poland, Portugal, Qatar, Saudi Arabia and Togo.
4. The contributions are reproduced as received.



## II. Replies received from Governments

### Angola

#### 1. Introduction

Angola has strengthened its acting in the smuggling of commercial goods and other cross-border illicit acts. As a consequence, seizures of irregular goods at ports, airports and border points have grown steadily over the past few years.

This transnational phenomenon falls within the scope of crimes against the economy, to combat such practices, the internal legislator adopted measures inserted in national legislation such as

- Penal Code;
- Law No. 9/89 of 11 December (Law on Crimes Against the Economy);
- Law No. 6/99 of 03 September (Law on Offenses Against the Economy);
- Law No. 13/03 of 10 June (Derogation of Law No. 6/99, of 03 September – Law on Offenses Against the Economy);
- Law No. 34/11 of 12 December (Law on Combating Money Laundering and Financing of Terrorism);
- Law No. 3/14 of 10 February (Law on the Criminalization of Offenses Underlying Money Laundering);
- Law No. 21/14 of 22 October (Law approving the General Tax Code);
- Decree-Law No. 5/06 of 04 October (Approving the Customs Code).

All of them are based on the constitutional principle of free economic initiative, stated in Article 38 of the Constitution of the Republic of Angola, without prejudice to the provisions of international conventions and treaties on the subject of which Angola is party.

According to articles 1, 19 and 29 of the United Nations Convention Against Transnational Organized Crime and, focusing on criminal policy in the fight against smuggling, the diversion and contamination of products essential for the development of the national economy in particular, and worldwide in general, Angola must strengthen its justice mechanism to combat the phenomenon.

Justice must be swift and active. The laws that define and typify crimes against the economy are lenient when it comes to their sanctions, which encourages offenders to reiterate such criminal practices, because they obtain more profits and less losses when they are held criminally responsible, in other words, criminal take risk actions that allow them to make fabulous profits, because they are aware that even if fines are levied, they do not cause serious damage.

Based on this thought and to contribute in the prevention and fighting against transnational organized crime of Smuggling Commercial Goods, there is an urgent need to analyse the case in internal and external context.

#### 1. Internal context

The Penal Code of 1886, in its article 279 defines the crime of Smuggling as “the fraudulent import or export of goods whose entry or exit is absolutely prohibited”.

The article 280 defines embezzlement as – any and all fraudulent acts intended to avoid, in whole or in part, the payment of duties and taxes established on the entry, exit or consumption of goods.

Despite the fact that smuggling is defined in the Penal Code, it was also dealt with in the Customs Code approved by Decree-Law No. 5/06 of 4 October, in its Chapter II, Section I, which subsequently saw Articles 190 to 209 revoked by the General Tax

Code, which in its chapter IV sought to deepen the scope of its application, adapting to the new socio-economic reality of the country and the world in general.

Based on the above and according to the request of the Commission on Crime Prevention and Criminal Justice, within the scope of the United Nations Convention Against Transnational Organized Crime, we believe that to fight Smuggling of Commercial Goods, it is necessary:

- (a) To promote legal education and public awareness, within the scope of general prevention;
- (b) To strengthen border control measures (areas, sea, river and land);
- (c) To provide institutions with sufficient human and technological resources to detect such crimes;
- (d) To ensure decent remuneration to the technicians who work in the institutions that intervene in the fight against organized crime;
- (e) To promote the continuous training and qualification of human resources linked to the sectors that intervene in the fight against organized crime;
- (f) To promote the review and aggravation of criminal frames for this type of crime.

## **2. External context**

The crime of Smuggling Commercial Goods, is often associated with crimes of embezzlement, tax fraud, money laundering, criminal association and others. Thus, is necessary and important that all States members and non-members of the United Nations Convention Against Transnational Organized Crime, in defining their criminal policy, must choose the Smuggling of Commercial Goods as a priority crime. In this context, we suggest:

- (a) The strengthening international cooperation, through the conclusion of bilateral or multilateral agreements between States and international organizations;
- (b) The indication of focal points between States Parties to allow and expedite the exchange of information, correspondence, whenever necessary;
- (c) The joint investigation of cross-border crimes, without prejudice to the sovereignty of each State;
- (d) The promotion of joint training of technicians from different countries on transnational crimes;
- (e) Programming of international conferences and fora;
- (f) The need to create an international database at the level of the judicial system to facilitate the efficient control of this type of crimes as well as its agents.

## **3. Conclusion**

Finally, despite some security measures adopted to combat smuggling, Angolan borders are still vulnerable. Therefore, Angola still working to achieve and to adopt the best policies to fight this phenomenon.

## **Argentina**

Before analysing possible measures or guidelines proposed to answer the request made by the Commission on Crime Prevention and Criminal Justice in respect of its mission of countering the smuggling of goods as a method of transnational organized crime, it is necessary to devote some paragraphs to the legal framework of this crime under our criminal legislation.

Smuggling is part of the so-called crimes against the economic and financial order, which are described as those conducts that violate legal-criminal rules protecting the economic order, understood as a legal regulation of the intervention of the State in the economy. Thus, the economic crime, since it is a special crime, is part of same hermeneutics as the rest of the crimes, which is set forth by criminal regulations.

At the national level, these crimes are criminalized mainly in supplementary laws, i.e. that almost all of them are not included in the special part of the Criminal Code of the Nation. Generally, the economic criminal law is made up of three large groups of regulations including the customs criminal law (law 22 415), the tax criminal regime (law 24 769 amended by law 26 735) and the exchange criminal regime (law 19 359 amended by laws 22 338, 23 928 and 24 144, regulations consolidated under the Executive Order 480/1995).

Smuggling is criminalized under the Customs Code (Law 22 415), which regulates every aspect related to exports and imports of goods, customs territory, parties that participate, taxes and controls, as well as a section dedicated to criminal regulations to which we will devote our attention. Thus, Section XII, named Criminal Regulations, has two Titles: Customs crimes and Customs infringements.

In order to complete the analysis of the regulations related to this crime, it is important to highlight the concept of transactions of “International Customs Transit” that can be defined as the “special customs regime under which goods subject to customs controls are transported from customs premises to another one in a single transaction, during which one or several borders with bilateral or multilateral arrangements are crossed”. This kind of transactions are stipulated in the Customs Code under the category of “transitory destinations of transit of importation”, in opposition to a “definitive” destination (for consumption); the purpose of the latter is that goods are entered to remain indefinitely in the national customs territory, which involves applying economic prohibitions and import duties that generally are not applied to transitory destinations. In case of transitory destinations, goods enter the customs territory for the purposes of being re-exported during a more or less short term.

These transactions of transit require specific supporting documentation, which in our country consists of a single document, as stipulated by the Agreement on International Land Transportation signed – within the framework of the Latin-American integration – by Argentina, Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay in year 1990; the use of said single document has been stipulated for the countries that adhere to the agreement.

In this context, preventing and countering smuggling in land customs transit transactions, especially in cases of international transits, is highly complex.

Therefore, following schemes can be mentioned: 1) Declaration of goods that differ from the one entered (quality/quantity of bulks); 2) Under-invoicing; 3) Change of origin of goods; 4) Replacing goods with high duties by goods with low duties or duty-free; 5) Evading goods from customs controls faking a theft or by registering a false “complied” of transit.

As regards controlling these types of complex schemes, the undersigned stresses as recommendations to be taken into consideration in international discussions:

Guidelines to be followed are mentioned below, which could be recommendations/steps to present in respect of what has been requested in this report:

- (1) To keep the strictest level of secrecy during critical stages of the investigation, i.e. those stages prior to searches, statements made by the accused answering the charges against him during the preliminary interrogatory or any measure involving becoming aware of the scheme under investigation. Since there are informal channels of communication between parties interested in the transaction and officials in charge of controls, there is a high risk of information leaks, reason why it is appropriate that transit documents or original clearances are not requested; instead, use alternative information sources. That is to say, to

keep the investigation within a confidential environment (prosecutor's office and/or court), trying to use data contained in the various databases to which the Attorney General's Office has access to. Same methodology should be applied when searching data on legal persons and individuals.

(2) Detecting signs of suspicious transactions, such as: inconsistency between declared value of goods and cost of freight or insurance; differences between description of goods in waybills and in accompanying commercial or transportation documents; repetition of land transit transactions that appear as "verified" by specific customs; inconsistency between goods description and value or weight declared; goods circulating through various transits without entering the market; departure and arrival place in tax-free areas; remitter and receiver in tax-free areas.

(3) This kind of schemes have certain common identifying features, such as the fact that they are conducted by organizations with a high-level of stability, which has a permanent group of actors (importers, customs dealers, etc.), generally acting in complicity with customs officials. In addition, payments for goods abroad are generally conducted through alternative money remitters, such as those called "caves" (illegal financial entities) and through frontmen.

It would be useful to initiate an investigation using as initial hypothesis the existence of a more or less stable complex organization that carries out various schemes annually.

Additionally, the highest amount of data should be gathered on the actors participating in the transaction (suppliers abroad, "shell" companies acting as remitters or recipients of goods, customs dealers, transport operators, owners/sellers of goods, individuals responsible for financial transactions and buyers).

It is also important to tap and analyse communications between the persons participating in the transaction.

(4) To retrace routes of goods. Routes are generally complex passing through various countries and tax-free zones. It is important to highlight, for the purposes of this proposal of response, the importance of the agreements signed among Customhouses or Attorney General's Offices to use formal channels (letters rogatory) to request useful information.

(5) Searches and testimony of witnesses. Searches should be conducted over commercial documentation proving the true nature of goods and their real value, letters, messages or communications among persons under investigation and goods that may be related to the transactions under investigation. As to testimonies, time, opportunity and persons to call should be chosen in a way that does not jeopardize the confidentiality of the investigation.

## **Belgium**

The Belgian General Administration of Customs and Excise welcomes the Resolution 28/2 wherein the Commission on Crime Prevention and Criminal Justice invites Member States to provide their views and inputs on how the Commission on Crime Prevention and Criminal Justice can contribute to addressing the smuggling of commercial goods as a form of transnational organised crime.

Belgian Customs welcomes the work carried out by the Commission on Crime Prevention and Criminal Justice to prevent and eliminate the smuggling of commercial goods. Furthermore, Belgium highly appreciate the significant role of the Container Control Program; Belgium is privileged to have invested substantially in this program, which has resulted in seizures of smuggled goods in ships with the port of Antwerp as destination.

Additionally, Belgian Customs has been supporting the CCP through the means of in-kind contributions. The same support can be provided in the field of commercial fraud.

Moreover, Belgian Customs welcomes any collaboration that the Commission on Crime Prevention and Criminal Justice may undertake with the World Customs Organisation, bearing in mind that the WCO is a crucial intergovernmental body which aims to combat illicit trade and smuggling.

## **Bosnia and Herzegovina**

We would like to inform that in our opinion, the Commission for the Prevention of Crime and Criminal Justice at the United Nations may contribute to the Indirect Taxation Authority of Bosnia and Herzegovina in the field of training and equipping of officials for the so-called “cash-controls” at the border, as well as the training of officers to work on commodity scanners and on devices for drugs and explosives detection, including the training that would lead to the identification of new modalities for commercial goods smuggling.

Furthermore, we also consider that cooperation should be established with regard to the exchange of information on the emergence and new modalities for commercial goods smuggling, in a way to ensure the most efficient and effective way of communicating and sharing information on suspected shipments potentially associated with transnational organized crime.

In addition, we also hold the view that cooperation should be realised in the preparation of the list for the so-called “commercial goods” in accordance with the Resolution 28/2, and in the field of organizing regional operational actions in accordance with a regional risk assessment.

## **Colombia**

Identificar acciones de cooperación y la asistencia técnica entre las autoridades de aduanas y judiciales de los Estados, en el fortalecimiento de la capacidad de detección, control, investigación y penalización de los proveedores fuente, distribuidores y financiadores del comercio ilícito de bienes y el contrabando.

Establecer y consolidar listas de personas naturales y/o jurídicas (importadores, exportadores, transportadores, distribuidores y organizaciones transnacionales, dedicados al fraude aduanero, al contrabando y al comercio ilícitos de bienes, asociados al blanqueo de dinero, tráfico de armas, narcotráfico y el terrorismo, entre otras manifestaciones del delito).

Contribuir al intercambio de información documentada entre las autoridades de los Estados, sobre fraudes aduaneros, contrabando y comercio ilícito de bienes, así como nuevos bienes ilícitos.

Desarrollar buenas y mejores prácticas para la detección, control y perfilamiento de bienes de alto riesgo, proclives al contrabando y al comercio ilícitos.

Brindar asistencia técnica para el conocimiento y desarrollo de estrategias orientadas a minimizar los niveles de soborno y corrupción de personas y organizaciones transnacionales, generadas en el comercio bienes y operaciones logísticas asociadas a estas actividades, como fuente principal generadora de ilícitos que atentan contra la seguridad y las economías de los Estados

Generar escenarios de apoyo estatal en el conocimiento de mejores prácticas internacionales en la lucha al contrabando.

Servir de foro de diálogo e intercambio de experiencias, buenas prácticas y eventuales acciones conjuntas entre los diversos componentes del sistema de las Naciones Unidas

y otras organizaciones internacionales y regionales relevantes para la lucha contra el contrabando de bienes comerciales.

Desarrollar discusiones y generación de conocimiento sobre el contrabando de bienes comerciales, dado que, por la naturaleza del delito, no se cuenta con toda la información que requieren los Estados para afrontarlo.

## **Dominican Republic**

### **1. Contrabando en República Dominicana**

La constitución de la República Dominicana, en su artículo 169, establece lo siguiente: “El Ministerio Público es el órgano del Sistema de justicia responsable de la formulación e implementación del Estado contra la criminalidad, dirige la investigación penal y ejerce la acción pública en representación de la sociedad.”

El Código Procesal Penal en sus artículos 88 y 89 Sobre las funciones, la unidad y la jerarquía, “El ministerio público dirige la investigación y practica u ordena practicar las diligencias pertinentes y útiles para determinar la ocurrencia del hecho punible y su responsable”, “El ministerio público es único e indivisible. Cada uno de sus funcionarios, cuando actúa en un procedimiento, lo representa íntegramente.”

La investigación y persecución penal del contrabando, tráfico ilícito de bienes y demás crímenes y delitos aduanales están contemplados en la Ley 3489 Sobre el régimen de la Aduanas, históricamente ha estado dividido en dos fases: la primera las inspecciones por los Oficiales de Aduanas y la segunda, la persecución penal por el Ministerio Público.

### **2. Aportes de la República Dominicana**

El 29 de diciembre de 2016, fue designado un Ministerio Público, como enlace del Ministerio Público ante la Dirección General de Aduanas, mediante auto No. 00025 suscrito por el Dr. Jean Alain Rodríguez, Procurador General de la República, para coordinar y asistir a los demás crímenes y delitos aduanales contemplados en la Ley 3489 Sobre el Régimen de las Aduanas.

Por otra parte, se cuenta con una Procuraduría Especializada de Crímenes y Delitos contra la Salud (PEDECSA), es un órgano complementario de la Dirección General de Persecución, creada mediante resolución del Consejo Superior del Ministerio Público número 4/2014, Acta 0005, de fecha 29 de abril del 2014. Esta tiene como base legal el Artículo 53 de la Ley orgánica del Ministerio Público, número 133-11, con un radio de acción operatividad, a nivel de toda la geografía nacional.

El 20 de febrero del 2019 fue promulgada la Ley 17-19 para la Erradicación del Comercio Ilícito, Contrabando y Falsificación de Productos Regulados, la cual tiene por objeto erradicar el comercio ilícito de mercancías, tipificando los delitos de comercio ilícito, el con trabando y la falsificación de productos regulados y estableciendo sus sanciones administrativas y penales.

### **3. Aportes y opiniones**

Como respuesta a la resolución MPRD-OI-VI-619-2019, nos place presentar los aportes sobre lo solicitado, que corresponde a la lucha de bienes comerciales como forma de delincuencia organizada transnacional:

- (1) Proporcionar capacitación especializada a los actores dedicados la prevención, control, investigación y persecución del contrabando de bienes comerciales;
- (2) Formentar la creación de un sistema de registro estadístico, monitoreo y cruce de información de casos de contrabando de bienes comerciales;
- (3) Establecer un modelo de gestión y protocolos de actuación unificada ante estos casos;

- (4) Conformar un ente que coordine la capacitación en prevención, control, investigación y persecución de los casos de contrabando de bienes comerciales a nivel nacional en cada uno de los países miembros;
- (5) Realizar campañas de orientación al público sobre los males que se derivan del uso y distribución de bienes comerciales contrabandeados;
- (6) Establecer un sistema de rastreo y monitoreo a las embarcaciones dedicadas al transporte de bienes comerciales;
- (7) Realizar levantamiento estadístico permanente de los casos de contrabando presentados;
- (8) Mantener actualizadas las normativas legales relacionadas al contrabando de bienes comerciales en los países miembros;
- (9) Fortalecer los mecanismos de auditorías e inspecciones que garanticen el fiel cumplimiento de las leyes en materia de contrabando;
- (10) Establecer un programa que permita transparencia entre la factura y compra de la mercancía, el transportador y el importador;
- (11) Creación de un protocolo donde a la empresa consolidadora se le imponga la obligación de presentar a la DGA la documentación necesaria que indique sin equívocos quien es el consignatario final de la mercancía importada, o más bien quien es el propietario legal de la mercancía.

## **Ecuador**

Instar a los Estados Partes que dentro de sus ordenamientos jurídicos, en lo relacionado al contrabando de bienes comerciales, se establezcan multas proporcionales al valor de los bienes comerciales incautados. Entre mayor sea el costo del bien, mayor debería ser la multa.

Exhortar a los Estados Partes, la adopción o creación de protocolos, que permitan a los operadores de justicia, derivar los posibles casos de contrabando de bienes, a una investigación más amplia como lo es la delincuencia organizada, desmantelando grandes organizaciones delictuales.

Solicitar a la Oficina de las Naciones Unidas contra la Droga y el Delito, asistir a los Estados Miembros, en actividades de capacitación, formación, información, talleres y conversatorios, dirigidos a los operadores de justicia para realizar el control y vigilancia, que permita que bajen los índices de contrabando en las fronteras.

Instar a los Estados Partes, a crear Comités o agrupaciones interinstitucionales, que permitan la coordinación de las dependencias involucradas en el sistema judicial, con el fin de proponer políticas de carácter general que permitan fortalecer los procedimientos para el control de este delito. Se recomienda que dicho comité este conformado con delegados de las máximas autoridades de las instituciones pertinentes, quienes se encarguen de identificar los nudos críticos actuales de la gestión contra el contrabando de bienes comerciales, así como viabilizar las acciones que sean necesarias para darles solución.

## **Germany**

Theft and trafficking of motor vehicles and construction vehicles in Germany is generally carried out by organized crime groups. To fight international vehicle crime Germany cooperates with Interpol, Europol and other international law enforcement agencies. Joint databases (tracing, licenses etc.) are used. With this in mind, access of customs authorities to national and international tracing databases would make sense.

Regarding arts and culture, findings point to a relation between the smuggling of goods and organized crime groups. Basically, the illegal import and export of cultural



goods is classified as “smuggling” according to the German Law on the Protection of Cultural Goods (entry into force: August 2016). Customs authorities are in charge of the control and criminal investigation. In addition, investigations by the Police are possible if illegal import and export are part of a complex scheme, for example the illegal placing on the market.

At the United Nations, the topic of “Illegal trade with cultural goods” is found under the heading “Cultural Heritage”. United Nations reports and initiatives are launched regularly on this subject, including illegal import and export. To avoid redundancies, the topic should not be treated additionally under a further heading.

## Greece

Monitoring legality of trade products, whether or not they are subject to excise duty, constitutes a permanent challenge for the law enforcement authorities as well as for other authorities involved from the private and public sector which are active in all supply chain stages.

Commerce globalization, free movement of goods within EU MS, the necessity of imports/exports to meet every day needs, the rise of customs duties, taxes, and charges on various products combined with the financial crisis that some states underwent or are still experiencing, have led to an increase of smuggling activities that they are not confined within the limits of national jurisdictions, but they have reached proportions of serious international organized crime.

Customs authorities are by definition competent to monitor the circulation of goods via the external borders and therefore, they are the first line of defence against dangerous and criminal activities related to commercial transactions. All merchandise entering, exiting or transiting EU (including goods transported by travellers) is subject to customs supervision and checks. It is worth mentioning that in our country, according to the existing legal framework (Law 2960/2001), containers control at country’s frontier entry points falls exclusively within the jurisdiction of Customs Authorities. As a result, the role of Customs Authorities along with enhancing the cooperation between Police and Customs Authorities in the field is of crucial importance.

At national, European and international level actions have already been taken and future actions are being planned to deal with goods smuggling as a form of transnational organized crime.

At the same time, at European level, the development of policy cycle on serious and organized crime has reinforced European and international cooperation on fraud related to excise taxes/missing trader intra community fraud (MTIC) while the involvement of customs authorities in these initiatives is foreseen.

In the light of what has already been mentioned above and with a view to strengthening the cooperation between police and customs authorities in this area the following are being merely proposed:

- Exchange information and data on real time to dismantle criminal organizations;
- Providing essential data on suspicious containers;
- Examining the possibility of legal provision for conducting controlled transports on suspicious merchandise according to the model applied for drug substances;
- Participation at joint operational actions organized at national, European and international level with emphasis on the exchange of operational information among the participating countries during these operations;
- Creation of joint control groups at borders entry/exit points. Conducting targeted risk-based controls;

- Enhancing cooperation with European and international organizations related to the matter, such as EUIPO, OLAF;
- Promoting cooperation at European and international level by establishing Joint Search Groups where it is provided by law (referring to EU MS) with the participation, if possible, of customs authorities;
- Making use of the capabilities of the SELEC centre.

## Hungary

The United Nations Convention against Transnational Organized Crime provides the definition of an organized criminal group and offers the legal basis for international cooperation to support the investigation and prosecution of all forms of crimes covered by it. Thus, there is no need for further conventions or protocols in this matter.

Nevertheless, the Commission on Crime Prevention and Criminal Justice could assist Member States to provide training and capacity-building opportunities for law enforcement officers, investigative authorities, prosecutors and judges in the field of countering the smuggling of commercial goods in cases falling within the scope of the Convention, including strengthening relevant skills in evidence collection and detection of the proceeds derived from smuggling of commercial goods to enable more efficient confiscations.

In addition, the Commission on Crime Prevention and Criminal Justice could assist in facilitating the collection of best practices, new developments and progress made.

As stated in the recent yearly report of Hungary made by the National Tax- and Customs Administration (henceforth: NTCA) and sent to the inter-governmental, Brussels-based World Customs Organization Customs Enforcement Network, most of the illicit tobacco trade activities strongly linked to third country borders, green borders, blue borders, or border crossing points (henceforth: BCPs), whichever aspect – smuggling of contraband, counterfeit products, or smuggling illicit tobacco production capacity – is being kept in focus. Our priority mission has to be to strengthen the law enforcement and control capacities on borders, especially on up-to-date equipment – radio barriers, X-rays, drones, light radars to provide effective background. Also, quantitative improvements are necessary in every elements of the border control. The officials and other involved professionals, authorities have made their jobs; the critical point of the control supply, that enormous financial support needed. There could be a global interest for CCPCJ, by making programs supporting these kind of acquisitions even administratively - by searching, getting, coordinating, managing and offering possibilities for nations – or financially – managing funds, loans or financial supports for down payments of other programs to help improvements.

Therefore, NTCA is looking for ways to implement full technical control along the Hungarian-Ukrainian green border through the acquisition of different technical devices. Such as the RADIOBARRIER (DefendGuard) ground sensor, suitable for detecting smuggling activities on “land” and the Lightwave Radar that would provide support in air surveillance (detecting paragliders, drones, powered hang gliders). Regarding the high cost of the devices their purchase cannot be made from the NTCA’s budget alone. I suggest to raise the issue in case the United Nations Office on Drugs and Crime has any possibility to provide assistance in the procurement as combating smuggling is not only a national but an EU interest as well.

The on-line sale of illegal tobacco products as well as the smuggling and delivery through Europe using parcel services is a trend, which is likely to prevail in the coming years<sup>1</sup>. The parcel services unintentionally become part of the crime, therefore it is necessary to develop cooperation between the authorities and the parcel services.

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<sup>1</sup> <https://rusi.org/publication/occasional-papers/e-commerce-delivery-services-and-illicit-tobacco-trade>.

Sharing of best practices of existing cooperation in certain member states could enhance the efficiency of the fight against smuggling.

The conditions of rail freight transport are becoming more and more competitive, that will show in the increase of the number of rail freights transports and at the same time in the smuggling activities using this transport modality as well.

The thematic report by Europol<sup>2</sup> indicates the impact of the development in rail transport on the activities of organised criminal groups highlighting the weak points of Member States' authorities such as the lack of professional knowledge of the staff carrying out controls and the poor quality of equipment used.

Regarding the above facts as a possible solution, it has been suggested from NTCA to address the problems identified in the mentioned Europol's report (e.g. compilation of learning materials to help control rail freight transport, provision of detection equipment at all EU internal BCPs).

## Italy

Smuggling of commercial goods is one of the illegal phenomena which strongly affect the State revenue system and the rule of fair competition between companies operating on the goods market.

In this regard, the fight carried out by the Guardia di Finanza Corps is particularly relevant not only against smuggling of manufactured and counterfeit tobacco, but also against frauds related to excise duties on energy products.

### 1. Smuggling of foreign manufactured tobacco (FMT)

Currently, the illegal trade in foreign manufactured tobacco includes:

- Smuggling of authentic tobacco products;
- Manufacturing and import of smuggled counterfeit cigarettes;
- Illegal trade in "cheap whites".

Italy plays a leading role in cigarette smuggling as final destination and consumption market and as transit area for FMT intended for other EU countries characterised by high excise duties, as well as due to the persistent presence of smuggling syndicates generally formed by Italian and foreign criminals (in particular, nationals from Eastern European countries).

Smuggling of cigarettes mainly originates from the United Arab Emirates, Eastern European countries and China. Monitoring of FMT seizures carried out in the main Italian ports confirms that Greece is the distribution hub for shipments arriving by land.

The main transportation and concealment methods in Italy include the use of:

- Road vehicle sea containers, small boats, mail, the Internet and aircraft;
- "cover cargoes" generally consisting in fruit and vegetables "formally" intended for Northern European countries.

Operations revealed additional features of cigarette smuggling:

- The Campania Region is the major FMT destination and consumption market;
- Criminal groups tend to delocalise storage facilities also to areas in Central and Northern Italy;
- Use of the same sea routes for trading in both migrants and FMT.

<sup>2</sup> EUROPOL: Thematic report The New "Silk Road" – The improved railway infrastructure between China and Europe.

Furthermore, there has been recently an evolutionary trend in smuggling whereby cigarettes are manufactured in clandestine plants located in Italy, also to reduce the cost and the risks linked to the cross-border shipment of FMT used for the illegal market.

## **2. Energy products**

The illegal trade in energy products is assuming increasingly worrying size and features as to revenue loss and distortion effects on the market.

Moreover, considering the high profitability of this phenomenon, Mafia organisations are progressively getting control of the smuggling of hydrocarbon oils. Such syndicates are becoming more and more involved in the illegal distribution and management of energy products coming, above all, from refineries located in Eastern Europe and the Balkans.

The operations carried out by the Guardia di Finanza units highlighted several fraudulent behaviours, such as:

- Carousel frauds through the setting up of letterbox companies to buy energy products from an EU country with excise duty and VAT suspension regime;
- Diversion of the so-called bunker oil (used for sea vessels) and oil for agricultural machinery from their legal use – which entails tax relief – to their use as motor fuel or for other purposes not envisaged by tax law;
- Purchase and import of energy products under excise duty suspension by foreign dressed companies;
- Import of oil products fraudulently destined to the highway gas stations;
- Transit of energy products on the national territory, with false documents and destined to third countries.

The main geographical areas involved are in the Eastern European countries (Poland and Hungary) and the Balkans (Serbia, Bosnia-Herzegovina), whereas Campania, Apulia and Sicily are the main final destination regions.

As to the illegal distribution of energy products on the Italian territory, considerable quantities of oil products are introduced through the highway border crossing points of Brenner, Tarvisio, Gorizia and Trieste.

## **Mexico**

The Commission on Crime Prevention and Criminal Justice could support to manage the creation of a specialized training program for the detection of smuggling of commercial goods and related crimes such as corruption and other forms of transnational organized crime, such as money laundering and drug trafficking, from the operational and risk management perspectives for customs, as well as the development of specialized training for the detection and investigation of practices directly related to customs corruption, which would also be aligned with the provisions of the Articles 11 and 29 of the United Nations Convention against Transnational Organized Crime (Convention of Palermo), as it is an action in training and technical assistance that would increase the effectiveness of import, export and transit controls, as well as cross-border cooperation between police and customs services.

Another proposal would be the elaboration of an updated compendium of international standards, which serve as a guide for administrative authorities without judicial powers to combat the smuggling of commercial goods and related crimes.

Likewise, it is suggested that Member States be urged to consider using the provisions on international cooperation of the United Nations Convention against Transnational

Organized Crime and the United Nations Convention against Corruption, in cases applicable, to investigate and prosecute the smuggling of commercial goods.

For example, on the issue of counterfeit goods; it is sought to be contemplated the possibility that the authority determines whether a commercial good is a “forgery” and thus does not necessarily require the affected brand to file a complaint or complaint to be able to retain and apply sanctions on the goods identified, even in those cases in which they are merchandise in transit or international transfer, and that must be released due to lack of performance of the affected brands.

Based on the foregoing, it is proposed that Member States consider, where appropriate, the possibility of criminalizing the smuggling of commercial goods, including criminalizing the corresponding crimes as serious crimes, when the crime is transnational in nature and there is an organized criminal group participated.

Additionally, it is proposed that Member States consider, in line with their internal legal frameworks and international obligations, best practices and difficulties encountered in preventing and eliminating the smuggling of commercial goods as a form of transnational organized crime and in that sense build alliances in order to promote international cooperation.

It is suggested that an international pattern of companies and individuals linked to smuggling be created, through which the information of the investigations carried out and their results is shared by the participating countries, in order to identify the modus operandi, determine possible links and combat smuggling activities and, where appropriate, organized crime, in the practice of international trade.

Intensify reviews and embargoes of foreign trade goods at points of sale within countries, to inhibit the purchase of the final consumer of these products.

Strengthen and intensify the exchange of information regarding foreign trade and billing operations, which proves the purchase / sale of merchandise.

## **Morocco**

Smuggling is an economic operation consisting in the circulation/exchange of goods across the national borders of two or more countries, without passing through customs control. Thus, smuggling represents one of the aspects of informal economy.

In view of the harmful effects of smuggling on the economy and the danger it poses to public safety, order and health, all national jurisdictions have agreed on its criminalization.

In view of the transnational nature of smuggling, it could take the form of transnational organized crime, if it is committed by a structured organization, composed of three or more persons, which has been in existence for a certain period of time and whose members operate for profit.

Concerned about the threat posed by smuggling to the national economy and the health and safety of consumers, the Public Prosecutor’s Office issued a circular note in June 2019 addressed to the judges of the Public Prosecutor’s Office in the Kingdom, urging them to step up their efforts to deal with smuggling, while at the same time ensuring that:

- (1) The judicial police is encouraged to collaborate with customs officers on the occasion of the opening of commercial and residential premises, and to make available to them the documents related to their allocated means of transports;
- (2) The customs services are notified of customs offences and offences recorded by the judicial police;
- (3) Those involved in customs matters are brought to justice;
- (4) Coordination with the Customs and Indirect Taxes Administration regarding the destruction of smuggled goods is insured;

(5) Coordination between the Judicial Police and Customs to deal with smuggling at the national level is done effectively;

(6) Working within the framework of specialized regional commissions is guaranteed in order to execute judgements pronounced in favour of the State.

On the basis of the mechanisms and tools offered by the United Nations Convention against Transnational Organized Crime (UNTOC), and based on our national experience in the fight against smuggling, our country suggests the following proposals to combat transnational smuggling:

(1) The juridical approach is not enough to curb smuggling with a transnational vocation. In order to do so, it would be advisable a global approach to deal with this phenomenon, through integrated economic strategies likely to, and the fight against the informal economy;

(2) Emphasize the importance of strengthening customs control over goods transport flows, and strengthening the existing global network of customs officers dedicated to the exchange of customs information between countries;

(3) Strengthening the diversification of intelligence in the field of transnational smuggling control, and ensure coordination between economic intelligence services and financial intelligence processing units;

(4) Launch a global survey on smuggling, with a view to better understanding its forms, dimensions and points of intersection with other forms of crime, including money laundering, financing of terrorism, trafficking in human beings, as well as to develop an annual questionnaire for this purpose;

(5) To strengthen technical assistance in the fight against smuggling with a transnational dimension, through the exchange of experiences and good practices, the organization of meetings and seminars in this field, as well as capacity building for practitioners;

(6) Raising awareness among all stakeholders of the dangerousness of this phenomenon, in order to better combat smuggling in all its forms and manifestations.

## **Myanmar**

According to the Office of the Union Attorney General of The Republic of the Union of Myanmar, the Commission on Crime Prevention and Criminal Justice is kindly recommended to contribute the following:

(1) To extend international cooperation to investigate and prosecute the smuggling of commercial goods in cross-border areas, where only the commercial goods are seized but the main culprits are not arrested and prosecuted;

(2) With respect to cross-border smuggling of commercial goods, to extend assistance and support not only in the information exchange and transfer of documents relating to measures taken against smuggling but also in the hand-over of the accused at border gates;

(3) In respect of transnational organized crimes, to provide technical assistance to obtain concrete evidence, confiscate exhibits, perform quality tests on seized commercial goods, and identify counterfeit goods. In this regard, CCPCJ shall support conducting training courses and workshops by technical experts;

(4) To provide support for study visits to those countries where transnational crimes are successfully tackled in order to gain professional experiences from them such as how transnational organized crimes are prosecuted worldwide,

how relevant countries take action against seized commercial goods as well as what kind of technologies are employed and how to obtain good results.

According to the Ministry of Home Affairs of the Republic of the Union of Myanmar, the Commission on Crime Prevention and Criminal Justice is kindly recommended to contribute as follows: with regards to smuggling of commercial goods, it will be beneficial to prevent these crimes if CCPCJ, in cooperation with UNODC, can assist in conducting workshops and training courses in order to undertake data collection and information sharing as well as to implement practical measures concerning transport security.

## **Panama**

La Comisión de la Prevención del Delito y Justicia Penal, puede hacer recomendaciones en la República de Panamá para la elaboración de un Plan de acción o estrategia nacional con miras a la persecución del contrabando de bienes comerciales como forma de Delincuencia Organizada Transnacional, conformada por funcionarios públicos de diversas instituciones entre las cuales se puede mencionar Aduanas, Policía Nacional, Servicio Nacional de Fronteras, Ministerio Público entre otros, a fin de darle cumplimiento e implementación a las acciones gubernamentales concretas en la materia.

Por parte de la Comisión de la Prevención del Delito y Justicia Penal puede contribuir una vez elaborado un plan en la recomendación de la creación de redes Institucionales sector judicial-policial en las que se analice y se propongan protocolos de actuación para la detección y procesamiento del contrabando de bienes comerciales provenientes de la Delincuencia Organizada Transnacional, fomentando mayor colaboración entre los estamentos de seguridad en relación a los temas aduaneros, a fin de intercambiar información cuando se dé la entrada y salida de cargas sospechosas ligadas a personas naturales o sociedades relacionadas a organizaciones criminales.

En este sentido puede la Comisión recomendar a las redes un mecanismo de evaluación y seguimiento de los casos que se generen producto de las investigaciones por contrabando de bienes provenientes de delincuencia transnacional, a fin de sugerir crear las redes transnacionales correspondientes para el combate de este delito.

## **Peru**

Al respecto, si bien el pedido está referido a los aportes y opiniones que deban efectuarse con respecto al tratamiento del contrabando de bienes comerciales, teniendo en cuenta que el Indecopi tiene el encargo, entre otros, de salvaguardar los derechos de propiedad intelectual, el presente documento va a estar referido a las actividades ilícitas contra dichos derechos, dada su vinculación directa con el contrabando de mercancías, siendo que generalmente ambos ilícitos se presentan en forma simultánea.

A este efecto, deben considerarse las definiciones de mercancías falsificadas y mercancías piratas recogidas en el Decreto Legislativo NO. 1092 (que aprueba Medidas en Frontera para la Protección de los Derechos de Autor o Derechos Conexos y los Derechos de Marcas), las que se han redactado en los siguientes términos:

Mercancía falsificada – Cualesquiera mercancías incluido su embalaje, que lleven puesta sin autorización una marca idéntica a la marca válidamente registrada para tales mercancías, o que no pueda distinguirse en sus aspectos esenciales de esa marca, y que de ese modo viole los derechos que al titular de la marca de que se trate otorga la legislación del país de importación.

Mercancía pirata – Cualesquiera copias hechas sin el consentimiento del titular del derecho de autor o de una persona debidamente autorizada por él en el país de producción y que se realicen directa o indirectamente a partir de un artículo y cuando

la realización de esa copia habría constituido infracción del derecho de autor o de un derecho conexo en virtud de la legislación del país de importación”.

Efectuadas estas precisiones, pasamos a indicar algunos aspectos que servirán de base para esbozar algunas opiniones y aportes que puedan contribuir a la lucha contra los delitos de propiedad intelectual como forma de delincuencia organizada transnacional.

## 1. Análisis

Si bien en el Perú no existe información estadística que permita medir el impacto de la falsificación, con respecto a la economía del país, podemos citar información obtenida de un estudio sobre el comercio global de productos falsificados y pirateados<sup>3</sup>, realizado por el Observatorio Europeo de las Vulneraciones de los Derechos de Propiedad Intelectual y la Organización para la cooperación y el Desarrollo Económico (OCDE), en el que se analizó el impacto de la falsificación sobre la economía y el comercio internacional, determinándose entre otras conclusiones las siguientes:

“En 2013, el comercio internacional de productos falsificados y pirateados representaba el 2,5% del comercio mundial, hasta sumar los 338 mil millones EUR, sobre la base de los últimos datos disponibles de 2013. (...) Los productos falsificados y pirateados pueden tener su origen en todas las economías, y las economías emergentes juegan un papel importante en este fenómeno, bien como productoras o falsificadoras, bien como zonas de tránsito. (...) China figura como la economía individual más productora. Hay una creciente utilización de envíos en paquetes pequeños por parte de los falsificadores, debido no solo al aumento del comercio digital sino también para reducir el riesgo y las consecuencias financieras en caso de ser detectados”.

Existe evidencia empírica y contrastable acerca de que la falsificación impacta negativamente en las economías de nuestros países, causando enormes pérdidas a los titulares de marcas y al Estado al dejar de percibir impuestos. Los ingentes ingresos percibidos por medio de la falsificación son invertidos en otras actividades ilícitas, propiciando corrupción, ahuyentando la inversión y obstaculizando el desarrollo económico de nuestros países. Asimismo, conforme lo señala la Organización Mundial de Aduanas la mejor forma que el narcotráfico encuentra para el lavado de activos es por medio de la importación y venta de productos falsificados<sup>4</sup>.

Al respecto Christopher Zimmermann, coordinador de la lucha contra la falsificación y piratería de la Organización Mundial de Aduanas (OMA) señala: “El narcotráfico utiliza al comercio informal para lavar dinero y establecer esta relación es fácil. Se importa un contenedor de cualquier artículo falso y una vez que entró al país se distribuye la mercancía en las tiendas informales; cuando venden un producto falso, no hay una factura en el mercado informal, pero sí se tiene el dinero. La mejor medida para blanquear dinero es la importación y la venta de productos falsos”<sup>5</sup>.

La Oficina de las Naciones Unidas Contra la Droga y el Delito (UNODC), señala que “los productos falsificados generan más del \$ 250 mil millones al año para el crimen organizado y la compra de éstos podría estar financiando otras formas más siniestras de delincuencia organizada”<sup>6</sup>.

Asimismo, agrega que “los productos falsificados no sólo plantean problemas éticos tales como la explotación laboral y la degradación medioambiental, sino que pueden ser dañinos y potencialmente peligrosos para los consumidores. La nueva campaña de

<sup>3</sup> Información obtenida el 13.01.2020 de:

<https://euipo.europa.eu/ohimportal/es/web/observatory/mapping-the-economic-impact>.

<sup>4</sup> Información obtenida el 25.5.2018 de: <https://expansion.mx/economia/2010/07/16/el-narco-lava-dinero-con-pirateria>.

<sup>5</sup> Información obtenida el 15-01-2020 de: <https://expansion.mx/economia/2010/07/16/el-narco-lava-dinero-con-pirateria>.

<sup>6</sup> Ver [www.unodc.org/counterfeit](http://www.unodc.org/counterfeit).



UNODC destaca las consecuencias, a menudo insospechadas, de consumir productos falsificados”<sup>7</sup>.

Con relación al Derecho de Autor, existen algunos cálculos realizados por la International Intellectual Property Alliance (IIPA), una iniciativa de empresas representantes de derechos de propiedad intelectual de los Estados Unidos (EE.UU.), en el que se brindan ciertos porcentajes de incidencia de la piratería, indicándose el porcentaje que la piratería representaría respecto del negocio total.

Sólo en los rubros de “fonogramas y música”, “software” y “libros”, se estimó que las pérdidas por efectos de la piratería ascendieron a US\$ 66,0 millones, US\$ 26,6 millones y US\$ 9,0 millones respectivamente, es decir un total de US\$ 98,6 millones.

Asimismo, se estimó que la incidencia de la piratería fue del 98% en el caso de “grabaciones musicales” y de 63 % en el caso de “software”; no se habría realizado un cálculo para el sector de “libros”.

El desarrollo de las industrias culturales y creativas podría haber tenido un efecto de mitigación sobre la incidencia de la piratería en la medida que se haya incrementado con mayor velocidad el volumen de negocios de obras protegidas en el ámbito formal, trayendo como consecuencia un mayor poder adquisitivo de la población, la cual podría implicar un cambio en el patrón de consumo orientándose las decisiones de los hogares hacia canales de comercialización más formales.

El panorama general esbozado en los puntos precedentes denota que los delitos contra los Derechos de Autor, no se cometen en forma individual, sino que existen grandes organizaciones criminales que lucran indebidamente con el esfuerzo y la inversión de las empresas tanto fonográficas como cinematográficas.

De hecho, existen diversas modalidades en que se comete el delito de la piratería, como el Camcording a través del cual la organización criminal introduce estrategias para reproducir ilegalmente los contenidos (la gran mayoría de veces la banda sonora y las imágenes en movimiento son reproducidas en momentos diferentes para posteriormente ser unidas y ensambladas en un ejemplar en formato de DVD), cuya práctica por lo general resulta de difícil detección. Estos productos ilegales sirven para abastecer a los mercados del extranjero. Es más, hay personas que sólo entran a las Salas de cine para grabar el audio en las películas de estreno, a fin de usarlo en las películas que no quieren el acento de un país, convirtiendo al Perú en un país de exportadores de películas de estreno piratas. Sobre el particular, ha sido remitido al Congreso de la República el proyecto para la Modificación del Código Penal en el tema concerniente al CAMCORDING (Acto de grabar sin autorización películas que son exhibidas en las salas de cine).

Específicamente, el Indecopi ha dirigido acciones administrativas y sancionado a organizaciones dedicadas a proveer insumos contra la piratería, tal como el caso Bysem Import Export E.I.R.L encabezada por MIGUEL HIDALGO CAQUI, considerado junto a su organización, el principal importador de discos ópticos en blanco en el Perú y proveedor de insumos para la piratería. En el pasado, dicha organización importó 110 millones de unidades de CD – DVD’S, cuando el mercado formal se abastecía únicamente con 5 millones.

En un enfoque diferente y de cara al futuro con las nuevas tecnologías, el comercio de productos piratas y falsificados está trasladándose de los anaqueles físicos a las galerías virtuales. Ello presupone que organizaciones criminales con suficientes conocimientos en tecnología, promueven nuevas formas de violación del Derecho de Autor y Derecho de Marcas, a nivel de contenidos tanto de música como de películas, así como de marcas notorias y denominaciones de origen, valiéndose para ello de la tecnología digital.

<sup>7</sup> Ver [www.unodc.org/counterfeit](http://www.unodc.org/counterfeit).

Además, debe considerarse el problema social y cultural de países como el nuestro, en el cual existen consumidores para los productos falsificados y pirateados, en la mayoría de los casos, aquellos que compran estos artículos a sabiendas de su ilegalidad, dado que incluso son ofrecidos en el mercado como productos alternativos.

Por otra parte, dada la globalización y el avance de las tecnologías de la información existe gran porcentaje de productos falsificados y pirateados que se ofrecen por las redes sociales, con diferentes submodalidades, haciendo más difícil la labor de fiscalización de las autoridades e imposibilitando la detección de estos ilícitos, incluso por parte de los propios titulares de marcas y derechos de autor que se mantienen vigilantes antes este tipo de flagelo.

Cabe añadir que el comercio de productos falsificados y pirateados, encuentran un ambiente apropiado a sus fines, en los altos índices de informalidad de nuestro país, que tiende sus tentáculos prácticamente a todos los sectores, de forma que los falsificadores y piratas se mueven con bastante versatilidad y flexibilidad, adecuándose y adelantándose a las medidas de observancia que las autoridades permanentemente vienen implementando.

En la lucha contra la falsificación y la piratería se encuentran comprometidas las autoridades del Indecopi y las autoridades del Ministerio Público, las mismas que vienen desarrollando el trabajo de observancia a nivel administrativo y a nivel judicial, respectivamente.

Si bien a nivel administrativo, se verifican la gran cantidad de denuncias por el uso indebido de derechos de propiedad intelectual, haciendo un trabajo relevante a nivel de Aduanas, en el nivel Judicial se intervienen casos más graves, incluidos algunos temas aduaneros. Sin embargo, es necesario mencionar que en estos dos planos, podemos advertir que existen casos en los cuales se ven involucrados familias enteras, grupos de varias personas, eventualmente almacenes aduaneros, agencias de aduanas, etc., en los que se aprecia actividad por parte de grupos organizados con el fin de ingresar en los circuitos comerciales productos falsificados y pirateados, que en general manejan el dinero sin ingresarlo al sistema financiero, sino después de realizar algunas acciones relacionadas con el lavado de activos.

Ante ello, la respuesta a la problemática de la falsificación y piratería debe incluir cuando menos dos factores : los obstáculos a la oferta ilegal y la reducción de la demanda del producto ilegal, a través de dos herramientas: la observancia o la aplicación de las normas fiscalizadoras y la internalización de los beneficios de la adquisición de productos formales (originales y legítimos); además las autoridades tienen el deber de enfrentar estos delitos mediante medidas preventivas y educativas, bajando drásticamente los niveles de informalidad con la generación de incentivos apropiados y formando nuevos ciudadanos con una educación y cultura de respeto a la propiedad intelectual y a las normas de orden aduanero.

Es cierto que cada país iberoamericano tiene su propia realidad y las propuestas de soluciones deben adecuarse a dicha realidad. En el caso peruano, el 96,5% de las empresas que existen pertenecen al sector de micro y pequeñas empresas (Mypes), de este universo de por lo menos 5,7 millones de empresas, cerca del 80% son informales y dan trabajo a aproximadamente 8,13 millones de personas<sup>8</sup>, siendo que la falsificación y piratería encuentran un escenario ideal en esta realidad, a la cual debemos estar atentos.

Cabe mencionar que cada zona de frontera tiene diferentes características y factores socioeconómicos y culturales, que son fácilmente aprovechadas por los delincuentes para el contrabando de mercancías, las que incluyen una gran cantidad de productos falsificados y pirateados. Estas actividades delictivas generalmente son realizadas por grandes grupos organizados que van extendiendo sus tentáculos para tener como aliados a diferentes personas, desde pobladores, transportistas, estibadores,

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<sup>8</sup> Información obtenida el 17.4.2018 de: <https://elcomercio.pe/economia/negocios/informalidad-micro-pequenos-negocios-peru-noticia-noticia-448518>.

almaceneros, distribuidores, etc., siendo que la acción de las autoridades en determinadas zonas de frontera, es muy escasa, dado el terreno ganado por los delincuentes en estos lugares.

Situaciones similares se presentan en muchos lugares del país en los que vamos a encontrar centros comerciales y mercadillos que ofrecen en venta productos pirateados y falsificados, así como de contrabando, que en algunos casos se encuentran organizados para hacer frente a la labor de las autoridades.

En ese sentido, considerando la experiencia del Indecopi en materia de lucha contra la piratería y falsificación se podrían esbozar algunos aportes para que los Estados puedan hacer retroceder estos flagelos, como sería el caso de que se puedan tratar estas actividades ilegales, dentro de normas de investigación y sanción del crimen organizado, principalmente las normas de lavado de activos, que permitiría cerrar la ruta del dinero producto de la piratería y falsificación que luego alimenta otras actividades ilegales.

Además, podrían recomendarse a los Estados que creen las bases para las acciones interdictivas y preventivas, adoptando, diferentes medidas que incluyan la persecución de mercancías falsificadas y piratas, capacitaciones a comerciantes, productores, estudiantes, profesores, autoridades de diversos sectores, establecimiento de un sistema de control en fronteras, hasta las acciones de formalización de los agentes económicos.

## **2. Conclusiones**

Las actividades ilícitas de propiedad intelectual se encuentran directamente vinculadas con el contrabando de mercancías y generalmente se presentan en forma simultánea.

A nivel país no contamos con cifras exactas del impacto de la falsificación y la piratería en la economía de nuestro país; sin embargo, podemos advertir que, tal como sucede en países similares al nuestro, estos flagelos causan enormes pérdidas a los titulares de marcas y de derechos de autor, así como al Estado al dejar de percibir impuestos.

Los ingentes ingresos percibidos por medio de la falsificación y la piratería son invertidos en otras actividades ilícitas, tales como la trata de personas y el lavado de activos, propiciando asimismo corrupción, ahuyentando la inversión y obstaculizando el desarrollo económico de nuestros países.

La falsificación y la piratería encuentran una gran demanda en nuestro país y además tiene un caldo de cultivo en el comercio informal que oscila en casi 80%, el mismo que también hace más difícil la labor de fiscalización de las autoridades e imposibilita la detección de estos ilícitos.

Podemos advertir que existen casos en los cuales se ven involucradas familias enteras, grupos de varias personas, eventualmente almacenes aduaneros, agencias de aduanas, etc., en los que se aprecian actividades por parte de grupos organizados con el fin de ingresar en los circuitos comerciales productos falsificados y pirateados.

## **3. Aportes**

Podría recomendarse a los Estados que creen las bases para las acciones interdictivas y preventivas, adoptando, entre otras, las siguientes medidas:

- (1) Disponer que estas actividades ilegales sean tratadas dentro de las normas de investigación y sanción del crimen organizado, principalmente las normas de lavado de activos, que permitiría cerrar la ruta del dinero producto del contrabando, la piratería y/o falsificación que luego alimenta otras actividades ilegales.

- (2) Realizar operativos constantemente y desarrollar un trabajo sostenido de persecución de los ilícitos mencionados, poniendo especial atención en los productos sobre los cuales se ejerce un control en las fronteras de los países.
- (3) Evaluar el fortalecimiento de las instituciones y de las normas legales para facilitar la labor de persecución de estos ilícitos.
- (4) Crear equipos de trabajo articulados entre las instituciones del Estado involucradas en la lucha contra los delitos aduaneros y contra la propiedad intelectual.
- (5) Generar alianzas bilaterales y multilaterales entre países, para adoptar acciones contra la delincuencia organizada transnacional.
- (6) Realizar acciones de sensibilización de la población, especialmente en zonas de frontera, para modificar su comportamiento con relación a las normas aduaneras y de propiedad intelectual.
- (7) Fomentar la formalización de las micro y pequeñas empresas en base a diferentes incentivos, como, por ejemplo, el uso de los registros de propiedad intelectual por parte de los empresarios.
- (8) Modificar los programas educativos en todos los niveles para generar ciudadanos conscientes del respeto a las normas de propiedad intelectual y aduaneras.

## **Poland**

First and foremost, an exchange of information should be ensured between entities supervising the shipment of goods in individual countries and further direct information on irregularities reported to law enforcement authorities. In addition, it is necessary to provide prompt and accurate answers to law enforcement authorities oversight of international shipment of goods, and then to create an “information guide” with phone numbers, e-mail address of the institution / entity supervising international shipment.

The key issue is also the organization of trainings on changes in the law regarding the flow of individual commercial goods enabling efficient detection of criminal activity. An irrevocable point is the exchange of (operational / procedural) information between law enforcement authorities of the Member States in the field of organized criminal activities of a group which they use in the international smuggling of commercial goods.

In addition, political action is needed to strengthen cooperation between border regions of countries in the area of bilateral agreements and to support efforts to increase mutual contacts and training activities of border services and law enforcement authorities. It is also compulsory to lay down rules and recommendations and implement best practices for preventing cross-border crime, inter alia by harmonizing strategic actions to combat serious and organized crime.

We also need to strengthen lobbying to improve EU and international law as regards the elimination of barriers in the structures of criminal law and procedural criminal law regarding the confiscation and safeguarding of tools to commit a smuggling crime as well as the freezing of proceeds from crime;

In conclusion, it should be emphasized that immediate and severe penalties are imposed on people smuggling goods by setting trends in criminal policy aimed at involving as many countries as possible in punishing the disclosure of cross-border crimes, in particular those covered by international conventions.

## Portugal

Smuggling activities vary from one State to another and usually the most frequent are carried out by individual small-case smugglers using the borders as a resource, transporting goods or more goods than allowed across a border without declaring them. Exploring the loopholes of border controls, they either sell these goods at a small profit or keep them for their own use.

Different situation is the smuggling of commercial goods involving organized criminal groups – as “professional smugglers” with adaptive capabilities of concealment and evasion, structural and operational flexibility – which raises the question of when and on what circumstances the smuggling of commercial goods should be considered as a form of transnational organized crime.

This issue raises as well the question of what should be considered as commercial goods for the purposes of Resolution 28/2.

The UNTOC and UNCAC do not include a definition of “commercial goods”. In addition, FATF Recommendations include in the list of designated categories of money laundering predicate offences the trafficking in stolen and other goods and the smuggling in general.

The concept of “commercial goods” is thus broad and may include, among others, counterfeited items, weapons, drugs, explosives, wildlife, cigarettes, alcohol or food products. And it can be linked to tax evasion or tax fraud. It is therefore important to define which goods we are referring to.

The provisions of the UNTOC Convention already allow for the countering of commercial goods where organized criminal groups are involved, as it seems to result from the combination of Article 5, 6 and 2(a) and (b) as confirmed by Article 29 (c).

However, it seems appropriate that the CCPCJ discuss in which situations the smuggling of commercial goods should be considered a serious crime (only when an organized criminal group is involved or when certain goods are concerned, for example, goods that could affect the States security and safety) and to develop and provide training and technical assistance for this purpose to law enforcement authorities, such as customs and border control authorities as well as judicial authorities aiming to improve institutional and inter-organisational coordination.

## Qatar

Raising awareness among the customs officials about the link between customs crimes on smuggling commercial goods and money laundering, terrorist financing crimes and other transnational organized crimes.

Urging Member States to encourage the private sector, research centres to develop technical systems and equipment that contribute to the detection of contraband. This shall contribute to developing legitimate trade and achieving customs compliance, and supporting innovative projects and initiatives. Including creating incentive and rewarding awards.

Preparing capacity building programmes of customs officials working in the fields of customs investigations and custom intelligence. Specifically, programs related to how to investigate, link facts, validate the proofs and collect evidence and information. Furthermore, the programmes shall have means to identify the criminal networks and the complicit parties committing smuggling crimes, both inside and outside the country.

Enhancing cooperation with the World Customs Organization to through conferences and seminars to exchange and best practices in the field of combating customs smuggling, and discussing challenges facing international cooperation regarding smuggling of the commercial goods, linked with transnational organized crime.

Urging Member States to participate in security programmes and initiatives sponsored by international organization, such as the Container Control Program (CCP), the Global Shield Program (PGS), as well as the INTERPOL programmes that enhance collaboration between police and the customs.

## **Saudi Arabia**

### **1. Strategies**

Establishing mechanisms to dismantle national and transnational criminal groups. Through establishing the mechanisms to strengthen the parallel financial investigation approach within the examination of these violations, which could lead to unveil the criminal networks behind national and transnational financial transactions.

The need of private sector's commitment, such as marine carrier, transport companies, post and customs clearance offices and financial institutions, to apply the necessary diligence measures, as well as the principle of knowing your customers when dealing with import and export companies, and to keep records for five years or more and not hesitate to coordinate with law enforcement authorities when requested.

### **2. Statistics**

Setting up standardized statistics forms, to assist in carrying out practical trend analyses, as well as the typologies used in smuggling.

### **3. Supervision**

Strengthening the risk-based approach of supervision to enhance its effectiveness, and setting up a general frame proposed by the committee to implement this principle.

Establishing a task force consisting of the responsible authorities and the law enforcement authority could overcome challenges in the coordination of procedures that arise from different entities responsible for commodities control.

### **4. Reporting of suspicions activities**

Increasing the cooperation between custom authorities of the State Parties, as well as exchanging information related to convicted offenders for smuggling of commercial goods.

Establishing a national guide with a list containing possible smuggling goods, and products with a cross-border crime character.

## **Togo**

La criminalité transnationale et plus particulièrement la contrebande de marchandises transnationale organisée, est un phénomène récurrent que les États de concert combattent depuis plusieurs décennies. Ainsi, par sa résolution 55/25 en date du 15 novembre 2000, l'Assemblée Générale des Nations Unies a adopté la convention des Nations Unies contre la criminalité transnationale organisée. Cette convention est complétée par trois protocoles additionnels relatifs à la traite des personnes, au trafic illicite de migrants, au blanchiment d'argent et à la fabrication et au trafic illicites d'armes à feu.

Pour mieux atteindre les objectifs fixés, l'aspect normatif s'est vu complété par celui institutionnel par la création, au niveau international, de plusieurs organes tels que l'Office des Nations Unies contre la drogue et le crime (ONUDD) et la Commission pour la prévention du crime et la justice pénale (CPCJP). La Commission constitue l'organe directeur de l'ONUDD en matière de prévention du crime et de justice pénale. L'un des domaines prioritaires d'intervention de la Commission que le Conseil lui a assigné à travers sa résolution 1992/2, est la lutte contre la contrebande de marchandise organisée. Ainsi, pour mieux lutter contre ce fléau mondial de

contrebande aux implications multiples, la Commission a adopté la résolution 82/2 intitulée « lutter contre la contrebande de marchandises dans les cas qui relèvent de la convention des Nations Unies contre la criminalité transnationale organisée », dans laquelle elle invite les États membres à présenter leurs vues et contributions sur la manière dont la Commission pourrait aider à combattre la contrebande de marchandises en tant que forme de criminalité transnationale organisée. Le Togo, membre des Nations Unies ayant ratifié ladite convention est donc invité, par la présente résolution (Résolution 82/2 de la Commission), à faire connaître ses vues et contributions en vue de la consolidation de la justice pénale au Togo et dans le monde.

Pour une démonstration beaucoup plus pertinente cadrant avec les réalités du pays, l'espace universel, comme le démontrent les missions de la Commission, semblerait être trop vaste pour servir de cadre d'étude. Ainsi, seul l'espace ouest africain, cadre de situation géographique et d'expérience du Togo, sera pris en considération.

La contrebande de marchandises transnationale organisée entendue de manière générale comme le transport illégal de marchandises à travers les frontières afin d'éviter de payer des taxes ou de faire entrer des produits interdits dans un pays ou, inversement, d'en faire sortir malgré l'interdiction, peut concerner plusieurs produits. Mais, seuls quelques-uns de ceux qui font la une de l'actualité dans la sous-région seront évoqués. Parmi ceux-ci, nous pouvons citer le carburant frelaté, le tabac et les faux médicaments.

Ceci précisé et, avant que l'accent ne soit mis sur les contributions sur la manière dont la Commission doit combattre ce fléau (1), il serait préalablement indispensable de faire un résumé succinct de l'ampleur de la pratique de la contrebande au regard des marchandises ci-dessus énumérés (2).

## **1. Un bref aperçu de contrebande de carburant, de tabac et de médicaments**

De nos jours, il n'est pas contesté que la contrebande de marchandises transnationale organisée est un fléau mondial aux implications multiples. Au Togo tout comme en Afrique occidentale, beaucoup de produits échappent aux contrôles et taxes douaniers. Les produits de contrebande les plus controversés actuellement sont : le carburant, le tabac et les médicaments.

En ce qui concerne la contrebande du carburant, il faut relever qu'elle est la question la plus récurrente actuellement dans la sous-région. Elle est plus remarquable au Bénin que dans les autres pays de la sous-région. En effet, considéré comme géant de l'Afrique occidentale producteur d'or noir, le Nigéria inonde son voisin le Bénin d'essence de contrebande, un trafic à grande échelle entretenu par les producteurs illégaux du Delta du Niger selon l'Agence Ecofin.

Dans ce territoire peu contrôlé par le Gouvernement nigérian, l'activité fait vivre des millions de personnes et représente plus de 75% de la consommation béninoise. Bien que réputée être de mauvaise qualité, ce produit s'est imposé sur le marché en raison de son prix bas, soit 0,40 euro le litre contre 0,60 euro à la pompe. Selon les dires du Ministre chargé de la planification et du développement béninois, « on ne peut pas régler ce problème uniquement par les contrôles policiers et douaniers. Si cela était suffisant, la contrebande d'essence aurait déjà été éradiquée », confirme Abdoulaye Tchané au quotidien béninois La Nouvelle Tribune.

Au Togo, selon l'Agence Ecofin, le phénomène est presque identique. Même si l'essence de contrebande représente encore une proportion relativement moins importante dans la consommation locale, sa commercialisation illégale n'est pas sans entraîner d'énormes pertes fiscales. Par exemple, dans la nuit de jeudi 13 septembre 2019, le litre se négociait à 1000f, voire 1100f dans certains quartiers de Lomé, à près de 2000f dans certaines localités de l'intérieur du pays, contre 564f dans les stations d'essence légales. Selon Contrade, l'agrégateur des flux commerciaux mondiaux des Nations Unies, l'importation de l'essence de contrebande du Nigéria est estimée à plus de 1,4 milliard de dollars sans comptabiliser l'essence frelatée qui transite par le Bénin.

En Afrique du nord par exemple, plus précisément en Libye, une étude a démontré que la contrebande de carburant coûte plus de 360 millions de dollars aux caisses de l'État. Selon l'Agence Ecofin qui cite un rapport d'un think tank américain, la contrebande représente 30% de la consommation nationale en Tunisie, soit environ trois (03) millions de litres par jour.

S'agissant de la contrebande du tabac, Chris McAllister, directeur régional de British American tobacco (BAT) a pu démontrer que l'un des principaux points d'entrée du tabac, notamment la cigarette, en Afrique de l'ouest se trouve être la Guinée Conakry, où l'absence d'une taxation appropriée à l'importation des produits de tabac constitue une opportunité considérable pour les contrebandiers. L'autre route prend naissance au Bénin et au Togo d'où, par le biais d'une utilisation frauduleuse de la procédure de transit, les cigarettes partent pour la Côte d'Ivoire, le Nigéria, le Niger, le Burkina Faso et le Ghana sans aucune charge fiscale. Selon les résultats de recherche de Georges Dougueli menée et publiée en septembre 2015, l'essor de la contrebande du tabac a engendré un manque à gagner de près de 182 millions de dollars, soit 108 milliards de francs CFA sur les recettes des États de l'Afrique de l'Ouest ces trois dernières années. D'ailleurs, entre 2013 et 2015, l'industrie du tabac de la sous-région a estimé à près de 11,3 milliards le nombre de cigarettes vendues en contrebande, ce qui équivaut à 526 millions de dollars, soit 314 milliards de francs CFA.

En définitive, les cigarettes de contrebande représentent actuellement environ 99% du trafic en Afrique Occidentale. Il s'agit de produits authentiques qui sont souvent achetés dans un pays à faible taux d'imposition avant d'être exportés. Il peut également s'agir de produits exonérés d'impôts à des fins d'exportation mais qui sont par la suite revendus de façon illégale, sans aucune charge fiscale, dans un marché où les prix du tabac sont plus élevés.

Le dernier produit de contrebande objet de démonstration va concerner les faux médicaments. En effet, Le trafic de médicaments falsifiés ou contrefaits désigne les activités illégales de fabrication, de distribution et de commercialisation de toute substance contrefaite présentée comme possédant des propriétés curatives ou préventives à l'égard des maladies humaines. De nos jours, ce problème de santé publique a atteint des proportions particulièrement inquiétantes. Si plusieurs études ont été lancées sur le sujet, l'on ne dispose pas de données véritablement précises sur le volume exact des trafics illégaux. Néanmoins, lors d'une enquête réalisée par l'Organisation Mondiale de la Santé (OMS) entre janvier 1999 et octobre 2000 et sur la base des rapports de vingt pays, il a été rapporté que 60% des cas de contrefaçon touchent les pays pauvres et 40% les pays industrialisés. Dans un numéro spécial paru il y a deux ans, l'American Journal of Tropical Medicine and Hygiene rapportait que deux antipaludéens avaient entraîné la mort de plus 122 000 enfants africains en 2013. Par exemple, l'opération douanière VOICE GRIPS 2 menée conjointement par l'organisation mondiale des douanes (OMD) et l'Institut de recherche anti-contrefaçon (IRACM) dans seize pays africains<sup>1</sup> entre le 11 et le 20 juillet 2012, a permis de saisir plus de 110 conteneurs de médicaments. Sur les 110 conteneurs maritimes inspectés par les équipes de la douane, 84 contenaient des produits contrefaits pour un montant évalué à 40 millions de dollars. Le Togo, le Ghana, le Cameroun et l'Angola étaient des pays où les saisies les plus importantes ont été réalisées. Parmi ces médicaments saisis, on peut citer des antipaludéens, des antiparasitaires, des antibiotiques, des sirops antitussifs, ou encore des contraceptifs. Selon les statistiques de l'OMS, ce fléau fait plus 700 000 morts chaque année dans le monde et un manque à gagner de plus de 75 milliards de dollars en 2010.

Dans la même droite ligne, selon une étude publiée le 11 juillet 2017 de l'Institut de recherche anti-contrefaçon de médicaments (IRCM) basé à Paris, la contrefaçon de médicaments concernerait 10% des produits en circulation dans le monde, soit un chiffre d'affaires estimé à 85 milliards d'euro. La même étude révèle que cette proportion s'élève à 30% en Afrique subsaharienne.

Malgré les progrès d'ordres institutionnel et législatif réalisés au niveau national et international en vue d'éradiquer le fléau de la contrebande des médicaments dans le



monde, ces préoccupations n'ont pas disparu. Fort de ce constat, de nouvelles perspectives doivent alors être pensées en vue de mettre fin à la contrebande de marchandises dans le monde entier.

## 2. Les mesures supplémentaires nécessaires de luttes contre la contrebande de marchandises

La contrebande de marchandises est un grand fléau aux conséquences multiples. Non seulement elle entraîne la perte des recettes fiscales aux États, mais aussi elle participe au développement de certains maux tels que le terrorisme et la pauvreté dans le monde. Pour mieux lutter contre cette pratique illégale, plusieurs solutions peuvent être envisageables. Toutefois, deux considérées comme cardinales s'imposent : il s'agit d'une part, de l'harmonisation des législations et d'autre part, le renforcement de l'entraide judiciaire en matière de lutte contre la contrebande de marchandises.

D'abord, en ce qui concerne l'harmonisation des législations, le constat incontestable est que plusieurs États, pour certaines raisons qu'ils considéreraient comme stratégiques<sup>2</sup>, ne sont pas encore parvenus à ratifier la convention des Nations Unies contre la criminalité transnationale organisée et ses trois protocoles. Même, ceux qui les ont ratifiés n'ont pas tous encore pris des dispositions internes de conformité. Ainsi, la Commission pour la prévention du crime et la justice pénale, organe directeur de l'ONUUDC, doit œuvrer en sorte que tous les États ayant ratifié la convention et ses protocoles, puissent aller vers une législation harmonieuse et commune. La Commission peut également organiser des campagnes de sensibilisations à l'endroit des États non parties sur les dangers présents et futurs de la contrebande de marchandises au point de les amener à y devenir parties.

Outre l'harmonisation au niveau universel, l'arsenal juridique régional doit être encouragé et renforcé par la Commission conformément aux règles universelles déjà existantes. Dans ces conditions, la Commission doit apporter son appui technique et financier aux initiatives de lutte contre la contrebande au niveau national et régional. À titre illustratif, l'on peut considérer l'initiative des chefs d'État d'Afrique dans la lutte contre le trafic des faux médicaments qui tuent près de 900 000 africains chaque année. En attendant la tenue de cette rencontre inédite qui se verra sanctionnée par le lancement de « L'initiative de Lomé », le Président de la République, Faure Essozimna Gnassingbé, dans une tribune publiée ce vendredi 20 décembre dans *Jeune Afrique*, dresse l'état des lieux et expose sa vision dont voici un extrait : « Depuis des années, un drame humanitaire se déroule sous nos yeux dans l'indifférence ou, pire, dans l'ignorance de la communauté internationale ; une urgence sanitaire qui ne dit pas son nom et dont personne, ou presque, ne parle jamais. Cette catastrophe touche principalement l'Afrique : le trafic de faux médicaments.

Il est temps d'agir, c'est une ardente obligation. D'abord parce que les victimes se comptent par centaines de milliers chaque année, et que beaucoup d'enfants sont concernés. Ensuite, parce que ce trafic ne cesse de croître, le mal progresse et s'étend partout. Une nécessité aussi parce que ce trafic est l'une des sources du financement de la criminalité internationale, notamment du terrorisme qui fait de trop nombreuses victimes en Afrique mais aussi à l'échelle de la planète ».

L'harmonisation devra aussi être composée avec le renforcement de l'entraide judiciaire<sup>3</sup> définie comme les mécanismes par lesquels les États reçoivent et fournissent de l'aide pour réunir des preuves dans le cadre d'enquêtes et de poursuites pénales. Une analyse documentaire d'études de cas sur les politiques de lutte contre le commerce illicite réalisée par le centre international de recherche sur le cancer (CIRC) a montré que les mesures de coopération internationale, tels que l'échange d'informations et la coopération dans les enquêtes et poursuites judiciaires des actes illicites, sont essentielles pour lutter contre la contrebande de marchandises transfrontières. Malheureusement, malgré l'existence d'un arsenal juridique international imposant, les preuves ne parviennent pas à destination, ou bien arrivent sous une forme très peu utile aux autorités requérantes, ou encore avec un tel retard que le résultat n'est que d'une mince utilité. La Commission devra alors renforcer et

développer une étroite coopération entre les États et les organisations internationales spécialisées dans les domaines concernés.

L'un des principaux problèmes d'entraide judiciaire en matière procédurale est l'insuffisance des ressources en termes de technologie et du personnel affectés aux « autorités centrales » chargées de la coordination des demandes d'entraide. Si la plupart des traités exigent que soit désignée une telle « autorité centrale » chargée de coordonner les demandes d'entraide et de fournir des renseignements dans certains cas, cette obligation n'est aucunement respectée et, dans d'autres, l'autorité centrale ainsi désignée n'a pas nécessairement la structure ou les ressources humaines qualifiées et technologiques appropriées lui permettant de jouer effectivement son rôle de coordination. Il serait alors indispensable que la Commission se penche sur un tel problème pour une solution adéquate.

Pour finir, la Commission doit œuvrer pour non seulement veiller que des sanctions contraignantes liées à la pratique de la contrebande soient prévues et harmonisées, mais aussi que ces sanctions soient revues au maximum. A ce titre, la durée des peines d'emprisonnement contenue dans les instruments internationaux doit être revue. Il en sera de même en ce qui concerne les amendes selon la gravité des infractions. Dans ce cas, les différentes infractions doivent être strictement prévues et clairement définies.

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