

The Global Illicit Trade Environment Index

A Briefing by the Transnational Alliance to Combat Illicit Trade

MYANMAR



Global Illicit Trade Environment Index

Myanmar Country Report

Introduction

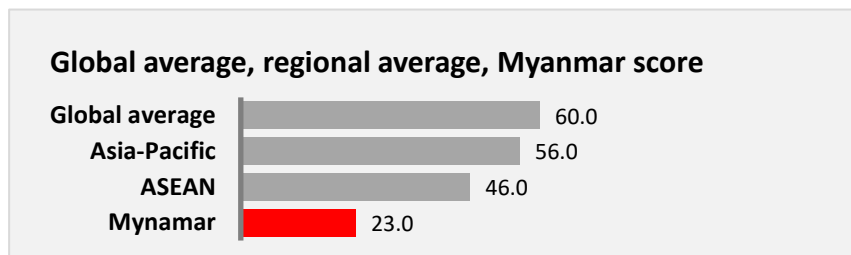
Since initiating reform in 2011, Myanmar has made progress in rejoining regional and international communities – transitioning to a market economy, liberalizing trade and investment and promoting industrial development.

Yet decades of political instabilities and civil unrest have sown the seeds of an extensive illegal economy, ranging from illicit trade in drugs, logging and mining to counterfeiting and wildlife and human trafficking.¹ Some of the problem can be attributed to Myanmar’s long and porous borders with China, India, Bangladesh, Thailand and Laos, which are difficult to police comprehensively.

Inadequate or lack of control at such borders allows smugglers to move illegal products in large volumes. These circumstances have combined to facilitate illicit trade. For example, Myanmar lost US\$50 million in tax to beer smugglers in 2016, and up to 30% of all beer sold in the country is illegally imported.²

To inform the policy response to illicit trade, the Transnational Alliance to Combat Illicit Trade (TRACIT) commissioned the Economist Intelligence Unit (EIU) to produce the *Global Illicit Trade Environment Index*. It evaluates 84 countries on their structural capability to effectively protect against illicit trade, highlighting specific strengths and weaknesses across 25 policy, legal, regulatory, economic, trade, institutional and cultural indicators. The findings are intended to help policy makers: (i) better understand the regulatory environment and economic circumstances that enable illicit trade; (ii) identify areas that merit greater attention; and (iii) formulate strategies to address the serious threats posed by illicit trade.

Chart 1



The scope and depth of this varied illegal activity presents significant challenges for the country’s continued economic development and regional integration; it also presents significant risks to

Myanmar’s environmental integrity (e.g. illegal logging) and the health and safety of its consumers (e.g. illicit trade in alcohol). As Myanmar moves towards deeper economic

integration with its trading partners via various trade agreements, and as it participates more intensely in regional economic cooperation with the Association of South-East Asian Nations (ASEAN) Economic Community (AEC), there will be an urgent need for it to stand stronger against illicit trade.

Myanmar's structural capability to effectively address illicit trade has not been good, and this is evidenced in its very low score in the 2018 Global Illicit Trade Environment Index.

Myanmar ranks 82nd out of 84 countries evaluated, with an overall score of 23.0 (out of 100). This means that—apart from Iraq and Libya—Myanmar shows the poorest structural defense against illicit trade. Regionally, Myanmar is well behind its neighbors in both ASEAN and APEC (see *Chart 1*).

In short, Myanmar showed significant weakness in virtually all the 25 policy, legal, regulatory, economic, trade, institutional and cultural indicators examined by the Index. Except for its work in the area of Customs, it ranks either 81st or 82nd across all categories and indicators.

Notably, weak governance and nascent state institutions, archaic laws, pervasive corruption and the vulnerability of its porous shared borders with some of the world's most prominent exporters of illicit goods have combined to give rise to an economy where illicit trade flourishes.

It is important to understand that the Index is a measure of a country's structural capability to effectively protect against illicit trade, and not its actual performance—past or future. In this respect, there have been some positive developments in recent years that suggest growing political interest in combatting illicit trade. These include the formation of Corruption Prevention Units in government departments, the announcement of a new National Drug Control Policy in co-operation with the UNODC and increases in the number of personnel working in anti-trafficking law enforcement units.

But political interest must translate into practical change through commitment and implementation. And as the Index shows, the challenges facing policy makers in addressing underlying vulnerabilities in the economy remain significant.

Category 1: Government policy

This category of the index measures the availability of policy and legal approaches to monitoring and preventing illicit trade. It measures the extent to which an economy has entered into 14 conventions related to illicit trade; its compliance with Financial Action Task Force (FATF) money laundering provisions; its stance on IP protection; its approach towards

Chart 2

Government policy scores

Global average	62.0
Asia-Pacific	54.0
ASEAN	42.0
Myanmar	22.0

corruption; law enforcement techniques in an economy; the extent of interagency collaboration; and its level of cyber-security preparedness.

Myanmar's rank of 81st places it in the absolute bottom percentage on government policy. The country underperforms in terms of compliance with Financial Action Task Force (FATF) standards on anti-money laundering, coming in 80th, and has only committed to 9 out of the 14 most common international conventions related to illicit trade.

Corruption is endemic in Myanmar, which is also reflected in its poor performance on the corruption indicator. The culture of offering small bribes or gifts in order to facilitate smooth and quick transactions exists at all levels of the society.³ Corruption at the border when importing and exporting goods is common, with a quarter of firms in the World Bank Enterprise survey indicating that they expect to give gifts in order to get an import license.⁴ Bribing customs officials in order to avoid paying customs duties and circumventing regulations is also common.⁵

Customs has a key role to play in combating illicit trade, with Customs officers on the front-line conducting inspections and detecting and seizing illicit goods. If this role is compromised by corruption, the system fails and enables opportunities for illegal trade, criminal activity, illegal financial flows and trafficking in products and persons.

On a more positive note, the government continues to demonstrate willingness to step up its anti-corruption activities. In July 2018, the Chairman of the country's Anti-Corruption Commission (ACC) U Aung Kyi announced the formation of Corruption Prevention Units (CPU) in government departments, as well as the drawing up of codes of conduct and implementing corruption risk assessments.⁶

Myanmar also scores poorly in terms of intellectual property (IP) protection, sharing the bottom score in the Index with six other countries, including neighboring Laos.

The ubiquity of counterfeit goods circulating in the market acts as a deterrent for foreign companies to invest in the country and impedes the development of domestic industry.⁷

"The pervasiveness of counterfeit goods in the market and theft of ideas are big challenges for small businesses. They have to compete with counterfeit goods which are cheaper than the original products," according to Dr. May Pyae Sone Kywe, chair of the Myanmar Young Entrepreneurs Association in an interview with The Myanmar Times.⁸

Myanmar has been working on improving its IP protection regime as part of a plan to overhaul its legal framework to facilitate and encourage foreign investment in the country. However, repeated delays in overhauling the country's antiquated IP laws have increased anxiety among investors and global businesses and has left the country vulnerable to becoming a transit hub for organized counterfeiting activity in neighboring countries.⁹ Nonetheless, the pending IP laws are viewed as a promising indication that enforcement efforts will continue to improve once Myanmar's IP regime becomes more in line with international standards.

Myanmar's score on interagency collaboration (57th place) is somewhat of a bright spot. The government has begun taking policy steps, however nascent, to tackle certain forms of illicit trade. In early 2018, for example, it announced a new National Drug Control Policy in cooperation with the UNODC aimed at reducing the production, trafficking and use of illicit substances.¹⁰ Among other things, the new policy focuses on greater interagency collaboration and better law enforcement, two of the indicators included in the government policy category. The policy was formed after extensive consultations between the government, NGOs, academics and other civil society stakeholders.¹¹

There are also examples of collaboration between law enforcement and customs authorities in the ports, including customs authorities deploying specially-trained personnel to conduct inspections supported by law enforcement personnel. However, this type of co-operation is considered irregular and will need to be strengthened and formalized across all forms of illicit trade, including actions against IP infringements, which have so far been limited.

Myanmar's participation in the UNODC's network of 70 Border Liaison Offices in Southeast Asia, will intensify its cooperation with neighboring border agencies, with associate potential to drive greater internal interagency cooperation. Similarly, Myanmar's participation in the ASEAN Working Group on CITES and Wildlife Enforcement shows potential to unify the efforts of Customs officers, police, prosecutors and governmental wildlife-law enforcement agencies.

Category 2: Supply and demand

This category measures the domestic environment that encourages or discourages the supply of and demand for illicit goods, including the level of corporate taxation and social security burdens, the quality of state institutions, labor market regulations, and perceptions of the extent to which organized crime imposes costs on business.

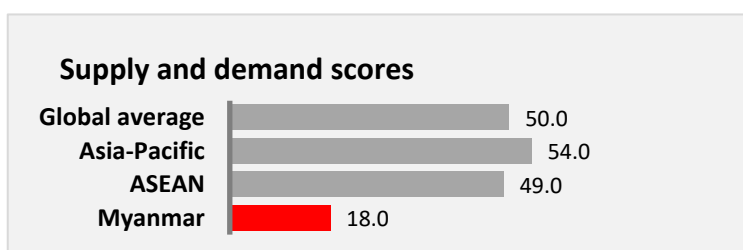
Myanmar ranks very near the bottom of the Index (81st out of 84 countries) in terms of its

policies to control the supply and demand of illicitly traded goods, and in relation to its neighbors it scores well below the ASEAN regional average. Although its level of tax and social security burdens places it near the middle of the Global Index, the overall poor score is a function of high levels of perceived organized crime and poor quality of state institutions.

Myanmar has grappled with infestation of organized criminal elements for years, and even now it joins nine countries in the Index, including Iraq, Libya and Venezuela, for the lowest score on quality of state institutions and ranks 79th on perception of organized crime.

"Transnational organized crime groups in Myanmar operate a multi-billion-dollar criminal industry that stretches across Southeast Asia. Trafficked drugs, humans, wildlife, gems,

Chart 3

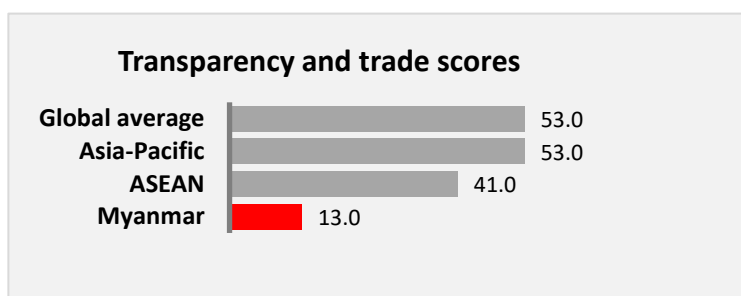


timber, and other contraband flow through [Myanmar], supporting the illicit demands of the region and beyond.”¹² “Transnational organized criminals from China, India and Thailand are deeply involved in Myanmar’s illegal drug, logging, mining, and wildlife economy.”¹³

Category 3: Transparency and trade

This category measures an economy’s transparency regarding illicit trade and the degree to which it exercises governance over its FTZs and transshipments. Indicators include: quality of consignment tracking and tracing services; the adoption of Annex D of the Revised Kyoto Convention (RKC), which seeks to ensure standardized customs procedures in customs warehouses and FTZs; the extent of monitoring and oversight at FTZs; and the extent to which governments report their efforts and share information to fight illicit trade.

Chart 4



Transparency and trade is a particularly problematic category for Myanmar, ranking 82nd and scoring well below the average of its regional peers.

Myanmar is not a signatory to Annex D of the World Customs Organization (WCO) Revised Kyoto Convention (RKC), which sets out guidelines for Customs operations within FTZs. And, although Customs agencies have the authority—under the Myanmar Special Economic Zone Law of 2014—to exercise supervisory powers over the movement of goods through and from free and protected zones within Special Economic Zones, monitoring and oversight of FTZs ranks at the bottom of the Index. This is largely attributable to the wording of the law, which states that the Customs Department “shall ensure the realization of economic and social security, the prevention of illegal trading and the observance of international conventions *but shall not exercise excessive control*.” The legal loophole created by the phrase “shall not exercise excessive control” has been identified as one of the primary contributors to the thoroughly weak FTZ governance in Myanmar.

The lack of regular publication of official statistics on illicit trade, including IPR infringements, also weighs heavily on Myanmar’s score in the transparency and trade category.

For decades, Myanmar has been one of the world’s epicenters of opiate and methamphetamine production. Myanmar is considered to be the world's second-largest opium poppy grower¹⁴ and the production of synthetic drugs in the Mekong Region – and Myanmar in particular – has reached “alarming levels” according to the UN Office on Drugs and Crime (UNODC).¹⁵

As noted by Mr Jeremy Douglas, UNODC regional representative, “The increase in supply coincides with a convergence of transnational organized crime and ethnic armed groups in

Myanmar. It's a merger of interests: one side needs money flow and the other needs territory to produce products where they're not going to be hindered by law enforcement."¹⁶

Human trafficking also continues to be prevalent in Myanmar, despite recent efforts by the government to address the issue. In 2004, Myanmar signed the UN Convention against Transnational Organized Crime and Protocol to Prevent, Suppress, and Punish Trafficking in Persons (Palermo Protocol), and in 2005, it enacted the Anti-Trafficking in Persons Law, which criminalizes all forms of sex/labor trafficking. In 2017, the government increased the number of personnel working in anti-trafficking law enforcement units and task forces.¹⁷ Nonetheless, the US State Department's 2018 Trafficking in Persons (TIP) report notes that Myanmar is not fully meeting the minimum standards for the elimination of trafficking and not making significant efforts to do so, and downgraded the country to tier 3, the lowest grade.¹⁸

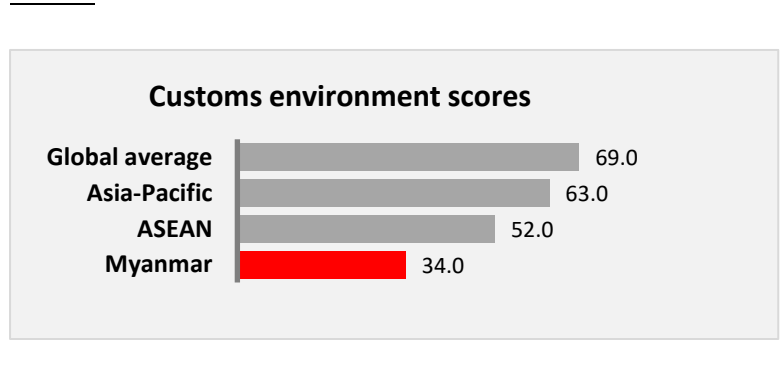
As with most developing countries, Myanmar is also challenged by a lack of public awareness on the dangers of illicit trade. To this end, local and regional education campaigns and community-level awareness activities are essential.

Category 4: Customs environment

This category measures how effectively an economy's customs service manages its dual mandate to facilitate licit trade while also preventing illicit trade. It consists of five indicators: percentage of shipments physically inspected; the time taken for customs clearance and inspection; the extent of automation of border procedures; the presence of AEO programs; and the presence of customs recordal systems.

Myanmar receives its highest score in the customs environment category with a score of 34, yet this is still

Chart 5



less than half of the global average and 18 points below the ASEAN regional average. It has an emerging Accredited Economic Operator (AEO) programme, which allows companies to pre-register with local customs for screening by the general customs office, pulling down the economy's score. Additionally, there are significant deficiencies in customs clearance and inspection (81st), as well as customs automation (79th), both of which can create an environment that facilitates bribes and other forms of corruption.

Myanmar's customs score receives a slight boost by the inclusion of a recordal system for trademarks. Presently, the Myanmar Customs Department (MCD) allows for the recordal of trademark registrations. Such recordals allow goods which are suspected to be counterfeits to be detained by the MCD, as well as for rights holders to notify the MCD concerning any specific importation of counterfeits.¹⁹ However, local experts note that the current recordal system remains largely ineffective, as it is not well known nor widely used, and enforcement

is very limited. The process is likely to be updated when Myanmar's impending new IP laws are brought into force, but the exact details are still being finalized.

Conclusion

The overall policy environment in Myanmar is held back by poor governance and weak institutions, which together enable the supply of illicit goods to both enter the country and transit through it onto other destinations. Low level of penalties, and weak coordination, monitoring and enforcement mechanisms on corruption also hinder the implementation of many anti-illicit trade policies in Myanmar.

The country's low scores across all four categories of the Index highlight the challenge that the country faces in combatting illicit trade. Clearly, more needs to be done in the coming years to tackle corruption and strengthen state institutions so that the environment for illicit trade in Myanmar will become less hospitable for traffickers and traders.

Myanmar's long borders through which much smuggled contraband passes stretch across vast trackless hills, mountains and semi-autonomous regions. Improving controls and transparency across these poorly patrolled and porous borders is a momentous challenge that requires improved cooperation with its neighbors and will not be achieved overnight. But even small steps, such as increased capacity-building for customs officials, improved IPR laws and enforcement, and public awareness campaigns can go a long way towards improving the overall environment to combat illicit trade.

As the region continues to integrate, the vulnerabilities and security challenges created by illicit trade in Myanmar will have negative impacts on both Myanmar and its neighboring countries. It is clear that without sustained outside assistance and engagement, Myanmar will find it particularly hard to reach the level of some of the wealthier nations in ASEAN, including Singapore (24th), Malaysia (47th) and Thailand (48th).

Notes

¹ See for example, <https://i.unu.edu/media/cpr.unu.edu/attachment/2445/Myanmar-Maneuvers-How-to-Break-Political-Criminal-Alliances-in-Contexts-of-Transition.pdf>; <https://www.state.gov/documents/organization/282798.pdf>; <https://www.mmtimes.com/news/counterfeit-goods-and-illegal-trade-deters-investors-draws-focus-lack-ip-laws.html>

² <http://www.euromonitor.com/alcoholic-drinks-in-myanmar/report>; <https://www.irrawaddy.com/news/burma/myanmar-govt-lost-50-million-tax-beer-smugglers-2016.html>

³ Shwe Zin KO, (2016), Proposed Collective Action against Corruption: Myanmar's Experience in Illicit Trade.,

⁴ <http://www.enterprisesurveys.org/data/exploreconomies/2016/myanmar#corruption>

⁵ <http://isdpc.eu/content/uploads/images/stories/isdp-main-pdf/2015-khaing-corruption-myanmar.pdf>

⁶ http://www.xinhuanet.com/english/2018-07/03/c_137298124.htm

⁷ <https://www.mmtimes.com/news/ajinomoto-concerned-counterfeit.html>; <https://www.mmtimes.com/news/counterfeit-goods-and-illegal-trade-deters-investors-draws-focus-lack-ip-laws.html>

⁸ <https://www.mmtimes.com/news/counterfeit-goods-and-illegal-trade-deters-investors-draws-focus-lack-ip-laws.html>

⁹ <https://www.securingsupply.com/pharmaceuticals/myanmar-ip-law-delays-causing-anxiety/s40/a3113/#.W3GYDy-B1o4>

¹⁰ UN Office on Drugs and Crime. New national drug policy announced for Myanmar.

¹¹ EIU ASIA paper, www.TRACIT.org

¹² (2008), Burma and Transnational Crime, <https://fas.org/sgp/crs/row/RL34225.pdf>

¹³ <https://i.unu.edu/media/cpr.unu.edu/attachment/2445/Myanmar-Maneuvers-How-to-Break-Political-Criminal-Alliances-in-Contexts-of-Transition.pdf>

¹⁴ <https://www.unodc.org/unodc/en/alternative-development/myanmar.html>

¹⁵ <https://frontiermyanmar.net/en/mekong-rethinks-drug-policy-as-syndicates-pump-meth-from-myanmar>

¹⁶ <https://frontiermyanmar.net/en/mekong-rethinks-drug-policy-as-syndicates-pump-meth-from-myanmar>

¹⁷ <https://asiafoundation.org/2018/03/28/can-myanmars-libraries-help-combat-human-trafficking/>

¹⁸ <https://www.state.gov/documents/organization/282798.pdf>

¹⁹ <https://www.twobirds.com/en/news/articles/2018/singapore/myanmar-new-trade-mark-regime>