



# Tackling Illicit Trade in ASEAN

## Advocacy Paper, 2020



## Table of Contents

Executive Summary.....	2
Illicit Trade & COVID-19 .....	3
Illicit Trade in ASEAN.....	5
ASEAN Illicit Trade Rankings – 2018 .....	6
The negative impact of illicit trade on development and the UN SDGs .....	8
Key sectors affected by Illicit Trade .....	9
Modes of Illicit Trade  E-Commerce.....	13
Fraudulent advertising online .....	14
ASEAN Mechanisms to Stop Illicit Trade through E-Commerce Channels .....	15
Modes of Illicit Trade  Free-Trade Zones .....	15
Modes of Illicit Trade  Counterfeit Goods.....	16
Copyright and Trademark Infringement in ASEAN .....	16
Falsified Medicines – A Parallel Pandemic.....	17
ASEAN Measures to Counter the Falsified Medicines Trade .....	18
Modes of Illicit Trade  Smuggling.....	18
ASEAN Measures to Facilitate Legitimate Trade .....	22
ANNEX.....	28
Strengthen law enforcement efforts .....	28
Strengthen the customs environment.....	28
Promote a clean digital environment .....	29
Address illicit trade in the express and postal mail sector .....	30
Raise awareness about illicit trade .....	30
About the EU-ASEAN Business Council.....	32
Executive Board .....	32
Membership.....	32

## Executive Summary

ASEAN is facing a crisis like never before. COVID-19 has disrupted supply chains, plunged stock markets, and has taken the lives of some 170,008 people.<sup>1</sup> The Asian Development Bank (ADB) has revised ASEAN's growth forecast from 4.7% to -3.8% in 2020, as 7 out of 10 Member states enter deep recessions.

Besides the macroeconomic shocks to the economy, the pandemic has also put a spotlight on Southeast Asia's growing illicit trade industry. To illustrate: the shortage of masks led to one of the largest face mask intellectual property infringement cases to date in Vietnam. On 31 July 2020, the Vietnam Directorate of Market Surveillance seized over 150,000 counterfeit 3M face masks.<sup>2</sup> Given the huge increase in demand in medical supplies, a similar incident happened in Philippines. Between 25 March and 31 May 2020, smuggled, unregistered or counterfeit personal protective equipment and other medical supplies worth US\$5 million were seized by the Philippines' Bureau of Customs.<sup>3</sup>

In ASEAN, the rise of illicit trade has dealt significant blows to biodiversity, human lives and human rights, in addition to causing monetary losses to governments and legitimate businesses. Moreover, the proceeds of illicit trade line the pockets of international organised crime, including terrorist organisations, and undermine governments' ability to safeguard the health and safety of their citizens. Take Myanmar for example: the country's illicit trade market amounts to US\$4.6 billion per year. Yet this staggering figure is most likely just the tip of the iceberg as it only reflects trade on official routes between Myanmar and its neighbouring countries.<sup>4</sup>

Furthermore, even in a post-COVID-19 world, unemployment and reduced purchasing power may increase demand for cheaper products, including counterfeits, and the push to revive trade and the fast flow of goods may cause lapses in customs enforcement quality. Additionally, the tax revenue lost through illicit trade pinches more, given the need to finance hefty stimulus packages for economic recovery. The lessons learnt in this pandemic on the dangers of illicit trade must be acted on immediately.

As ASEAN looks towards charting the path to the next new normal, the region needs to transform lockdown lessons into resilient post-crisis regulatory regimes by understanding where and how criminal groups exploit weaknesses. The time for ASEAN is now and the failure to act could result in a larger public healthcare crisis.

*We reaffirm our commitment towards an illicit drug-free region and a zero-tolerance approach towards illicit drugs. The Mid-Term Review of the ASEAN Work Plan on Securing Communities Against Illicit Drugs will be conducted in due course and work is underway to publish the next series of the ASEAN Drug Monitoring Report 2019 by the ASEAN Narcotics Cooperation Center, a key trademark of ASEAN's cooperation in combating illicit drugs.*

*We commend the significant progress made in combating transnational crimes. Work is underway to enhance border management cooperation based on Thailand's draft concept Paper on 'A Regional Border Management Cooperation Roadmap' which is discussed by the Senior Official Meeting on Transnational Crime.*

*Chairman's Statement of the 36<sup>th</sup> ASEAN Summit, June 2020.*

<sup>1</sup> [Worldometers.info, 2020.](https://www.worldometers.info/)

<sup>2</sup> [US-based 3M thanks Vietnam authority for seizing massive counterfeit face masks. Hanoi Times, 2020.](https://www.hanoitimes.com.vn/US-based-3M-thanks-Vietnam-authority-for-seizing-massive-counterfeit-face-masks)

<sup>3</sup> [Department of Finance, 2020.](https://www.dof.gov.ph/)

<sup>4</sup> [Myanmar steps up fight against illicit trade. UNCTAD, 2020.](https://www.unctad.org/)

## Illicit Trade & COVID-19

As the COVID-19 pandemic swept its way across the globe, causing unwelcome impacts on health systems, stock markets and economies, the business of illicit trade found new strategies for profiteering off the crisis. In February 2020, when the World Health Organisation (WHO) declared the coronavirus a pandemic, Interpol's Operation Pangea, a global pharmaceutical crime fighting unit, made 121 arrests across 90 nations in a single week.<sup>5</sup> Globally, the operation resulted in the seizure of more than 48,000 packages through customs authorities, containing 4.4 million units of illicit pharmaceuticals including fake COVID-19 cures.<sup>6</sup>

As the world's largest producers of medical supplies, China and India, entered lockdowns, counterfeit masks, sanitisers and medical devices appeared on 2,500 website links around the world, amounting to US\$14 million worth of illicit goods.<sup>7</sup> By March, WHO issued a Medical Product Alert warning consumers and healthcare professionals of falsified medical products, especially falsified in vitro diagnostic product (IVD's) and laboratory reagents used in eight countries, including Singapore.<sup>8</sup> Similar warnings were issued by the World Customs Organisation and the United States' Food and Drug Administration as illicit traders attempted to take advantage of newly instated export licenses for critical medical supplies adopted by nations facing shortages, including Vietnam and Malaysia.<sup>9</sup>

Globally, the counterfeit pharmaceuticals trade amounts to a significant US\$4.5 billion, and pandemics offer the perfect opportunity for criminals to use modern e-commerce channels and ineffectively enforced customs procedures to exploit supply chain disruptions.<sup>10</sup> Additionally, the Transnational Alliance to Combat Illicit Trade (TRACIT) issued an Illicit Alcohol Market Alert in April, warning governments that COVID-19 related prohibitions on alcoholic beverages would incentivise illegal black-markets to form, endangering consumers and encouraging criminal activity.<sup>11</sup>

Thus, the pandemic has heightened the dangers posed by the global illicit trade, potentially placing additional demands on an overburdened global healthcare system.

Even in a post-COVID-19 world, unemployment and reduced purchasing power may increase demand for cheaper products, including counterfeits, and the push to revive trade and fast flow of goods may cause lapses in customs enforcement quality. Additionally, the tax revenue lost through illicit trade puts extra burdens on already stretched budgets, given the need to finance hefty stimulus packages

*"We risk a parallel pandemic, of substandard and falsified products unless we all ensure that there is a global coordinated plan for coordinated production, equitable distribution and the surveillance of the quality of the tests, medicines and vaccines. Otherwise the benefits of modern medicine will be lost."*

*Paul Newton, Director of the Lao-Oxford-Mahosot-Wellcome Research Unit, Laos.*

<sup>5</sup> Operation Pangea. INTERPOL; [Coronavirus fuels a surge in fake medicines. BBC World Service, 2020.](#)

<sup>6</sup> [Global operation sees a rise in fake medical products related to Covid-19. Interpol, 2020.](#)

<sup>7</sup> [Research Brief: COVID-19-related Trafficking of Medical Products as a Threat to Public Health. UNODC, 2020.](#)

<sup>8</sup> [Medical Product Alert N3/2020. World Health Organization, 2020.](#)

<sup>9</sup> [Covid-19 Urgent Notice – Counterfeits. World Customs Organization, 2020.](#)

<sup>10</sup> [Trade in Counterfeit Pharmaceutical Products. OECD, 2020.](#)

<sup>11</sup> [Covid-19 Impact on Illicit Alcohol. Tracit Media Release, 2020.](#)

for economic recovery. The lessons learned from the pandemic compel a renewed urgency to combat illicit trade.

The first step to transforming lockdown lessons into a resilient post-crisis regulatory regime is to understand where and how criminal groups exploit weaknesses. As illustrated above, there are several factors that must be accounted for to ensure that we build back better, with new models for consumer protection that are more resilient. These factors include the impacts of:

- Limited supply due to panic buying, prohibitions or system supply-chain lockdowns that create easy markets for new entry by counterfeit, fraudulent and other illicit products.
- Distracted, dislocated, or confined Customs and law enforcement officers that are unavailable to perform traditional enforcement responsibilities.
- Reduced, dislocated, or confined corporate brand protection officers, side-lined due to lost sales and associated budgetary cuts leaving businesses with fewer resources to tackle greater risk.
- Erratic consumer behaviour deriving from fear, less disposable income, the no-guilt “holiday effect” associated with abnormal circumstances.
- Significant growth in online shopping including new entrants with less experience in dealing with fraud.

For example, as cash-crunched consumers search for cheaper deals, they may inadvertently choose and purchase a counterfeit alternative. Similarly, small businesses looking to shave margins might be defrauded—or willing—to purchase components or ingredients in bulk even though they are fake or from illegitimate sources.

Post-crisis regime changes must also consider the enduring impacts:

- Solidification (and/or growth) of market shares for illicit products that already command 10-50% of many markets.
- Entrenchment of criminal activity that prospered during the lockdown.
- Jeopardisation of long-term employment and growth, where side lined legal companies play catch up.
- Government revenue losses.

## CASE STUDY - PSI

*While the world is gripped by COVID-19, criminal organisations have turned this global pandemic into an opportunity to carry out fraudulent activities, particularly by trafficking counterfeit medical supplies such as face masks and medicines. The Pharmaceutical Security Institute (PSI) during this calamity came together with its members and carried out an initiative which identified hundreds of illicit websites offering COVID-19 treatments, several hundred social media postings and more than nine thousand postings in the market place platforms.*

*PSI is currently working with both international and regional law enforcement outfits to cripple these unscrupulous syndicates and protect innocent unsuspecting patients*

## ASEAN'S Illicit Trade Market in Figures (USD)



**\$2.6 Billion**

Worth of counterfeit medicines purchased annually



**\$3.3 Billion**

Lost in tax revenue from smuggled cigarettes annually



**\$2.5 Billion**

Worth of illegal wildlife trade annually



**\$35.9 Billion**

Size of counterfeit goods market in 2018

## Illicit Trade in ASEAN

With a projected annual growth rate of over 5.5% (prior to COVID-19), ASEAN's accelerated development means that it could become the fourth largest economy in the world by 2050.<sup>12</sup> This growth is bolstered by favourable demographics: 58% of the region's population is under 35 years of age, and the middle class is expected to constitute 50% of the population by 2030.<sup>13</sup> However, this rapid urbanisation and rising affluence has a darker side, which is the rise of illicit trade ranging from endangered wildlife species to narcotics.

The World Trade Organisation defines illicit trade as "any commercial practice or transaction related to the production, acquisition, sale, purchase, shipment, movement, transfer, receipt, possession or distribution of any illicit product defined as such by international law, and any conduct intended to facilitate such activities".<sup>14</sup>

In ASEAN, the rise of illicit trade has dealt significant blows to biodiversity, human lives and human rights, in addition to causing monetary losses to governments and legitimate businesses. Moreover, the proceeds of illicit trade line the pockets of international organised crime, including terrorist organisations, and undermine governments' ability to safeguard the health and safety of their citizens. A 2014 study by the Indonesian Anti-Counterfeiting Society, estimates that the illicit counterfeit goods trade deprives the Indonesian economy of up to US\$4.8 billion per year.<sup>15</sup> Similarly, Myanmar's illicit trade market amounts to US\$4.6 billion per year.<sup>16</sup>

ASEAN has undertaken several measures to counter the scourge of illicit trade. From the ASEAN-Australia Customs Workshop in 2019, to the formation of the ASEAN Network of IPR Enforcement Experts, the region is taking steps to tackle the various modes and methods of illicit traders. However, there is a lot of work remaining with regards to forming a regional taskforce and strategy tackling illicit trade in all its various forms.

<sup>12</sup> [The Economic Toll of Covid-19 on Southeast Asia: Recession Looms as Growth Prospects Dim. CSIS,2020.](#)

<sup>13</sup> [ASEAN Growth Projections. US-ASEAN Business Council, 2019.](#)

<sup>14</sup> [Illicit Trade and the WTO. TradeLab, 2017.](#)

<sup>15</sup> [Indonesian Anti-Counterfeiting Society,2014.](#)

<sup>16</sup> [Myanmar steps up fight against illicit trade. UNCTAD, 2020.](#)

Sidebar - [Transnational Organized Crime in Southeast Asia. UNODC, 2019.](#)

## ASEAN Illicit Trade Rankings – 2018

TRACIT commissioned the Economist Intelligence Unit to produce the global index on illicit trade, comprising of 84 nations and spanning four identified domains pertinent to the issue. Instead of evaluating a country's performance combating illicit trade, the index looks at a country's structural capacity and regulatory environment as a measure of its potential to combat illicit trade. The definitions of the indices are:

1. Government Policy – Availability of policy and legal approaches for monitoring and preventing illicit trade.
2. Supply and Demand – Measure of the domestic environment that encourages or discourages supply and demand for illicit goods.
3. Transparency and Trade – Degree of governance over Free Trade Zones (FTZs) and transshipments.
4. Customs Environment – Effectiveness of custom service in facilitating legitimate trade and preventing illicit trade.<sup>17</sup>

The reasons for ASEAN's poor performance in some of the categories are due to structural issues such as corruption and bribery. Moreover, the countries have not displayed a strong commitment to preventing illicit trade in terms of signing on to anti-illicit trade treaties such as Annex D of the Revised Kyoto Convention,<sup>18</sup> particularly Singapore, Thailand and the Philippines. However, these nations did receive high scores on IP reporting due to their regular publishing of trade-related IP infringement, which not only assists in information-sharing but also helps create common border-management strategies.

As for Myanmar, Laos and Cambodia, the Index scores were due to their lack of capacity, skills and institutional and resource constraints in addressing illicit trade. For instance, law enforcement agencies in the countries are designed around combatting community-based crimes at a national level, and do not have the means or training to tackle complex, transnational syndicates. The report also noted how most illicit trade in these countries happens through official channels, since inspection agencies did not have the time nor manpower to check many consignments and were prone to accepting bribes.<sup>19</sup>

---

<sup>17</sup> [The Global Illicit Trade Environment Index. Economist Intelligence Unit, 2018. \(Insufficient statistics to include Brunei in the study\)](#)

<sup>18</sup> The International *Convention* on the simplification and harmonization of Customs procedure is known as the *Kyoto Convention*. It is the blueprint for modern and efficient Customs procedures in the 21<sup>st</sup> century.

<sup>19</sup> [The Global Illicit Trade Environment Index. Economist Intelligence Unit, 2018. \(Insufficient statistics to include Brunei in the study\)](#)

	<i>Global Ranking</i>	<i>Government Policy</i>	<i>Supply &amp; Demand</i>	<i>Transparency &amp; Trade</i>	<i>Customs Environment</i>	
	Cambodia	79 <sup>th</sup>	80 <sup>th</sup>	72 <sup>nd</sup>	74 <sup>th</sup>	77 <sup>th</sup>
	Indonesia	68 <sup>th</sup>	71 <sup>st</sup>	63 <sup>rd</sup>	45 <sup>th</sup>	69 <sup>th</sup>
	Lao PDR	81 <sup>st</sup>	82 <sup>nd</sup>	47 <sup>th</sup>	76 <sup>th</sup>	82 <sup>nd</sup>
	Malaysia	47 <sup>th</sup>	39 <sup>th</sup>	20 <sup>th</sup>	55 <sup>th</sup>	66 <sup>th</sup>
	Myanmar	82 <sup>nd</sup>	81 <sup>st</sup>	81 <sup>st</sup>	82 <sup>nd</sup>	78 <sup>th</sup>
	Philippines	64 <sup>th</sup>	79 <sup>th</sup>	55 <sup>th</sup>	24 <sup>th</sup>	60 <sup>th</sup>
	Singapore	25 <sup>th</sup>	22 <sup>nd</sup>	2 <sup>nd</sup>	57 <sup>th</sup>	56 <sup>th</sup>
	Thailand	48 <sup>th</sup>	60 <sup>th</sup>	31 <sup>st</sup>	40 <sup>th</sup>	45 <sup>th</sup>
	Vietnam	66 <sup>th</sup>	73 <sup>rd</sup>	38 <sup>th</sup>	79 <sup>th</sup>	54 <sup>th</sup>

The Index can be a valuable tool to help ASEAN governments improve their defences against illicit trade. For example, in response to shortcomings delineated in the TRACIT report, the Myanmar government has stepped up its efforts to combat illicit trade.<sup>20</sup> In 2019, it formed the Illegal Trade Eradication Steering Committee, led by the Vice President, and empowered the Ministry of Commerce to coordinate state-level departments and establish policies, strategies, tactics, programmes and plans to tackle illicit trade.

<sup>20</sup> [The Republic of the Union of Myanmar President's Office](#)

## The negative impact of illicit trade on development and the UN SDGs

ASEAN adopted the United Nations Sustainable Development Goals (SDGs) in 2015, as well as the ASEAN Community Vision 2025, which share complementarities on issues of poverty eradication, infrastructure and connectivity, sustainable management of natural resources, sustainable consumption and production and resilience.<sup>21</sup>

However, the socio-economic impacts of illicit trade are all quantifiably negative and present significant deterrence to achieving all 17 of the SDGs, creating a triple threat to the financing of development: crowding out legitimate economic activity, depriving governments of revenues for investment in vital public services and increasing the costs of achieving the SDGs by eroding the progress already made.<sup>22</sup>

There are notable “macro” impacts where illicit trade cuts deeply across many of the SDGs, undermining achievement of the economic goals for poverty reduction, decent jobs and economic growth (SDGs 1, 2, 3, 4 & 8), and robbing governments of taxable income that can be invested in public services (SDGs 9 & 17). When it generates revenue for organised criminal and terrorist groups, illicit trade undermines goals for peace and stability (SDG 16). Most forms of illicit trade plunder natural resources (SDGs 6, 14 & 15), abuse supply chains and ultimately expose consumers to fake and potentially harmful products (SDG 12). In all cases, illicit trade pushes achievement of the goals further away.

For example:

- 1. Environmental Conservation** – Illicit trade in ASEAN harms the environment in myriad ways. Its vast rainforests, which constitute almost 20% of the forest cover in the world, have shrunk to less than half their original size due to deforestation and illegal logging of timber.<sup>23</sup> Though several ASEAN Member states are REDD+ (Reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries) partner countries, illegal logging prevents them from achieving set targets. Similarly, ASEAN’s US\$2.1 billion illegal wildlife trade threatens the region’s rich biodiversity and accelerates the global extinction crisis.
- 2. Management of Natural Resources** – Exhaustible natural resources such as refined petroleum products, timber and natural gas are siphoned away from legitimate channels through theft, diversion and smuggling in ASEAN. For instance, Myanmar produces US\$12-\$31 billion worth of jade annually, but up to 80% is smuggled out, depriving the government of tax revenue.<sup>24</sup> Thus, illicit trade erodes progress made towards managing natural resources and harms communities whose livelihoods depend on the same.
- 3. Health and Well-Being** – Over half of the anti-malarial medicines tested in ASEAN are found to be fraudulent, reversing the years of progress in combating this deadly disease.<sup>25</sup> UNODC’s 2019 study on transnational crimes in the region found that the illicit pharmaceuticals trade was run by organised criminal syndicates, as traces of Methylenedioxymethamphetamine(MDMA) were found in fraudulent medicines in Cambodia. Under-investment in supply chain and regulatory

<sup>21</sup> [ASEAN, ESCAP Propose 7 Initiatives to Achieve SDG’s in the Region. SDG Knowledge Hub, 2018.](#)

<sup>22</sup> [Illicit Trade and the UN Sustainable Development Goals \(SDGs\). TRACIT](#)

<sup>23</sup> [Deforestation – A Modern-day plague in Southeast Asia. The ASEAN Post, 2017.](#)

<sup>24</sup> [Myanmar steps up fight against illicit trade. UNCTAD, 2020.](#)

<sup>25</sup> [Fake Medicine giving ASEAN a headache. ASEAN Post, 2019.](#)

systems have placed the health of the ASEAN people at risk, as they purchase an estimated US\$520 million to US\$2.6 billion a year worth of falsified medicines.<sup>26</sup>

- 4. Reduced Inequalities** – Human trafficking has been a thorn in the sides of ASEAN governments, particularly in the remote, rural provinces of Vietnam, Lao PDR and Cambodia where brokers trap jobseekers in predatory loan arrangements. The Global Slavery Index by Walk Free estimates that 25 million people are trapped in modern slavery due to human trafficking in the Asia Pacific region, which is 62% of the global total.<sup>27</sup> Out of ten states, the Philippines is the only ASEAN country to be on Tier 1 of the US Department of State’s Trafficking in Person’s Watchlist i.e. the only state which fully complies with the Trafficking Victims Protection Act’s minimum standards. Thus, illegal trafficking of humans continues to remain a serious problem in ASEAN, despite the signing of the Convention against trafficking in persons, especially women and children (ACTIP) at the 27<sup>th</sup> ASEAN Summit in 2015.<sup>28</sup>

In addition, the more a country is vulnerable to illicit trade, the fewer prospects it has to create employment, improve its economic performance and consolidate its governance structures. This, in turn, results in lower credit ratings determinations by international rating agencies, which further dampens the economic and financial forecast and nurtures the perpetuation of the structural conditions where illicit trade prospers.<sup>29</sup>

Correcting regulatory and economic circumstances that enable illicit trade also can improve sovereign credit ratings, thereby reducing the cost of borrowing and enabling governments to raise capital in the international financial market, stimulating long term investment and growth.<sup>30</sup>

A favourable credit rating enables governments to raise capital in the international financial market, as well as attract other forms of investments like foreign direct investments to a country. In contrast, a low credit rating or downgrade to a lower rating can discourage investors from purchasing the bonds or making direct investments in the country. Faced with increased borrowing costs, governments may find it harder to finance much-needed investments that are vital to long term growth prospects. This in turn can slow down the real economy, putting even more pressure on the government’s credit rating.<sup>31</sup>

## Key sectors affected by Illicit Trade

Illicit trade is an issue that affects almost all sectors in ASEAN, and globally. However, some industries remain hotbeds of illicit trade, either due to widespread demand for cheap alternatives, counter-intuitive taxation policies or just cross-border manufacturing chains. These include –

- 1. Tobacco** – Over 20% of ASEAN’s adult population are smokers, and all ASEAN Member states (except Indonesia) are signatories of the WHO Convention on Tobacco Control, which requires countries to clamp down on tobacco smuggling.<sup>32</sup> Furthermore, no countries within ASEAN are parties to the Protocol to Eliminate Illicit Trade in Tobacco Products, which requires international cooperation and information sharing between international organisations and customs offices.<sup>33</sup> Illicit inflows consist of unspecified market variants, contraband and counterfeit cigarettes, which

<sup>26</sup> [Transnational Organized Crime in Southeast Asia. UNODC, 2019.](#)

<sup>27</sup> [Modern Slavery- A Hidden, Everyday Problem. Global Slavery Index, 2018.](#)

<sup>28</sup> [ASEAN Convention Against Trafficking in Persons, Especially Women and Children. ASEAN Storage, 2015.](#)

<sup>29</sup> TRACIT, “The link between illicit trade and sovereign credit ratings: How addressing illicit trade can lower the cost of borrowing and promote investment”, 2020 at <https://www.tracit.org/>

<sup>30</sup> IBID

<sup>31</sup> IBID

<sup>32</sup> [The ASEAN Tobacco Control Report. ASEAN Storage, 2014.](#)

<sup>33</sup> [The Protocol to Eliminate Illicit Trade in Tobacco Products FAQ. World Health Organisation.](#)

results in lost tax revenue. For instance, in 2020, Malaysia lost about RM1 billion during the Movement Control Order period starting in mid-March through unpaid taxes, according to estimates from JT International BHD.<sup>34</sup> The table below outlines how much each ASEAN state (except for Brunei) loses in tax revenue due to illicit trade.

Geography	Category	IT Volume (Mio sticks)	Price MSB per ,000 sticks (WHO 2016 - US\$)	Tax % MSB (UN 2016)	Tax per 000 sticks (WHO 2016 - US\$)	Potential Tax Loss from IT in 2019 (Mio US\$)
Cambodia	Cigarettes	685	24.5	25.2%	6.2	4.2
Indonesia	Cigarettes	24,707	82.5	57.4%	47.4	1,170.8
Laos	Cigarettes	237	43	18.4%	7.9	1.9
Malaysia	Cigarettes	12,503	209.5	52.7%	110.4	1,380.9
Myanmar	Cigarettes	45	36	35.3%	12.7	0.6
Philippines	Cigarettes	7,930	43	62.6%	26.9	213.4
Singapore	Cigarettes	101	482.5	66.2%	319.6	32.2
Thailand	Cigarettes	2,495	123.5	73.5%	90.7	226.5
Vietnam	Cigarettes	17,860	45.5	35.7%	16.2	289.9
<b>Total ASEAN (excl Brunei)</b>		<b>66,563</b>				<b>3,320</b>

Note: This study used the latest tax rates publicly available in the 2017 WHO global tobacco report including 2016 tax yields. The 2019 tax impact is based on 2019 IT estimates from Euromonitor and 2016 WHO tax rates  
MSB - Most Sold Brand  
Source: Euromonitor for IT Volume, IT penetration. WHO global tobacco report 2017 (Tax %, MSB price) [https://www.who.int/tobacco/global\\_report/2017/appendix-ix/en/](https://www.who.int/tobacco/global_report/2017/appendix-ix/en/)

**2. Alcohol** – Illicit alcohol has long plagued the region, with unlicensed distilleries packaging products to look like establish brands or filling original bottles with counterfeit alcohol. This issue does not just harm brand reputation and cause tax shortfalls, but has even taken lives, such as the 2018 spate of methanol poisoning in Indonesia which claimed over 100 lives.<sup>35</sup> Due to the high level of taxation of alcoholic beverages in Malaysia, Indonesia and Vietnam, imported liquors are expensive and thus people turn to obtain liquor from illicit sources. A World Health Organisation’s report in 2018 estimated that ASEAN would be the region with the highest consumption of unrecorded alcohol by 2025, with 4.5-6.2 litres of illicit alcohol consumed per capita.<sup>36</sup>

<sup>34</sup> [RM 1b tax revenue goes up in smoke. Edge Weekly, 2020.](#)

<sup>35</sup> [The Danger of Bootleg Booze. The ASEAN Post, 2020.](#)

<sup>36</sup> [Global Status Report on Alcohol and Health. World Health Organisation, 2018.](#)

COVID-19 related restrictions on the sale and distribution of alcohol have exacerbated the problem by incentivizing illicit suppliers to enter the market to meet the new demand. In the case of outright bans/dry laws, consumers are prevented from purchasing legal alternatives and pent-up demand has no other alternative than to shift entirely to illegal markets. In the worst cases, people died from consuming illicit beverages as a substitute or as a perceived remedy to COVID19. In other cases, they were driven to engage in harmful behaviours, such as alcohol looting and panic buying, all of which undermine social distancing objectives and their exposure to the COVID19 virus.<sup>37</sup>

**3. Toy and games sector:** ASEAN's young demographics and growing household incomes have contributed to the steady growth in demand for toys and games in the region. The toy and games sector has recorded healthy growth in recent years, recording an average of 10% revenue growth across ASEAN. Between 2012 and 2017, retail sales of toys and games enjoyed double-digit growth in Indonesia. In Thailand, retail sales of toys and games increased by a compounded annual growth rate of 13% between 2012 and 2017. Sales of toys and games in Malaysia rose by 15% in 2017, surpassing the growth rate of 9% in the previous two years. This growing demand for toys and games in the region, as well as the boom of e-commerce has inevitably encouraged the parallel increase in the availability of counterfeit toy products in the ASEAN market. These counterfeit and knock-offs toy products, which compete with genuine products for their share of the market, are often associated with products of low quality and are sold without undergoing the necessary safety testing and labelling requirements, have frequently be found to be dangerous and harmful for children.

**4. Automotive Parts** – The automotive industry is one that brings in millions of dollars in revenue to ASEAN countries, especially Thailand. However, the widespread penetration of counterfeit automotive parts is a growing concern. According to World Trademark Review, the estimated global economic cost of counterfeiting in the automotive industry could reach \$2.3 trillion by 2022.<sup>38</sup> In ASEAN, the amount of fake parts being made and distributed continues to rise despite efforts by national governments and industry actors. For example, BMW spare parts are imported into Thailand

## CASE STUDY –THE LEGO GROUP (COPYRIGHT INFRINGEMENTS)

*Lookalike products that infringe the LEGO Group's products are commonly found in the ASEAN region through traditional retail channels as well as online e-commerce platforms. The LEGO Group takes the protection of our IPR very seriously as it safeguards our brand and business, the work of our employees, and most importantly the promises of quality and safety that we make to our consumers.*

*In ASEAN, the LEGO Group has worked closely with IPR enforcement officials, including customs authorities, on enforcement actions, and supported officials with training. The company has also actively collaborated with online e-commerce platforms across the region to address the presence of listings of IPR infringing products. While these efforts and our cooperation with authorities and e-commerce platforms have brought us some success in the enforcement of our IPR, the efforts will need to be multiplied and accompanied by a strong IPR legal and policy environment to keep up with the pace of growth of infringing products as well as the adept and evolving nature of infringers.*

<sup>37</sup> [Prohibition, Illicit Alcohol and Lessons Learned from Lockdown. TRACIT, 2020.](#)

<sup>38</sup> [Fighting back against Fake Parts. Automotive Logistics, 2020.](#)

from China where there are some manufacturing activities of counterfeit filters and alloy wheels in Thailand. Parts which are faked in large volumes include brake pads and airbags, both of which are critical to driver and passenger safety. Moreover, consumers are usually easily duped by fakes because it is difficult to distinguish a fake automotive part from a legitimate one simply by looking at the outer appearance. This is even more the case when it comes to online transactions. Consequently, consumers often inadvertently purchase products that are sub-standard and could be unsafe.

**5. Pharmaceuticals:** Increasing amounts of falsified medicines are being produced in ASEAN, in part as a result of legitimate, and illegitimate, pharmaceutical producers based in India and China having

transferred or outsourced some manufacturing processes to Malaysia, Vietnam, Myanmar and Cambodia to avoid tougher regulations and enforcement – and to benefit from lower production costs – according to a recent report by the United Nations Office on Drugs and Crime (UNODC).<sup>39</sup> For example, The UNODC estimates that 47 percent of anti-malarial medicines tested in Southeast Asia were found to be fraudulent.<sup>40</sup> Substandard and falsified medicines are an urgent health problem for ASEAN as they may contain none, or inadequate amounts of active ingredients, or may even contain harmful ingredients. This poses a considerable threat to human lives.

**6. Agrochemicals and pesticides:** Trade in counterfeit and illegal pesticides is a growing problem in South East Asia, posing real and serious risks to the environment and sustainable agriculture. Illegal pesticides often contain chemicals which are either banned or restricted due to the risk they pose to human health and/or the environment. Additionally, counterfeit and illegal pesticides are often falsely declared to avoid international labelling requirements designed to ensure safety during transport. As a result, highly toxic, flammable or otherwise hazardous substances are transported without due regard to the safety of the staff handling the product, bystanders and the environment. The other challenge is the proximity of the South East Asia region to two of the world's largest sources of illicit pesticides – China and India.<sup>41</sup> For example, about 10 tonnes of fake pesticides were seized and a few criminals detained during a Chinese–Cambodian police operation.<sup>42</sup> In 2016, nearly 3 tonnes of smuggled pesticides were confiscated in Taiwan and 70 tonnes were confiscated in Vietnam, as a result of cooperative investigations with law enforcement.<sup>43</sup> Efforts by the private sector to engage with law enforcement and raise awareness of the issues led to a number of seizures of illicit pesticides in India, Philippines, Thailand and led to criminal convictions in Malaysia.<sup>44</sup>

## CASE STUDY - ZUELLIG PHARMA

*Zuellig Pharma have recently launched **eZTracker**, the first blockchain-based application in Asia that allows patients to trace a product's origins and authenticity by scanning a code on the packaging. With eZTracker, Zuellig Pharma and the medicine's manufacturer are immediately notified if an unregistered product is detected and can bring this up with the relevant authorities. This app is currently available in Hong Kong, Thailand and as part of our response to COVID-19, we have accelerated its launch in the Philippines to help support the country's mass vaccination programme and track flu vaccine doses.*

<sup>39</sup> [Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact, 2019](#)

<sup>40</sup> Ibid

<sup>41</sup> [United Nations Environment Programme, The Illegal Trade in Chemicals, 2020](#)

<sup>42</sup> [United Nations Environment Programme, The Illegal Trade in Chemicals, 2020](#)

<sup>43</sup> [CroLife Asia, Outreach Report 2018](#)

<sup>44</sup> [CroLife Asia, Outreach Report 2012-2013](#)

**7. Copyright piracy:** Not surprisingly, consumption of digital media has also seen a sharp rise during the COVID-19 stay-at-home and social distancing regulations. This has propelled an increase in illegally streaming content online: film piracy increased 41% in the US, 43% in the UK, 50% in Spain, 66% in Italy and 63% in India.<sup>45</sup> This impacts the interests of writers, composers, photographers, visual artists, musicians, actors, producers of video games, broadcasters, libraries, music and video platforms, and ultimately the consuming public.

## Modes of Illicit Trade | E-Commerce

ASEAN's e-commerce market has expanded considerably over the past decade, and is projected to hit US\$300 billion by 2025, according to a study by Google and Temasek.<sup>46</sup> High internet penetration rates, increasing levels of disposable income and tech-savvy populations have resulted in increasing demand, which is met by major e-commerce players including Bli Bli, Bukalapak, Carousell, Cho Tot, Lazada, Sendo, Shopee, Tiki and Tokopedia.

Notably, Bukalapak, Carousell, Shopee, Tokopedia are all listed on the 2019 USTR Notorious Markets List,<sup>47</sup> while Bukalapak and Lazada both feature on the 2018 European Commission Counterfeit and Piracy Watchlist.<sup>48</sup>

However, the e-commerce boom has given rise to the problem of fraud and illicit trade, which costs the region US\$260 million per year, according to an AppsFlyer report in 2019.<sup>49</sup> The worst affected nations are Indonesia, Philippines, Thailand and Vietnam, due to their large user bases and low awareness of fraud. For example, information services company Experian found that 19% of Thais experienced fraud across various e-commerce channels in 2018, which underscores the prevalence of the problem.<sup>50</sup>

The most common types of illicit trade activities through e-commerce channels consist of unauthorised sellers, counterfeit goods, rogue domain name registrars and false advertisements. Third-party vendors operating on e-commerce platforms are often outside the jurisdiction of law enforcement agencies, which makes it difficult to crack down on illicit trade. For example, as several of these sellers are based out of China, it is often challenging for national law enforcement in ASEAN countries to act against such sellers as it falls outside the scope of their jurisdiction. Moreover, infringer identities are hidden from brand owners, making it difficult to identify connected accounts to permanently remove sellers that trade in counterfeits as they come



<sup>45</sup> [Film and TV Piracy Surge during COVID-19 Lockdown. MUSO, 2020](#)  
<sup>46</sup> [e-Conomy Report Southeast Asia Report. Temasek, 2019.](#)  
<sup>47</sup> [2019 Review of Notorious Markets for Counterfeiting and Piracy, USTR.](#)  
<sup>48</sup> [2018 Counterfeit and Piracy Watchlist, European Commission.](#)  
<sup>49</sup> [Tackling Mobile Fraud while building an E-commerce powerhouse. AppsFlyer, 2019.](#)  
<sup>50</sup> [Digital Consumers Insights Thailand. Experian, 2018.](#)

Sidebar: [e-Conomy Report Southeast Asia Report. Temasek, 2019.](#)

back with a different name or account. This makes it challenging to conduct effective online to offline enforcement and puts brands at risk when their goods are sold by counterfeiters.

In ASEAN, while each platform is taking steps towards tackling online infringement to varying degrees, there is no unified approach across platforms to proactively tackle the infringers. As such, the time is right for ASEAN governments and platforms to amplify efforts to develop sophisticated systems in cooperation with right holders and national and regional law enforcement to tackle illicit offers online and set an example for other platforms around the world.

### Fraudulent advertising online

Fraudulent advertising is rapidly emerging as a new risk to consumers shopping online, where millions of consumers are exposed to fraudulent advertisements taking them to thousands of illegitimate e-commerce websites that defraud and/or sell counterfeit products and deceitful services. Such adverts are all over social media networks like Facebook and Instagram, where people are not expecting fraud.<sup>51</sup> These adverts are indistinguishable from legitimate adverts—except the hyperlinks divert consumers to criminal websites selling counterfeit items or fraudulent services. In 2020, TRACIT released a report that investigates this trend and shows that more than 70 major international brands were targeted by fraudulent adverts on Instagram and Facebook since 2017, some of which received up to a quarter of a million views before they were detected.<sup>52</sup> In addition to advertising fake and substandard products, there is a growing trend of deceptive advertising for fraudulent commercial and financial services, where names and images of popular personalities are used without authorisation. The lack of sufficient policies and procedures to verify users' true identity and to conduct the necessary vetting and due diligence during the onboarding process is a system weakness across multiple Internet-based platforms for social networking and shopping.

This calls for enhanced “Know Your Business Customer” protocols, starting with a more demanding registration and verification system; a more rigorous review of advertisement prior to publication; and more effective reactive measures against fraudulent advertisers found in violation of terms of service, going beyond termination of the advertising agreement and including removal of the infringer's account and blocking the advertiser from the website or platform.

## BEST PRACTICE – IPOPHL AND DIP

*The Intellectual Property Office of the Philippines (IPOPHL) is currently developing a Memorandum of Understanding (MoU) based on the 2016 EU “MoU on the sale of counterfeit goods via the internet” to which 26 global ecommerce platforms, associations, and brand owners are signatories. The proposed IPOPHL MoU will highlight the importance of e-commerce players adopting a set of uniform and simpler guidelines on receiving and processing complaints from rights owners and on taking down unscrupulous accounts, referred to as notice and take-down.[1] Similarly, Thailand's Department of Intellectual Property (DIP) is also exploring a MoU on these lines with local e-commerce platforms to strengthen online enforcement of IPRs.*

[1] Republic of the Philippines, IPOPHL, *IPOPHL helps build trust between IP rights owners and e-commerce players in anti-counterfeiting, piracy endeavor* available at <https://www.ipophil.gov.ph/news/ipophil-helps-build-trust-between-ip-rights-owners-and-e-commerce-players-in-anti-counterfeiting-piracy-endeavor/>

<sup>51</sup> TRACIT, ‘Fraudulent advertising online: emerging risks and consumer fraud’, 2020.

<sup>52</sup> TRACIT, ‘Fraudulent advertising online: emerging risks and consumer fraud’, 2020.

## ASEAN Mechanisms to Stop Illicit Trade through E-Commerce Channels

The ASEAN Agreement on Electronic Commerce, which came into force in January 2019, aimed to contribute to creating an environment of trust and confidence in the use of e-commerce in the region, and cooperate in areas of consumer protection and IPR.<sup>53</sup> Furthermore, ASEAN Directors-General of Customs intensified efforts to put in place national Authorised Economic Operators (AEOs) in all Member States in 2018 (currently, 7 out of 10 AMS are part of this World Customs Organisation strategy to support reliable traders and weed out illicit trade) and to develop an ASEAN-wide AEO Mutual Recognition Agreement. Workshops were organised by the ASEAN Regional Integration Support from the EU (ARISE) Plus in support of national customs department to discuss implementation strategies.<sup>54</sup>

Most ASEAN nations have a tax stamp system to ensure that taxes on excisable products are paid, though there are variances in the processes and technologies used due to differences in capacity. For instance, Cambodia, Philippines and Singapore have initiated the use of unique identification codes, QR codes, hidden image technology and intaglio printing for tobacco products, though the costs are mostly shouldered by the industry. There are also variations in licensing across the supply chain for tobacco; Singapore and Vietnam require almost all actors (growers, producers, exporters, wholesalers and retailers) to apply for licenses to ensure government oversight whereas Cambodia and Myanmar only require manufacturers and wholesalers to do so.<sup>55</sup>

## Modes of Illicit Trade | Free-Trade Zones

Today, ASEAN has over a 1,000 special economic zones, and Singapore is home to the world's largest transshipment hub.<sup>56</sup> Though Free Trade Zones (FTZ's) bring in trade and revenue for governments, they also reel in illicit trade due to their more relaxed oversight and regulations and limited taxes.

Illicit traders employ a variety of methods to conduct their business through FTZ's. Since FTZ's are favoured transit points for large containers and small shipments, counterfeiters break down large consignments into smaller cargoes, thus allowing them to adapt and tamper with goods and re-label them. Large international criminal syndicates make use of the reduced oversight at FTZ's to assemble counterfeits in different countries, forge documents to conceal the contents of packages and identity of manufacturers. Similarly, false invoices are issued to undervalue imported goods declared to customs, and fake retail licenses are used to enable distribution through legitimate supply chains.<sup>57</sup>

Manufacturing in FTZ's is a lucrative option for traffickers of illicit goods too, as there is limited customs oversight, compared to domestically made excisable goods. This, for instance, makes it easier

*“As ASEAN becomes more integrated economically, the countries that score poorly in illicit trade can create vulnerabilities for other countries across the region.”*

*Chris Clague, Economist Intelligence Unit  
Managing Director for Asia*

<sup>53</sup> [ASEAN Agreement on Electronic Commerce. ASEAN Storage, 2019.](#)

<sup>54</sup> [ASEAN Customs Officers join workshop on AEO Programme. ASEAN Storage, 2018. U.S Businesses Support Facilitating E-Commerce, Tackling Illicit Trade. US-ASEAN Business Council, 2019.](#)

<sup>55</sup> [Measures to Control the Tobacco Supply Chain. Southeast Asia Tobacco Control Alliance, 2019.](#)

<sup>56</sup> [Economic Zones in ASEAN. UNIDO, 2015.](#)

<sup>57</sup> [Transnational Organized Crime in Southeast Asia. UNODC, 2019.](#)

to manufacture ‘illicit white’ cigarettes, as the volume of source materials such as acetate tow and raw tobacco can be under-declared.

## Modes of Illicit Trade | Counterfeit Goods

The Trade-Related Aspects of Intellectual Property Rights (TRIPS), the most comprehensive multilateral agreement on intellectual property which all AMS are signatories, defines counterfeit goods as “any goods, including packaging, bearing without authorisation a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation.”<sup>58</sup>

A number of factors makes Southeast Asia a counterfeit goods hub, but mainly its geographical proximity to China, which is the largest manufacturer and consumer of both counterfeit and legitimate goods.<sup>59</sup> Within ASEAN, Malaysia, Thailand and Vietnam have high levels of manufacturing and repackaging activity, while Singapore serves as the primary origin and transit hub to international markets.<sup>60</sup> The market for counterfeit goods does not just consist of luxury brands, but ranges from pharmaceuticals, fast moving consumer goods, apparel and footwear, food products, alcohol, software, pesticides and seeds, chemicals, automotive parts and cigarettes, to name but a few. Excluding medicines, which is a huge market of its own, the counterfeits market in Southeast Asia ranges from US\$33.8- US\$ 35.9 billion annually.<sup>61</sup>

Social media advertising and e-commerce coupled with small-parcel postal services and FTZ’s have helped create the perfect ecosystem to lower the risk and increase the profitability of this enterprise.<sup>62</sup> Furthermore, brands themselves find it difficult to distinguish counterfeit versions of their goods because of tampering and removal of lot codes (batch numbers), which prevent them from conducting track and trace. Thus, there is an urgent need to make lot codes mandatory and enforce stricter penalties on suppliers with defaced or removed lot codes.

Table 3: Percentage of Illicit Trade Items Exported to Europe using Postal and Courier Services as Mode of Transport (Average 2011-2013).<sup>63</sup>

			
<b>Cambodia</b>	Singapore	Thailand	Vietnam
<b>63.6%</b>	86.6%	68.0%	27%

## Copyright and Trademark Infringement in ASEAN

Trademark regimes in ASEAN generally adopt the ‘first-to-file’ system, which grants exclusive trademarks to the first party to complete registration within a particular country. Since there is not a centralised regional system for trademark registration, companies are required to register in each

<sup>58</sup> [Overview of TRIPS Agreement. WTO, 1995.](#)

<sup>59</sup> [China Counterfeits Affecting Neighbouring Countries in South East Asia, 2016.](#)

<sup>60</sup> [Mapping the Real Routes of Trade in Fake Goods. OECD, 2017.](#)

<sup>61</sup> [Transnational Organized Crime in Southeast Asia. UNODC, 2019.](#)

<sup>62</sup> [Misuse of Small Parcels for Trade in Counterfeit Goods. OECD, 2017.](#)

<sup>63</sup> [Misuse of Small Parcels for Trade in Counterfeit Goods. OECD, 2017.](#)

local market to prevent ‘trademark squatting’. The widely prevalent problem of trademark infringement is rendered even more difficult to address due to the lengthy and costly redress processes. At present, the onus remains on companies to identify counterfeiters and navigate the legal system to put a stop to it, while also embarking on public awareness campaigns to preserve their reputation.<sup>64</sup> There is also a lack of effective deterrent sanctions for these crimes making it further attractive and feasible for counterfeiters to continue operations. Currently, destruction of infringing goods is possible through non-litigation options such as cease-and-desist letters, but monetary damages and public apologies remain hard to obtain.

However, implementing the goals laid out in the ASEAN IP Rights Action Plan 2016-2025 may ease the burden on companies through the development of information materials on anti-piracy and creation of linkages between national IP Offices and judiciary systems to expedite cases.<sup>65</sup> At present, all AMS except Myanmar are signed onto the Madrid Protocol - an international treaty which provides streamlined process for protecting trademarks. Additionally, Malaysia’s new trademark law in 2019 included different classes of non-conventional registrations such as 3D, single colour and shape marks, on par with international best-practices. Importantly, the law also lowers the threshold for infringement; previously brands could only sue for infringement if there was a ‘direct match with registered goods and services’, but the amended law provides grounds for infringement even in cases of similar goods.<sup>66</sup> These developments bode well for the future of IPR protection in ASEAN, and the crackdown on lookalikes - ‘copycat’ products, as well as counterfeits.

### Falsified Medicines – A Parallel Pandemic

The counterfeit medicine trade in ASEAN is one of the region’s most dangerous illicit trade activities due to its difficulty to trace, health risks posed to consumers and conflation with narcotics syndicates. This issue has increased in urgency given the impact of the pandemic on healthcare systems and supply chains. Online medicine vendors make use of unauthorised and unregulated online pharmacies, rogue domain name registrars, electronic payment systems and delivery services to sell spurious, falsely labelled or ineffective/poisonous medical ingredients at various levels of the supply chain. The problem is so prevalent that over half of the 361 IPR infringement cases in Indonesia in 2018 involved pharmaceuticals, despite increased scrutiny of websites selling counterfeit medicines in the same period. According to data from WHO, about 10% of pharmaceuticals in lower and upper-middle income countries, such as ASEAN, are falsified. Thus, based off the total health expenditure in the region, it can be estimated that the market of falsified medicines is worth US\$2.6 billion per year.<sup>67</sup>

The primary actors in this operation are either unlicensed manufacturers or licensed manufacturers who produce falsified pharmaceuticals on the side of legitimate activity. There are different methods of producing falsified medicines, such as cutting costs through diluting products with cheaper substitutes, altering expiration dates, or departing from due procedure in the mixing and treatment of chemicals. Subcontractors, who are often unaware of the illegal nature of the activity, are then recruited to carry out the various subsequent processes of logistics, marketing, packaging and distribution. Corruption too, plays a significant role in the trade, as evidenced by the many cases of pharmaceutical company executives and healthcare professionals being arrested in relation to the sale of counterfeit medicines. For example, in 2017, six former executives of a private pharmaceutical company in Vietnam were caught forging paperwork to distribute fake cancer drugs to unsuspecting

<sup>64</sup> [IP Considerations for the Automotive Industry in Southeast Asia. European Commission, 2017.](#)

<sup>65</sup> [ASEAN IP Rights Action Plan 2016-2025. ASEAN Storage, 2016.](#)

<sup>66</sup> Strengthening IP Rights in ASEAN. World IP Review, 2019.

<sup>67</sup> [Transnational Organized Crime in Southeast Asia. UNODC, 2019.](#)

customers, which they claimed was manufactured by a non-existent company in Canada.<sup>68</sup> Between 2013 and 2017, ASEAN caught 673 incidents of counterfeiting and illegal diversion of medicines, out of which 193 occurred in Philippines, 110 in Thailand and 93 in Indonesia, according to data from the Pharmaceutical Security Institute. However, the widespread presence of e-commerce and small-package postal services makes cracking down on this business harder than ever before.

### ASEAN Measures to Counter the Falsified Medicines Trade

1. **ASEAN Action Plan** – In 2019, the ASEAN Health Ministers vowed to finalise the ASEAN Action Plan,<sup>69</sup> which is being developed with support from the World Health Organisation, and aims to combat falsified medicines through strengthening national regulatory mechanisms and coordinating on the detection and elimination of the same. Collaboration with other stakeholders is also in the works, such as the Asia-Europe Summit held in 2020.<sup>70</sup>
2. **UNODC** has published a report entitled, “Guide to Good Legislative Practices on Combating Falsified Medical Product-Related Crime.”<sup>71</sup> To support its recommendations, the Guide includes case studies from countries around the world, including Cambodia and Brunei from ASEAN. It is intended to support States in enacting or strengthening domestic legislation to combat falsified medical product-related crime and, in so doing, contributing to the protection of public health. States may use this Guide as a practical tool as they draft, amend or review relevant national legislation within their constitutional and legislative framework.<sup>72</sup>
3. **Collaborating with Private Stakeholders** – Many e-commerce platforms have been exploited by sellers as a means to sell expired or ineffective goods. Thus, governments have been collaborating with companies such as Lazada and Shopee to identify and remove such sellers. For example, the Health Sciences Authority of Singapore worked with these companies to remove over 2,500 listings and issue warnings to individual sellers for making false or misleading claims in March 2020.<sup>73</sup> An alternative strategy, adopted by the Philippines, was to only allow e-commerce platforms with a special license to sell pharmaceuticals to do so.<sup>74</sup> Future collaboration between brands, e-commerce platforms and government authorities would be beneficial for identifying more solutions.
4. **Expanding legitimate manufacturing** – The goals of the ASEAN Post-2015 Health Development Agenda, and the ASEAN Sociocultural Blueprint 2025 include development of the pharmaceutical and health ecosystem of the region. This consists of improving chemical manufacturing capacity, quality control standards, and regulation enforcement, such that counterfeiters find it harder to operate within the improved infrastructure.

### Modes of Illicit Trade | Smuggling

Smuggling is a rampant problem in ASEAN, due to the many porous shared borders and discrepancies in excise tax policies. The most frequently smuggled products are tobacco and alcohol, both of which are heavily taxed by all ASEAN nations. The issue of illicit whites i.e. legally manufactured cigarettes that are smuggled into different jurisdictions without paying due taxes is particularly rampant, especially in Malaysia. Smugglers employ a variety of methods to move goods across borders such as:

---

<sup>68</sup> [Fake Medicine Giving ASEAN a Headache. The ASEAN Post, 2019.](#)

<sup>69</sup> [Joint Statement – 14<sup>th</sup> ASEAN Health Ministers Meeting. ASEAN Storage, 2019.](#)

<sup>70</sup> [Joint Statement – 14<sup>th</sup> ASEAN Health Ministers Meeting. ASEAN Storage, 2019.](#)

<sup>71</sup> [Guide to Good Legislative Practices on Combating Falsified Medical Product-Related Crime. UNODC, 2019.](#)

<sup>72</sup> [UNODC launches Guide to Combat Crime related to Falsified Medical Products. UNODC, 2019](#)

<sup>73</sup> [Press Releases. Health Science Authority, 2020.](#)

<sup>74</sup> [FDA Orders Shopee, Lazada to stop online sale of medicines. Rappler, 2019.](#)

1. Misdescription of the contents of an import or export consignment that contains taxable items.
2. Moving containers through multiple ports, especially FTZ's to repack and divert as required.
3. Unlicensed production facilities producing undeclared goods for distribution into legitimate markets, such as illicit white cigarettes.
4. Non-containerised shipments moving undeclared across land, sea borders.<sup>75</sup>
5. Round trip 'exports' originating in the region to outside the region, and then returning the unopened containers to the original destination.

### Under Declaration

Under declaration is also another method of illicit trade that is rampant in ASEAN, particularly in Indonesia's illicit cigarette trade. Complex tax regime of Multitiered excise system (10 tiers) based on type of product, production scale, and price range with high excise burden gap between the tier incentivize manufacturers to under declare their appropriate tax level as means of tax avoidance. The system that currently relies on 10 tiers, each with a different excise stamp specification favours illicit cigarette activity because of the numerous ways in which excise stamps and cigarette packs may be misappropriated for the illegal trade. Thus, for example, tobacco producers in a lower tier who pay lower excise tariffs can resell used excise stamps or affix their excise stamps to higher-tiered cigarettes at higher prices.<sup>76</sup> There are also reported cases where big scale manufacturers purposely create small new manufacturers in order to get lower excise tax.<sup>77</sup> Based on Indonesia' Ministry of Finance definitions, there are six types of illegal domestic cigarettes in Indonesia, with 2 of them are means of illicit trade in under declaration method (number 4 and 5):

1. Unpacked Cigarettes,
2. Cigarettes Packed Without Excise Stamps
3. Cigarettes Packed with Forged or Otherwise Counterfeit Excise Stamps
4. Cigarettes Packed with Excise Stamps with Incorrect Business Excise Identification Numbers
5. Cigarettes Packed with Wrong Designations, And
6. Cigarettes Packed with Used Excise Stamps.<sup>78</sup>

The business of smuggling and under declaration are very closely interlinked with excise tax policies in the region and trade facilitation. Though the term 'excise tax' is not used by all members of ASEAN, the common definition used by OECD is "those taxes that are levied on particular products, or on a limited range of products, imposed at any stage of production or distribution and are usually assessed by reference to the weight or strength or quantity of the product, but sometimes by reference to the value."<sup>79</sup> Going by that definition, all AMS have versions of the same such as the "Special Consumption Tax" in Vietnam, the "Commercial Tax" in Myanmar, the "Specific Tax on Certain Merchandises and Services" in Cambodia, and the "Liquor Tax" and "Tobacco Tax" in Thailand.

<sup>75</sup> [Reducing the Illicit Trade in Tobacco in ASEAN. World Customs Journal, 2013.](#)

<sup>76</sup> [The government is not serious about eradicating illegal cigarettes. Bisnis, 2011.](#)

<sup>77</sup> [The government is not serious about eradicating illegal cigarettes. Bisnis, 2011.](#)

<sup>78</sup> [Confronting Illicit Tobacco Trade. World Bank, 2019.](#)

<sup>79</sup> Ibid

While these taxes are a necessary source of revenue for governments, they are only useful when implemented within an ecosystem of transparent customs procedures, effective monitoring, appropriate and simple tax structures and coherent long-term policies. Otherwise, the taxes merely serve to incentivise smugglers and under declaration as means of tax avoidance, at the cost of legitimate traders who adhere to the stipulated procedures, due to the potentially extremely high profits that can be made.

For tobacco excise tax structures, international institutions such as the IMF, the World Bank, the European Commission and the WHO recommend a simple, single uniform tax excise structure to ease tax administration, reduce tax avoidance and evasion while enhancing government revenues. It is also recommended to use a specific excise tax system over an ad valorem excise system. This is because the former is a simpler and more efficient way of meeting public health and fiscal objectives. However, in ASEAN, Cambodia and Vietnam have adopted purely ad valorem systems, while Indonesia's multi-tiered specific tax system is also like the ad valorem system. Only Philippines, Malaysia and Singapore tax all tobacco products in a comparable manner, so as to reduce the price difference between various product categories.<sup>80</sup>

The example of the Malaysia tobacco industry, however, also illustrates the importance of tax policies. In 2015, Malaysia drastically increased excise tax on cigarettes by 40% and there was a subsequent spike in illicit traded cigarettes, which is now 66% of total consumption in the country.<sup>81</sup> Such drastic tax increases, especially during the current COVID-19 environment of financial uncertainty and supply chain disruptions for the legitimate industry can further push consumption from licit to illicit channels, thereby impacting tax revenue collections as well as public health objectives. On the contrary, coherent long-term policies that focus on regular tax adjustments instead of drastic increases can effectively achieve both public health and fiscal objectives.

In the Philippines, a major overhaul of the tobacco tax system in 2012 and tax increases in 2017 and 2019 led to a significant increase in tobacco excise tax collections. Prices of cigarettes increased substantially on the back of these tax changes, leading to a demand for cheaper illegal products which have become a serious concern for Government. However, initiatives by impacted parties to increase awareness of these developments and the willingness of relevant authorities to intensify their enforcement efforts are helping contain this illicit tobacco trade at reasonable levels. And lawmakers are also considering giving more powers to enforcement agencies and increasing penalties for illegal traders to further curtail the issue.

Among ASEAN countries, only Indonesia, Lao PDR and Philippines have long-term policies on their tobacco taxation structure with regular monitoring and adjustments<sup>82</sup>. However, the implementation of such long-term policies is inconsistent among ASEAN members. In the case of Philippines, the World Bank acknowledges that the 2012 Philippines Sin Tax Law brought about long-overdue reforms to tobacco and alcohol taxation.<sup>83</sup> This has not been put on hold as one of the primary objectives promulgated by the Ministry of Finance representatives for simplifying the structure is to reduce incentives for illicit trade ( e.g., through the misclassification and under-declaration of Excise Tax liabilities by domestic manufacturers).

Thus, there is a need to evaluate excise tax regimes with greater scrutiny to understand the relationship between tax regimes and illicit trade and take steps to prevent the same. A 2019 study

---

<sup>80</sup> [Implementation of the WHO Framework of Convention on Tobacco Control in ASEAN. SEATCA Tobacco Tax Index, 2019.](#)

<sup>81</sup> [RM 1B tax revenue goes up in smoke. Edge Weekly, 2020.](#)

<sup>82</sup> [Implementation of the WHO Framework of Convention on Tobacco Control in ASEAN. SEATCA Tobacco Tax Index, 2019.](#)

<sup>83</sup> [Sin Tax Reform in the Philippines. World Bank, 2016.](#)

by TRACIT, shared with UNCTAD Member States, concludes that tobacco tax policies can be limited if they are not combined with an interconnected policy response to illicit trade<sup>84</sup>.

The business of smuggling is very closely interlinked with excise tax policies in the region and trade facilitation. Though the term ‘excise tax’ is not used by all members of ASEAN, the common definition used by OECD is “those taxes that are levied on particular products, or on a limited range of products, imposed at any stage of production or distribution and are usually assessed by reference to the weight or strength or quantity of the product, but sometimes by reference to the value.”<sup>85</sup> Going by that definition, all AMS have versions of the same such as the “Special Consumption Tax” in Vietnam, the “Commercial Tax” in Myanmar, the “Specific Tax on Certain Merchandises and Services” in Cambodia, and the “Liquor Tax” and “Tobacco Tax” in Thailand.

While these taxes are a necessary source of revenue for governments, they are only useful when implemented within an ecosystem of transparent customs procedures, effective monitoring, appropriate tax structures and coherent long-term policies. Otherwise, the taxes merely serve to incentivise smugglers, at the cost of legitimate traders who adhere to the stipulated procedures, due to the potentially very high profits that can be made.

For tobacco excise tax structures, international institutions such as the IMF, the World Bank, the European Commission and the WHO recommend a specific excise tax system over an ad valorem excise tax system, as the former is a simpler and more efficient way of meeting public health and fiscal objectives. However, in ASEAN, Cambodia and Vietnam have adopted purely ad valorem systems, while Indonesia’s multi-tiered specific tax system is also similar to the ad valorem system. Only Philippines, Malaysia and Singapore tax all tobacco products in a comparable manner, so as to

## CASE STUDY - APISWA

*The Philippines changed alcohol taxation in 2012 to boost revenues for health care and discourage alcohol-related harm. Last January 2020, the excise tax was hiked, including a steady increase from 2021-onwards.*

*Inherently regressive in nature, increasing “sin tax” on alcohol did not achieve the twin objectives. Worse, it made illicit alcohol more attractive. The WHO reported that consumption of illicit alcohol accounted for 32% of the total in 2016, up from 17% in 2008[1], representing a PHP23 billion revenue loss[2]. Further, unrecorded alcohol doesn’t adhere to any regulations related to food safety, labelling, declaration and accountability, price, taxation and other commercial restrictions.*

*APISWA’s engagement with government stakeholders came to a conclusion that the best outcome was a marginal tax hike, as a surge in “sin tax” would widen the price gap between recorded and unrecorded alcohol and exacerbate the proliferation of illicit liquor and the dangers posed by this.*

[1] “Global status report on alcohol and health 2014” World Health Organisation. Available at: <  
<http://apps.who.int/iris/bitstream/handle/10665/112736/9789240692763-eng.pdf;jsessionid=ECBFA4B7F709CEF590A1A75A13EB7F21?sequence=1>>

[2] “Global status report on alcohol and health 2018” World Health Organisation. Available at: <  
<http://apps.who.int/iris/bitstream/handle/10665/274603/9789241565639-eng.pdf?ua=1>>

<sup>84</sup> Mapping the Impact of Illicit Trade on the Sustainable Development Goals. Tracit, 2019.

<sup>85</sup> Ibid

reduce the price difference between various product categories.<sup>86</sup>

The example of the Malaysia tobacco industry, however, also illustrates the importance of tax policies. In 2015, Malaysia drastically increased excise tax on cigarettes by 40% and there was a subsequent spike in illicit traded cigarettes, which is now 66% of total consumption in the country.<sup>87</sup> Such drastic tax increases, especially during the current COVID-19 environment of financial uncertainty and supply chain disruptions for the legitimate industry can further push consumption from licit to illicit channels, thereby impacting tax revenue collections as well as public health objectives. On the contrary, coherent long-term policies that focus on regular tax adjustments instead of drastic increases can effectively achieve both public health and fiscal objectives.

In the Philippines, a major overhaul of the tobacco tax system in 2012 and tax increases in 2017 and 2019 led to a significant increase in tobacco excise tax collections. Prices of cigarettes increased substantially on the back of these tax changes, leading to a demand for cheaper illegal products which have become a serious concern for Government. However, initiatives by impacted parties to increase awareness of these developments and the willingness of relevant authorities to intensify their enforcement efforts are helping contain this illicit tobacco trade at reasonable levels. And lawmakers are also considering giving more powers to enforcement agencies and increasing penalties for illegal traders to further curtail the issue.

Among ASEAN countries, only Indonesia, Lao PDR and Philippines have long-term policies on their tobacco taxation structure with regular monitoring and adjustments<sup>88</sup>. However, the implementation of such long-term policies is inconsistent among ASEAN members. In the case of Philippines, the World Bank acknowledges that the 2012 Philippines Sin Tax Law brought about long-overdue reforms to tobacco and alcohol taxation<sup>89</sup>, while in the case of Indonesia, the World Bank mentions that an important reform entails reviving and strengthening a tobacco simplification roadmap of 2018, that has been put on hold<sup>90</sup>.

With the case of alcohol, onerous regulations whether in the form of bans, limiting availability and sales or high excise tax regimes can also motivate illicit traders to smuggle cheaper illicit varieties across borders to circumvent such measures. In ASEAN, smuggling across border and counterfeit alcoholic beverages are among major concerns in the development of alcohol taxation policy.<sup>91</sup> For example, in 2016, Myanmar's government lost US\$ 50 million in tax to beer smugglers with up to 30% of all beer sold in the country illegally imported.<sup>92</sup>

Thus, there is a need to evaluate excise tax regimes with greater scrutiny to understand the relationship between tax regimes and illicit trade and take steps to prevent the same. Consequently, proactive monitoring, evaluation and countervailing measures should be undertaken when considering tax reforms to ensure that they reach the desired revenue, societal and governance outcomes, as well as mitigate the risk of adverse outcomes.<sup>93</sup>

### ASEAN Measures to Facilitate Legitimate Trade

ASEAN has made some limited progress in removing trade barriers, since the declaration of the ASEAN Economic Community in 2015 and signing the ASEAN Trade in Goods Agreement (ATIGA) in 2009. As

---

<sup>86</sup> [Implementation of the WHO Framework of Convention on Tobacco Control in ASEAN. SEATCA Tobacco Tax Index, 2019.](#)

<sup>87</sup> [RM 1B tax revenue goes up in smoke. Edge Weekly, 2020.](#)

<sup>88</sup> [Implementation of the WHO Framework of Convention on Tobacco Control in ASEAN. SEATCA Tobacco Tax Index, 2019.](#)

<sup>89</sup> [Sin Tax Reform in the Philippines. World Bank, 2016.](#)

<sup>90</sup> [Indonesia Public Expenditure Review: Spending for Better Results. World Bank, 2020.](#)

<sup>91</sup> [Alcohol Policy in the WHO South-East Asia Region: A Report. WHO, 2017.](#)

<sup>92</sup> [Alcoholic Drinks in Myanmar. Euromonitor International, 2018.](#)

<sup>93</sup> [The Global Illicit Trade Environment Index: TRACIT Recommendations to Combat Illicit Trade. TRACIT, 2018](#)

ASEAN edges slowly towards deeper economic integration and seeks to meet its aim of harmonising standards, it makes processes simpler and more transparent, therefore exploitable opportunities are taken away from smugglers, thus allowing legitimate trade to enjoy these channels while weeding out illicit trade. Key achievements include:

1. **Liberalising tariffs under the ATIGA** - As of May 2019, 99.3% of all tariffs have been eliminated by the ASEAN-6 (e.g. Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand), while the corresponding figure for Cambodia, Lao PDR, Myanmar, and Viet Nam (CLMV) is 97.7%. Thus, collectively, ASEAN has eliminated 98.6% of the total number of tariff lines. However, since 2015 non-tariff measures (NTMs) have increased by 60% to almost 9,500.<sup>94</sup> These often inconsistent and non-transparent NTMs provide legal loopholes for smugglers to exploit.
2. **ASEAN Harmonised Tariff Nomenclature** - To ease the utilisation of the ATIGA, ASEAN has also introduced the ASEAN Harmonised Tariff Nomenclature (AHTN) in 2017, which allows all AMS to use the same tariff nomenclature up to eight-digit level, two-digits beyond the international Harmonised System (HS) Code. The ATIGA Tariff Reduction Schedules (TRSs) in AHTN 2017 have been endorsed for all AMS, except Viet Nam, by the AFTA Council.
3. **Self-Certification Scheme for Certificates of Origin** - To further facilitate intra-ASEAN trade, a 'self-certification' scheme has been initiated for Certificates of Origin (CoO). This mechanism allows certified exporters to self-certify the origin of their exports to enjoy preferential tariffs under the ATIGA. The Protocol to Amend the ATIGA to allow for the AWSC Scheme was signed by all AMS in January 2019, followed by the endorsement by the ASEAN Economic Ministers at the 33rd AEM-AFTA Council Meeting of the amended ATIGA Operational Certification Procedure in September 2019. The scheme went live in September 2020. By prioritising legitimate exporters, this scheme is able to disincentive illicit traders by creating extra barriers for them compared to legitimate traders.
4. **ASEAN Customs Transit System (ACTS)** A joint effort between Customs and Land Transport Authorities, ACTS enables free movement of trucked goods between participating countries without the need for a customs declaration at each border or a change of vehicle. Under this system, duties and taxes can be covered by a single guarantee, and this applies for all countries involved in the transit operation. With support from the ASEAN-EU's ASEAN Regional Integration Support from the EU Plus (ARISE Plus), ACTS has now gone live and is operational, linking both the North-South Corridor (Malaysia, Singapore, and Thailand) and the East-West Corridor (Cambodia, Lao PDR, and Viet Nam).<sup>95</sup>

---

<sup>94</sup> [ASEAN Competitiveness & Trade Facilitation: A Time for Action, 2020.](#)

<sup>95</sup> [ASEAN Integration Report. ASEAN Storage, 2019.](#)

	<b>Stakeholder</b>	<b>Recommendation</b>
<b>E-Commerce</b>	Businesses/Brand Owners	<p>Major online platforms to promote online to offline enforcement with rights holders, adopt common risk management and reporting criteria. Increase collaboration between brand owners and postal operators to adopt common risk management and reporting criteria, including indication of blacklisted distributors, establishment of points of contact and checklists for spotting illicit products, inbuilt into the digital systems.</p> <p>Promote adoption of better due diligence processes for online intermediaries including e-commerce and social media platforms that make it imperative to know who they are working with when they accept paid advertising and encourage implementation of effective reactive and deterrent measures against fraudulent advertisers.</p>
	National Governments	<p>As a starting point, ensure that all platforms have: a transparent policies and processes to deal with illicit goods including counterfeits listed on their sites; adequate resources allocated to deal with this issue; and clear points of contact. At a very minimum, ensure that these platforms have an effective notice and take down mechanism and more transparency on seller information to share with right holders to pursue further action against IPR infringing sellers.</p> <p>Develop national government frameworks for governing advertising and promotion of products, compatible with OECD guidelines.</p> <p>Establish regional common standards in customs clearance for low value packages, through the ASEAN Technical Sub-Working Group on Classification.</p> <p>Encourage Philippines, Lao PDR and Myanmar to adopt national Authorised Economic Operator (AEO) programmes, and ASEAN Mutual Recognition Agreements on AEO for trade facilitation.</p> <p>With the assistance of local IP offices, identify gaps in the measures enforced by platforms to deal with illicit goods; and facilitate a dialogue between platforms and brand owners to remedy such gaps.</p>
	ASEAN Secretariat	<p>Include robust and specific coverage of IPR protection and anti-illicit trade measures in the existing ASEAN E-Commerce Agreement.</p> <p>Create a mechanism that will allow for sharing of information and best practices between brand owners, platforms and law enforcement at a national and regional level to prevent illicit actors from misusing online platforms.</p>

		<p>Accelerate efforts to establish alternative dispute resolution mechanisms such as online dispute resolution systems to facilitate disputes including on domain names and claims over e-commerce transactions, giving special attention to low-value cross border transactions, as addressed under the ASEAN Work Programme on E-Commerce.</p> <p>Develop a clear framework of recommendations for platforms as a partner document to the IPR Action Plan and the IPR Enforcement Action Plan, as these documents currently do not sufficiently cover the digital environment. Such a framework should be built in consultation with the private sector.</p>
<b>Counterfeit Goods / Trafficking</b>	Customs Regulators	<p>Develop a comprehensive framework pertaining to the implementation and protection of lot codes and enforcement against tampered and decoded codes of any traceable element created by the brand owner. Define serialisation and Track and Trace laws, and mandate serialization of products (GS1 2D DataMatrix barcode on every product including Serialisation, GTIN, Batch Number and Expiry Date) and full track &amp; trace via scanning of all products during the End-2-End Supply Chain.</p> <p>Empower customs authorities to take enforcement action—acting ex officio or at the request of legal cargo owners—to seize or suspend the release of counterfeit products when they are imported, exported, in-transit and in all situations where the goods are under customs supervision including in free trade zones or other zones with special economic and tax regimes as well as bonded warehouses.</p> <p>Move towards a comprehensive digital environment for customs and border clearance, as automated systems reduce human touch points in the clearance process and thus lessen the opportunities for improprieties.</p> <p>Streamline enforcement process on review requirements for bond payment and facilitate remote product verification for smoother cross-border movement of goods.</p>
	National Governments	<p>Amend national laws and regulations (where necessary), to strengthen enforcement efforts and ensure the prosecution, conviction and proportionate and dissuasive sentencing of criminals. Further, ensure that criminal penalties for trading in counterfeits reflect the magnitude of the crime, including jail time and the imposition of higher penalties for illegal activities that have health and safety repercussions. Penalties should be sufficiently high to remove the monetary incentive of traffickers.</p>
	ASEAN Secretariat	<p>Form regional Public-Private working group for Illicit Trade to establish communication, share market intelligence and investigative techniques with customs authorities.</p> <p>Organize capacity-building seminars, workshops, and consultative meetings for various stakeholders and public authorities involved in IPR</p>

		<p>enforcement through the ASEAN Working Group on IP Cooperation (AWGIPC).</p> <p>Increase efforts of the ASEAN IP Training Platform to assist MSME's in learning about the protection and commercialisation of their IP's and efforts to accede to international treaties such as the Madrid Protocol, Hague Agreement and Patent Cooperation Treaty.</p>
<b>Free Trade Zone Governance</b>	Customs Regulators	<p>Form comprehensive and specific definitions of permissible activity in FTZ's with implementation policies and periodic checks and audits of the same.</p> <p>Incorporate digital solutions to ease reporting requirements, track and trace requirements and flag exceptions within FTZ's.</p> <p>Ensure authorities have access to aggregated statistical data on goods entering and exiting the FTZ with correct tariff classification and owner information.</p> <p>Empower authorities to prohibit persons who do not provide necessary assurance of compliance with customs provisions, and persons convicted of illegal economic or financial activities from carrying out activities in FTZ's.</p> <p>Ensure stringent supervision of perimeter and entry and exit points of FTZ's.</p> <p>Adopt Annex D of the Revised Kyoto Convention and follow the guidelines addressed therein on explicit Customs jurisdiction over FTZs, rules on origin of goods, and Customs transit and transshipment procedures.</p> <p>Implement the OECD's Recommendation of the Council on Countering Illicit Trade: Enhancing Transparency in Free Trade Zones.</p> <p>Implement OECD's voluntary Code of Conduct for Clean Free Trade and participate in peer learning and forums to resolve implementation issues.</p>
	ASEAN Secretariat	<p>Extend existing national AEO Programmes to include specific IPR protection standards and Port Operators to deter illegal traders.</p> <p>Engage in capacity building exercises in partnership with industry leaders in cargo and vessel inspection services, share information on best practices in management of FTZ's.</p> <p>Improve Customs to Customs cooperation through Customs Mutual Assistance Agreements and similar information sharing and disclosure gateways.</p>
<b>Taxation Policies</b>	National Governments	<p>Consider the impact of price differentials among duty-paid products of similar nature, as well as between duty-paid and non-duty paid products as an incentive for parallel importation, when designing taxation structures.</p>

		<p>Simplify the administrative requirements of the taxation process, through labelling and documentation standards, so as to reduce incentives for tax avoidance.</p> <p>Adopt coherent long-term policies that focus on regular tax adjustments instead of drastic increases, especially during the current COVID-19 environment of financial uncertainty and supply chain disruptions for the licit industry.</p> <p>Include proactive monitoring, evaluation and countervailing measures when considering tax reforms to ensure that they reach the desired revenue, societal and governance outcomes, as well as mitigate the risk of adverse outcomes.</p> <p>Adopt simple, single tier specific tax structures, taking into account various demand-related factors including overall consumption, price, income levels and the ensuing affordability of products.</p>
--	--	---

## ANNEX

TRACIT 5-point plan:

### Strengthen law enforcement efforts

Criminalising illicit trade with deterrent penalties and laws is only as effective as the actions taken by the law enforcement community. Effective enforcement depends on better coordination and the availability of adequate funding and training sufficient to address new challenges and patterns. Governments also must respond to the magnitude of the problem by not only amending national laws and regulations, but also: (i) introducing legislation that targets various forms of illicit trade issues, such as the recent efforts of the US government to fight against illicit trade in wildlife<sup>96</sup> and tobacco;<sup>97</sup> (ii) setting deterrent penalties; and (iii) enforcing a zero-tolerance enforcement regime. Governments must also adapt their enforcement legislation and court procedures to a reality in which illicit operators covertly utilise a range of modern communications technologies and adeptly manipulate privacy laws to structure their international operations to remain undetected or to increase the costs and difficulty of detection.

- *Amend national laws and regulations (where necessary), to strengthen enforcement efforts and ensure the prosecution, conviction, and proportionate and dissuasive sentencing of criminals.*
- *Ensure that criminal penalties for illicit trade reflect the magnitude of the crime, including jail time and the imposition of higher penalties for illegal activities especially for those crimes that have health and safety repercussions. Penalties should be sufficiently high to remove the monetary incentive of traffickers.*
- *Ensure that law enforcement officials are regularly trained on illicit trade-related laws and regulations, evidence collection and preservation and assembling case files.*
- *Ensure that law enforcement teams are well-funded, fully staffed and properly supplied with equipment necessary to detect illicit trade, including illicit online trade.*
- *Ensure that law enforcement and judicial procedures sufficiently address cases involving electronic evidence and online activities.*

### Strengthen the customs environment

Customs and other border control agencies have a key role in combating illicit trade at the border, with officers on the front-line conducting inspections and detecting and seizing illicit goods. A strong, clean, customs environment contributes strongly to combating illicit trade. Conversely, corruption at the border is a significant non-tariff barrier to trade that hampers economic growth and trade performance. Recent figures from the OECD show that improving integrity policies in customs alone has the potential to reduce trade costs by 0.5% and 1.1%.<sup>98</sup> If customs' role is compromised, the system fails and enables opportunities for illegal trade, criminal activity, illegal financial flows and trafficking in products and persons.

Promoting a better customs environment through enhanced public-private dialogue in cross-border processes can create significant benefits for society, as well as the public and private sectors.

---

<sup>96</sup> [Executive Order – Combating Wildlife Trafficking. The White House, 2013.](#)

<sup>97</sup> [Senate's 2018 National Defense Authorization Act, 2018.](#)

<sup>98</sup> [Integrity in customs: taking stock of good practices. Paris: OECD Publishing. OECD, 2017.](#)

- *Empower customs authorities to take enforcement action—acting ex officio or at the request of legal cargo owners—to seize or suspend the release of illicit products and those suspected of infringing laws when they are imported, exported, in-transit and in all situations where the goods are under customs supervision including in free trade zones or other zones with special economic and tax regimes as well as bonded warehouses.*
- *Implement a digitised Customs Recordal System for IPRs so that key information can be easily accessed by enforcement officers.*
- *Require that illegal traders be primarily held liable for storage and destruction costs.*
- *Recognise the role played by intermediaries and incentivize cooperation of all parties involved.*
- *Strengthen and expedite adjudication of counterfeiting and piracy cases presented to authorities.*
- *Promote the adoption of sound, intelligence-based risk-management approaches for the detection of counterfeit and pirated goods by customs agencies taking into account, in particular, the organisational framework and processes outlined in the World Customs Organization’s (WCO) Customs Risk Management Compendium.*
- *Move towards a comprehensive digital environment for border clearance, as automated systems reduce human touch points and thus lessen the opportunities for improprieties (i.e., bribes). Furthermore, implement the “Ten Principles” of the WCO Revised Arusha Declaration on Integrity in Customs and the G20 High Level Principles on Countering Corruption in Customs.*
- *Ensure balance in implementation of the World Trade Organization (WTO) Trade Facilitation Agreement to ensure that “quick and easy processing” does not obviate long-standing customs and tariff systems necessary to control illegal trading.*
- *Provide for criminal penalties to be applied in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale, including imprisonment and/or monetary fines sufficient to provide a deterrent, consistent with the level of penalties applied for crimes of a corresponding gravity. Measures should include the seizure, forfeiture, and destruction of the infringing goods and of any materials used in the commission of the offence.*
- *Utilize the full spectrum of investigative techniques available to disrupt such groups.*

### Promote a clean digital environment

As noted, online platforms are increasingly vulnerable to exploitation and misuse by illicit traders or otherwise illegitimate operators. Moreover, the spectrum of illicit trade comprises illicit digital trade, including cybercrimes (like hacking, denial of service attacks, spam, copyright piracy and child pornography) and money-laundering in the financial system. Copyright piracy and live events are significant forms of cybercrime that require increased attention and action by governments to deter these illegal activities more effectively.

- *Examine the corporate responsibility and supply chain compliance role for online marketplaces and social media platforms in preventing illicit trade.*
- *Increase transparency requirements for digital supply chains, with a special focus on online marketplaces and social media platforms, to improve know-your-customer and know-your-seller programs.*

- *Increase expectations on online platforms to intensify the implementation of good practices for preventing and removing access to illegal content.*
- *Treat domestic warehouses and fulfilment centres as the ultimate consignee for goods that have not been sold to a specific consumer at the time of its importation.*
- *Encourage the development and adoption of advanced prevention technologies, such as automated tools for rapid notice, takedown and stay down, filtering and redress for online platforms; and the use of risk scoring services and preventive measures to be implemented by online payment solutions offering services on unsafe online platforms. This should also include website blocking. The use of such expeditious actions should match the speed and volume of transactions on a platform.*
- *Ensure that online platforms and participating intermediaries may face liability for operations that promote access to illegal, illicit or otherwise infringing materials and that Internet Service Provider (ISP) safe harbour laws are not misused by businesses that depend on the unlicensed use of protected content.*
- *Promote policies requiring ongoing access to contact information for registrants of domain names used in online commerce to ensure law enforcement, cyber security professionals, brand protection representatives and others have continued access to this data in order to protect consumers and to protect against illegal activity online.*

### Address illicit trade in the express and postal mail sector

The knock-on impact of the sharp growth in the digital commerce sector and rise of social media platforms is the delivery of illicit products through postal and courier streams. For traffickers, small shipments also are a way to avoid detection and minimise the risk of sanctions.

- *Streamline Custom's lengthy and time-consuming seizure process, including regulatory changes to reflect the shift in international shipping from ocean shipping containers to small parcels.*
- *Promote technologies and practices to improve targeting, prediction, and decisional processes.*
- *Collect data on patterns and trends at each point-of-entry, by product category, sector, and brand—including analysis of the corresponding country of origin, trans-shipment routes, evasive tactics employed, repeat offenders, and other illicit characteristics.*
- *Increase engagement with online intermediaries and deepen cooperation between government and the private sector to prevent the unfettered flow of illegal, illicit, and counterfeit items through the post.*

### Raise awareness about illicit trade

As a prerequisite for responsible action, consumers, politicians, enforcement agencies, IGOs and the business community all need to fully understand the harmful consequences of illicit trade on the economy, consumer health and safety, and the environment. It will be essential to continue researching and reporting on the size of the problem to elucidate policy makers on the urgency of solutions. Many intermediaries, when better informed about potential exploitation of their infrastructure and the related damage, demonstrate a willingness to secure supply chains from abuse. Also, in the face of the escalating global growth in demand, it has become clear that consumer education must be undertaken to control the demand-side of these nebulous markets.

The 2020 UNCTAD/TRACIT Illicit Trade Forum is a good model that can be replicated to raise awareness of the deterrent impacts of illicit trade. The event brought together 55 UN member States (including Indonesia and Myanmar) to discuss illicit trade in 12 key sectors and the negative impacts on achieving the UN SDGs.

- *Launch public awareness campaigns on the threat and harms of counterfeiting and piracy in tangibles and intangibles, both online and offline.*
- *Encourage organizations such as the WCO, OECD, UNCTAD and UNODC to continue their concerted efforts to quantify and communicate the extent of illicit trade.*
- *Promote legal and sustainable alternatives to illegal goods, including through economic incentives and by endorsing credible certification programs and licensing schemes that guarantee that goods are legitimate and produced in an environmentally and socially responsible manner.*
- *Educate intermediaries on how their infrastructures are vulnerable to and exploited by illicit trade; and promote voluntary (best practice) measures to encourage and/or require intermediaries to restrict use and abuse of their infrastructures to prevent illicit trade.*
- *Educate governments on how privacy laws and cryptocurrencies can be exploited by illicit traders and promote pragmatic, fact-specific application of relevant legislation. Explore integration of multiple existing governmental awareness campaigns by aggregating the key messages and sharing “campaign” resources and outreach networks. A useful model to build upon is UNODC’s campaign “Counterfeit- Don’t buy into organized crime,” which is unique in its cross-cutting story.*

## About the EU-ASEAN Business Council

The EU-ASEAN Business Council (EU-ABC) is the primary voice for European business within the ASEAN region. It is formally recognised by the European Commission and accredited under Annex 2 of the ASEAN Charter as an entity associated with ASEAN.

Independent of both bodies, the Council has been established to help promote the interests of European businesses operating within ASEAN and to advocate for changes in policies and regulations which would help promote trade and investment between Europe and the ASEAN region. As such, the Council works on a sectorial and cross-industry basis to help improve the investment and trading conditions for European businesses in the ASEAN region through influencing policy and decision makers throughout the region and in the EU, as well as acting as a platform for the exchange of information and ideas amongst its members and regional players within the ASEAN region.

The EU-ABC conducts its activities through a series of advocacy groups focused on particular industry sectors and cross-industry issues. These groups, usually chaired by a multi-national corporation, draw on the views of the entire membership of the EU-ABC as well as the relevant committees from our European Chamber of Commerce membership, allowing the EU-ABC to reflect the views and concerns of European business in general. Groups cover, amongst other areas, Insurance, Automotive, Agri-Food & FMCG, IPR & Illicit Trade, Market Access & Non-Tariff Barriers to Trade, Customs & Trade Facilitation and Pharmaceuticals.

### Executive Board

The EU-ABC is overseen by an elected Executive Board consisting of corporate leaders representing a range of important industry sectors and representatives of the European Chambers of Commerce in South East Asia.

### Membership

The EU-ABC's membership consists of large European Multi-National Corporations and the eight European Chambers of Commerce from around South East Asia. As such, the EU-ABC represents a diverse range of European industries cutting across almost every commercial sphere from car manufacturing through to financial services and including Fast Moving Consumer Goods and high-end electronics and communications. Our members all have a vested interest in enhancing trade, commerce and investment between Europe and ASEAN.



To find out more about the benefits of Membership and how to join the EU-ASEAN Business Council please either visit [www.eu-asean.eu](http://www.eu-asean.eu) or write to [info@eu-asean.eu](mailto:info@eu-asean.eu)

### About TRACIT

The Transnational Alliance to Combat Illicit Trade ([TRACIT](http://www.TRACIT.org)) is an independent private sector initiative to mitigate the economic and social damages of illicit trade by strengthening government enforcement mechanisms and mobilizing companies in the industrial sectors most affected by illicit trade.

To learn more, visit [www.TRACIT.org](http://www.TRACIT.org)





© EU-ASEAN Business  
Council 2020

Issued by the EU-ASEAN  
Business Council  
November 2020

19/F Singapore Land Tower  
50 Raffles Place  
Singapore 048623

[info@eu-asean.eu](mailto:info@eu-asean.eu)