

The Global Illicit Trade Environment Index

A Briefing by the Transnational Alliance to Combat Illicit Trade



TUNISIA

Global Illicit Trade Environment Index

Tunisia Country Report

Introduction

Since the 2011 revolution, Tunisia has been heralded as a model of democratic transition. However, nine governments in the past seven years have failed to revive the economy and the North African state faces the difficult task of maintaining faith in democracy amid a lagging economy, rising security challenges, and widespread corruption. This challenge is exacerbated by a historic dependence on informal cross-border trade coupled with an economy that is itself largely informal, accounting for as much as 35.5% of GDP and 30% of all products consumed in Tunisia. Taken together, these factors have provided fertile grounds for illicit trade to flourish.¹

Differences in the levels of government subsidies on either side of the border as well as varying tax regimes have been the primary drivers of this informal trade.² Although headlines commonly focus on the illegal imports of fuel and tobacco, a wide variety of other consumer products such as fruit and vegetables, electronics, home appliances, clothes, and shoes are smuggled in and out of the country. And, if these goods and the transactions remain within the informal network, the loss of government revenues can be significant as smuggled goods are neither subject to customs duties at the Tunisian border nor value-added tax (VAT). This activity also undermines legitimate business, who can't

compete against smugglers. Furthermore, it deters foreign investments in the struggling economy.

To inform the policy response to illicit trade, the Transnational Alliance to Combat Illicit Trade (TRACIT) commissioned the Economist Intelligence Unit (EIU) to produce the Global Illicit Trade Environment Index. It evaluates 84 countries on their structural capability to effectively protect against illicit trade, highlighting specific strengths and weaknesses across 25 policy, legal, regulatory, economic, trade, institutional and cultural indicators.

The findings are intended to help policy makers: (i) better understand the regulatory environment and economic circumstances that enable illicit trade; (ii) identify areas that merit greater attention; and (iii) formulate strategies to address the serious threats posed by illicit trade.

Given its linkages to organized criminal activity, illicit trade can underpin wider risks to national and regional security. This is especially the case when existing routes and markets for cross-border smuggling of consumer products are exploited by criminal groups, including non-state armed actors, for trafficking in high profile illegal goods, such as drugs and arms.³

The situation of high instability in neighboring Libya poses additional challenges. After the European Union, Libya is Tunisia's second most important trade and economic partner. The two countries share a 500-kilometer land border, where both cultural and historical ties along with regulatory differences play a role in perpetuating informal trade between both countries. For example, transportation fuels that are heavily subsidized in Libya create incentives for cross-border smuggling into Tunisia, where fuel is only partially subsidized.

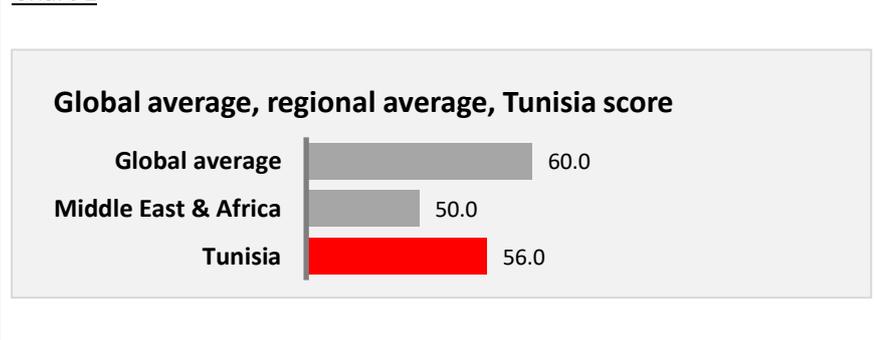
A recent World Bank report estimates informal fuel imports from Libya into Tunisia account for 17 percent of Tunisia's consumption.⁴ Moreover, the chaos that has engulfed Libya since the collapse of the country's former leader Muammar Gaddafi in 2011 has complicated customs arrangements between both countries.⁵ Thus, the events in Libya have substantial impacts on Tunisia's economy in general, and its ability to curb contraband trade across the Tunisia–Libya border region in particular.⁶

Tunisia's structural capability to effectively address illicit trade is mixed, and this is evidenced in its average score in the 2018 Global Illicit Trade Environment Index. Tunisia ranks 53rd out of 84 countries evaluated, with an overall score of 56.0 (out of 100). And while this score is slightly below the global average (60.0), Tunisia

nonetheless ranks 6 points above the regional average for Middle East and Africa (see Chart 1).

Amongst the four categories in the index, Tunisia registers its strongest performance in the customs environment category, where it ranks 38th of 84 economies and receives a score of 78.0, equal to 9 points above the global average. In addition,

Chart 1



Tunisia's score in the transparency and trade category is also slightly above the global average (55 points compared to the global average 53). The country, however, struggles in the supply and demand category, as well as in government policy, where problems of corruption, poor protection of intellectual property rights, tax burdens and weak compliance with international standards on anti-money laundering lower the economy's overall performance.

It is important to understand that the Index is a measure of a country's structural capability to effectively protect against illicit trade, and not its actual performance—past or future. In this respect, there have been some positive developments in recent years suggesting progress in addressing some of the underlying vulnerabilities identified in the Index.

Examples of progress include the updating of IP protection laws with the establishment of a National Counterfeit Control Board, the launch of an Accredited Economic Operator (AEO) program to prioritize customs clearing processes and Tunisia's involvement in a joint UNODC-WCO program aimed at creating multi-agency law enforcement units at maritime ports.

And while reductions in tariffs have helped to reduce incentives for illicit trade and parallel imports, the government is still grappling with the right balance. For example, until the end of 2015, Tunisia applied excise duties between 600 and 700% ad-valorem on imported spirits, which precluded imports but opened the door to smuggled spirits from Algeria and to a certain extent from Libya. To correct this situation, the Tunisian government lowered the excise rate to 50%. Not surprisingly, smuggling fell, and formal tax revenues increased. However, under pressure to improve tax revenues, in January 2018 the rate of excise went back to 100% ad-valorem. And not surprisingly, illicit trade has gone back up. In the end, the current combination of 100% tax and import quotas are combining to encourage the resumption of smuggling, criminal activity and illicit trade in alcohol.

As illustrated by the Index, there are areas in need of improvement—such as the case of illicit alcohol—and any successful strategy will require concerted, sustained and joined up efforts between all the

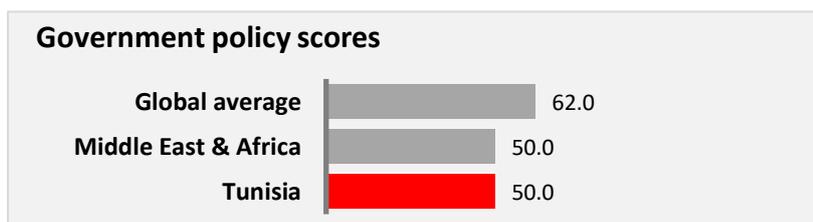
government bodies responsible for tackling this issue.

It is also important to strengthen cooperation with neighboring countries and address informal cross-border trade, smuggling, tax policies and subsidy alignments in the course of deliberations during forthcoming bilateral and multilateral meetings.

Category 1: Government policy

This category of the index measures the availability of policy and legal approaches to monitoring and preventing illicit trade. It measures the extent to which an economy has entered into 14 conventions related to illicit trade; its compliance with Financial Action Task Force (FATF) recommendations on money laundering; its stance on IP protection; its approach towards corruption; law enforcement techniques in an economy; the extent of interagency collaboration; and its level of cyber-security preparedness.

Chart 2



Tunisia's rank of 62 out of 84 places it in the lower half of the Index on government policy (*see Chart 2*). The country performs poorly on IP protection and underperforms in terms of compliance with Financial Action Task Force (FATF) standards, coming in 74th. And while Tunisia received a low score on

interagency cooperation, some instances of coordination between customs, the national guard and defense forces indicate a stepping up of efforts to control the Tunisian borders and combat illegal trade.

The overall category score is buoyed by the country's commitment to 10 of the 14 most common international conventions related to illicit trade and the existence of legislation addressing corruption, money laundering and empowering authorities to use special law enforcement techniques to combat illicit trade.

Tunisian legislation for the protection of intellectual property (IP) conforms with international standards, including the requirements of the WTO agreement on Trade-Related Aspects of Intellectual Property (TRIPS). The fight against counterfeiting is governed by legislation on intellectual property, specifically Law No. 2001-36 of 17 April 2001 on the protection of trademarks. This law was amended by Law No. 2007-50 of 23 July 2007 to reinforce penalties for counterfeiting and to authorize economic control agents and customs officials to inspect for violations of the law and to perform provisional seizure of products suspected of being counterfeit.⁷

Other notable actions include the creation of the National Counterfeit Control Board, an inter-ministerial body tasked with advising on national anti-counterfeiting programs and providing overall coordination for various agencies on matters of control, information, awareness-raising and international cooperation. (Decree 2009-418 of 16 February 2009).

The enforcement of its IP laws, however, remain a concern.⁸ Recent studies by the

OECD and EUIPO have identified Tunisia as one of the key provenance economies-- either as a producer or strategic point of transit—for fake goods entering Europe, in particular leather goods and footwear.^{9 10} In order to improve its score in this area, existing legislation must be accompanied by stricter enforcement, action plans to combat digital piracy and closer scrutiny of producers and importers of counterfeits.

Tunisia's placement on the Financial Action Task Force (FATF) list of jurisdictions with deficiencies in the areas of anti-money laundering and counter-terrorist financing (AML/CFT) weighs heavily on its score in the government policy category. In its most recent statement (29 June 2018), the FATF recognized that Tunisia had taken steps towards improving its AML/CFT, however it is required to continue to work to address its deficiencies.¹¹ Working with the FATF to strengthen the effectiveness of its AML/CFT regime, including tackling money laundering associated with illicit trade, should be a high-level political policy priority.

Corruption remains a destabilizing force in Tunisia, impacting every aspect of its economy, national security and political system.¹² While numerous legal measures and initiatives have been implemented to address it, 78 percent of Tunisians believe that corruption is worse now than before the country's democratic revolution.¹³ In 2017, Tunisia's anticorruption agency noted that corruption in public contracting costs the government almost US\$ 1 billion every year.¹⁴

Category 2: Supply and demand

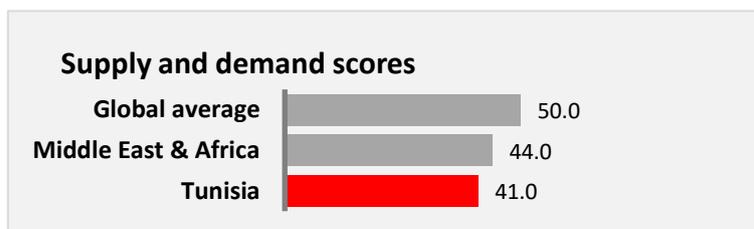
This category measures the domestic environment that encourages or discourages the supply of, and demand for, illicit goods, including the level of corporate taxation and social security burdens, the quality of state institutions, labor market regulations, and perceptions of the extent to which organized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

Tunisia ranks in the lower half of the Index (58th out of 84 countries) in terms of its policies to control the supply and demand of illicitly traded goods, and in relation to its neighbors in Middle East and Africa it scores below the regional average (see Chart 3). In particular, the country scores poorly on tax and social security burdens, high levels of perceived organized crime, and labor market regulations, which can drive workers into the underground economy, including activities related to illicit trade.¹⁵

Differences in tax burden, government subsidies and varying levels of domestic availability of goods in the region are important drivers of illicit trade in Tunisia. Together, these factors create large price differentials between neighboring countries, significantly enhancing the profitability of cross-border smuggling.¹⁶ As a result, a variety of goods are traded illegally across the country's land borders, including cigarettes, subsidized fuel, alcohol, chemical fertilizers, pharmaceuticals, foodstuffs, livestock, household appliances and

construction materials.¹⁷ For example, Tunisian pasta and couscous are in high demand in Libya, and both foods are directly subsidized by the Tunisian government. Large quantities of Tunisian pharmaceuticals subsidized by the Tunisian pharmacy board are illegally exported to Libya.¹⁸ Similarly, different tax and subsidy levels between Tunisia and Algeria create large price differences – by a factor of five for a packet of cigarettes or a bottle of strong liquor or by a factor of ten for fuel – incentivizing illegal trade across the border.¹⁹ While the level of contraband tobacco trade has declined

Chart 3



slightly in recent years, it remains a significant problem in part due to market restrictions, an outdated distribution model and high taxes that inflate the price of tobacco. For example, a study by the World Bank found that contraband cigarettes primarily from Algeria and Libya represent as much as 38% of the annual cigarette consumption in Tunisia. The loss in tax revenue from contraband cigarettes is substantial, estimated at approximately TD 500 million (USD 177 million) per year.²⁰

Addressing both the supply and demand side of illicit trade in Tunisia will require increased regional coordination and greater harmonization between Tunisia and its neighbors in terms of tariffs, tax

levels and subsidies. Stopping tobacco smuggling, in particular, must be a top priority for policy makers given the significant fiscal leakages and the large profits that organized crime and armed militias in the region amass from the illicit tobacco trade.

Category 3: Transparency and trade

This category measures an economy's transparency regarding illicit trade and the degree to which it exercises governance over its FTZs and transshipments.

Indicators include: quality of consignment tracking and tracing services; the adoption of Annex D of the Revised Kyoto Convention (RKC), which seeks to ensure standardized customs procedures in customs warehouses and FTZs; the extent of monitoring and oversight at FTZs; and the extent to which governments report their efforts and share information to fight illicit trade.

Transparency and trade is a strong category for Tunisia, with its rank of 44th putting it above both the global average and its regional peers (*see Chart 4*). Notably, Tunisia is one of only five countries in the Index that is a signatory to Annex D of the RKC, which sets out guidelines for Customs operations within Free Trade Zones (FTZs).²¹ Specifically, Annex D clarifies that FTZs are part of the national Customs territory, and Standard 4 in Chapter 2 states that Customs shall have the right to carry out checks of goods in the free zone, including the right to conduct checks for non-tariff

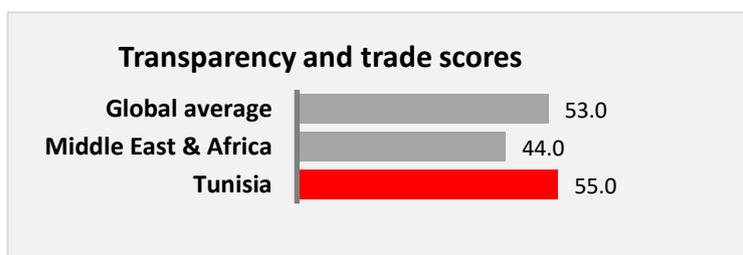
compliance. Other provisions address rules on origin of goods, refusal of entry of pirated or counterfeit goods, and Customs transit and transshipment procedures.

Tunisia has two free trade zones (officially known as "Parcs d'Activités Economiques") in Bizerte and in Zarzis. The zones are exempt from taxes and customs duties and benefit from unrestricted foreign exchange transactions. Inputs enjoy limited duty-free entry into Tunisia for transformation and re-export.

Ensuring continued transparency, monitoring and Customs oversight in these zones is an important measure to reduce trafficking vulnerabilities and ensure that they do not become hotspots for illicit trade.

The lack of regular publication of official

Chart 4



statistics on illicit trade, including IPR infringements, drags Tunisia's score down in the transparency and trade category. Although the Tunisian government has acknowledged the importance of combatting the trade in counterfeit goods, official statistics on IP infringements and drug seizures are either not publicly available, i.e. published on the relevant ministry websites, or are out of date and limited in scope.

Tunisia also faces challenges with human trafficking. The United Nations Office on Drugs and Crime (UNODC) notes that “Tunisia is a country of origin, transit and destination for humans who are exploited in various forms, including through trafficking in persons (TiP) and smuggling of migrants (SoM).”^{22/23}

Tunisia has nonetheless taken earnest steps to address these types of criminal conduct. In 2003, it ratified the United Nations Convention against Transnational Organized Crime and became party to its two supplementing Protocols dealing with TiP and SoM. Furthermore, Tunisia has acceded to other regional and international human rights instruments, and at the national level, the government has demonstrated increasing efforts by prosecuting traffickers under the anti-trafficking law and by training judicial and law enforcement officials on the application of the law. It also designated deputy prosecutors and investigative judges responsible for overseeing human trafficking cases in 27 tribunals across the country; Tunisia also offers anti-trafficking training programs for judicial officials.²⁴ The US State Department’s 2018 Trafficking in Persons (TIP) report notes “that while the Government of Tunisia does not fully meet the minimum standards for the elimination of trafficking, it is making significant efforts to do so.”²⁵

Efforts to address illicit trade are further challenged by a lack of public awareness on its dangers, which has led to a degree of social acceptability in some of the border

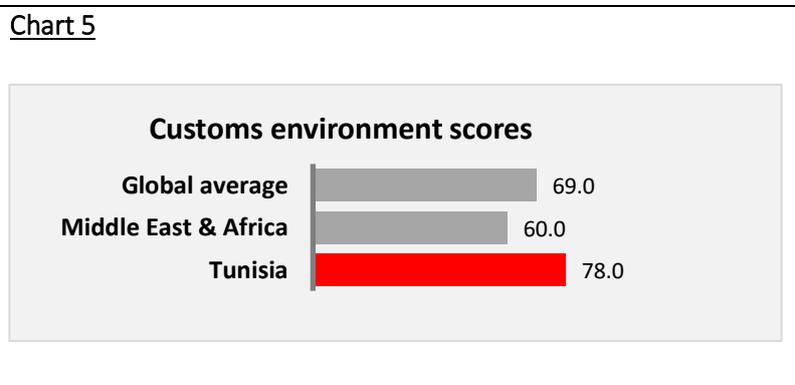
communities where smuggling of cigarettes, fuel, foodstuffs, clothing and construction materials are considered “innocent smuggling”.²⁶ To this end, local and regional education campaigns and community-level awareness activities are essential to help shift public perception and understanding of the negative impacts of illicit trade.

Category 4: Customs environment

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

Tunisia receives its highest score in the customs environment category with a score of 78.0, which is 9 points above the global average and 18 points above the Middle East & Africa regional average (see Chart 5).

Chart 5



Tunisia launched an Accredited Economic Operator (AEO) program in 2010, which allows companies to pre-register with local

customs for screening by the general customs office, in exchange for reduced inspections on goods and quicker clearance times at borders. In turn, Customs agencies can increase their administrative efficiency by prioritizing inspections on unknown high-risk cargo.

Tunisia also joined the UNODC-WCO Container Control Programme (CCP) in 2016.²⁷ The CCP works jointly with competent national authorities to establish, equip and train interagency teams comprised of customs officials, law enforcement officers and other specialized agencies and to facilitate public-private partnerships with the private sector. A Port Control Unit for the Port of Radès has been established to undertake specialized profiling, targeting and examining of high-risk containers used to transport illicit goods. The Unit includes Customs, the Border Police, the Tunisian Stevedoring and Handling Company (STAM) and the Merchant Marine and Ports Authority.²⁸

Tunisia's customs score also receives a boost by the inclusion of a recordal system for trademarks, based on three laws from 2001 (no. 2001-36, no. 2001-20 and no. 2001-21), which were introduced to comply with WTO requirements. The principal advantage of the recordal system (other than providing a central registry containing information for recorded trade marks) is that it allows for prompt and proactive action by Customs officials to act *ex officio* to detain potentially infringing goods and notify the trademark owner (or its representative) of suspect shipments of fake goods.

The customs environment score is weighed down by deficiencies in customs clearance and inspection (53rd), as well as

customs automation (47th), both of which can create an environment that facilitates bribery and other forms of corruption.

Ensuring the integrity of Customs is critical in the fight against illicit trade. If this role is compromised by corruption, the system fails and enables opportunities for trafficking in products and persons, criminal activity and illegal financial flows.

The Tunisian government has taken important steps in this regard as part of Prime Minister Youssef Chahed's "war on corruption", including by conducting surprise visits to the Port of Rades, taking disciplinary actions against corrupt customs officers, and ordering several high-profile arrests.^{29 30}

Despite these efforts, corruption within customs continues to be a contagion that discourages legal business operators, while making illegal trade more attractive.^{31 32} As long as there are corrupt customs officials working with the smugglers, any attempt to strengthen border policing and control will have limited effect.

Conclusions

Tunisia will continue to struggle with illicit trade until the root causes are targeted and abated. The overall policy environment in Tunisia is held back by a persisting informal sector driven by major price and tax differentials with its neighboring countries, a culture of corruption, a lack of legal job opportunities in the formal market, and porous borders.

Finding solutions to these problems is not a simple task. Smuggling economies have been an integral component of regional trade for centuries, with contraband and

informal commerce serving as the main sources of employment in some border communities. Corruption is endemic, and by some accounts has worsened since the 2011 revolution.³³ Moreover, the evolving geopolitics in the wake of the Arab Spring have changed security dynamics in the region, opening new routes and markets for exploitation of a broad range of illicit goods.³⁴

Addressing the threat of illicit trade will require comprehensive reform and an associated national strategy that addresses incentives for smuggling, such as reforming administered prices and subsidies, tariff policies and technical constraints to legal importation. Enforcing laws and strengthening border control and integrity in Customs is also paramount.

Moreover, policies to address illicit trade must be holistic and factor in broad social impact and local development issues. This includes steps to ensure that policies do

not inadvertently create instability and chaos in communities that currently depend on informal cross-border trade. If not managed properly, border closures and trade restrictions can damage legitimate commerce, further pushing individuals into the informal sector. Efforts to disrupt illicit trade must therefore include a development aspect to provide border regions with sustainable alternative sources of livelihood.

Tackling illicit trade will also require improved and deepened cooperation with neighboring countries. Disparities in different governments' policies create large differences in prices and taxes and arbitrage opportunities for traffickers in illicit goods. As far as possible, Tunisia should seek to align tariff rates and subsidy policies with its neighbors, strengthen border control and integrate the illicit trade threat into bilateral and regional-level discussions.

Notes

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