



Written Statement Submitted by the Transnational Alliance to Combat Illicit Trade (TRACIT)

Senate Committee on Finance Hearing

Ending Trade that Cheats American Workers by Modernizing Trade Laws and Enforcement, Fighting Forced Labor, Eliminating Counterfeits, and Leveling the Playing Field

February 16, 2023

I'm Jeffrey Hardy, Director-General of the Transnational Alliance to Combat Illicit Trade (TRACIT), and I respectfully submit this written statement for your hearing record.

I commend you, Chairman Wyden and Ranking Member Crapo, and the Senate Finance Committee for holding today's hearing focused on *Ending Trade that Cheats American Workers by Modernizing Trade Laws and Enforcement, Fighting Forced Labor, Eliminating Counterfeits, and Leveling the Playing Field*. Many of you have been staunch advocates for strengthening protections against counterfeits and the illicit economy.

TRACIT is a United States-based, independent, private sector initiative to drive change to mitigate the economic and social damages of illicit trade by strengthening government enforcement mechanisms and mobilizing businesses across industry sectors most impacted by illicit trade. Our members are multinational companies.

The Problem:

Illicit trade is a major and growing policy challenge in the United States (US) and across the world. From smuggling, counterfeiting and tax evasion, to the illegal sale or possession of goods, services, and wildlife, governments are losing billions in tax revenues, legitimate businesses are undermined, and consumers are exposed to poorly made and unregulated products. These crimes also are tied to human rights and labor rights violations, money laundering, illicit financial and arms flow, child labor, and environmental degradation.

Given that illicit trade is estimated to account for 5-8% of total international trade, its utilization of cargo containers, parcel packages, ship and airline capacity, and port capacity clogs the world's trade infrastructure. According to the United Nations Conference on Trade and Development (UNCTAD), there already are not enough ports worldwide nor enough labor to process the goods being traded across borders, and poor infrastructure creates congestion at ports. Delays in shipping causes supply chain disruptions and increased costs for all involved.

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With estimates of various illicit activities running upward of \$3 trillion, these figures rival the GDP of some G20 countries. These costs multiply exponentially when accounting for drains on tax revenue, the use of forced labor, obstruction of sustainable development, organized crime, terrorism and the plundering of natural resources. Moreover, trade in counterfeit and illicit goods has an extensive destabilizing impact on American and global security due to its central role in facilitating transnational organized crime and illegal flows of money, people and products across borders. It undermines the formal authority of rule of law, which can disrupt business and discourage investment.

More recently, the COVID-19 pandemic has escalated an unremitting illicit economy to expand and take root, spawning new markets for illicit trade, like falsified vaccines, pharmaceuticals and medical devices, and deepened age-old illicit trade in alcoholic beverages, tobacco and counterfeits.

The pandemic drove Americans online to purchase products that could be delivered directly to their homes. This facilitated the growth of the sale of counterfeit and illicit goods primarily because nefarious third-party sellers exploit e-commerce platforms, which heretofore do not sufficiently vet their sellers, quickly take down known counterfeits nor ban bad sellers, exposing consumers to unregulated products. What types of products are we talking about? We have a saying, "If you make it, they can fake it." This means products across every industry, including counterfeit automobile parts like brakes, seatbelts, air bags, tires; appliances and parts such as water filters for refrigerators; toys and other children's products; beauty and personal care products; human and pet food; beverages; pesticides; jewelry and apparel; cleaning products and on and on. Attached to my statement is a comprehensive list.

Additionally, fraudulent advertising on social media platforms, e.g., Facebook Marketplace and Instagram, is a devious form of online fraud intended to route social media users to rogue websites set up for the sole purpose to sell counterfeits, cultivate bait and switch scams, steal personal financial information or otherwise put at risk the internet's growing population of social media users. These may be American-based platforms, but they serve over 1.4 billion users worldwide, equivalent to over three times the entire population of the US.

In an effort to warn consumers, educate policymakers and encourage online platforms to improve system weaknesses, TRACIT and the American Apparel and Footwear Association (AAFA) published in July 2020 the first public report documenting the emergence of fraudulent advertising on popular online social networking platforms: *Fraudulent Advertising Online-Emerging Risks and Consumer Fraud* ([TRACIT Report: Fraudulent Advertising Online Emerging Risks and Consumer Fraud - Transnational Alliance to Combat Illicit Trade](#)).

The 2020 Fraudulent Ad Report showed that fraudulent advertisements on Instagram and Facebook targeted more than 70 major international brands, some of which received up to a quarter of a million views before they were detected. The lack of adequate policies and procedures to verify an advertiser/user's 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. This enables infiltration of social media accounts by fraudulent advertisers and exploitation of social media users. There is also little protection from repeat offenders.

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What Congress can do

Congress should move quickly to solve this exponentially growing problem, with far-reaching negative impacts on American security, innovation, economic growth and consumer safety. Below are some specific actions:

Enhance Consumer Protection Laws

TRACIT joined many companies encouraging Congressional passage of legislation to establish better, more uniform rules for secure and safe conduct of e-commerce in the US, including legislation intending to hold online marketplaces and social media platforms accountable for keeping bad actors and fraudulent products off their marketplaces. It is past time for depending on voluntary efforts by the e-commerce platforms to remedy the situation, especially when their bottom lines benefit from passive enforcement and looking the other way as criminals easily manipulate the limited security measures currently in place.

We worked with the last Congress to achieve passage of the Integrity, Notification and Fairness in Online Retail Marketplaces for Consumers Act (INFORM Consumers Act), which is the first step in improving consumer protections by requiring e-commerce platforms to conduct more due diligence in vetting sellers and requiring sellers to disclose more information to platforms and consumers. In December 2022, President Biden signed the new law which requires third-party sellers to provide government issued IDs and disclose to consumers from where the product is being shipped along with a contact link for customers. The INFORM Act will help law enforcement, manufacturers, retailers and online marketplaces of all sizes work together to protect consumers from bad actors selling counterfeit and stolen goods.

But this first step is far from the necessary controls needed to mitigate fraud and consumer risk associated with online shopping. TRACIT urges Congress to reintroduce and pass the bipartisan bill, The Stopping Online Harmful Offers on Platforms by Screening Against Fakes (SHOP Safe Act), to enhance consumer protection for e-commerce purchases. This law introduces the well-established principle of liability, specifically holding e-commerce and social media platforms responsible and liable for selling counterfeit and illicit products that harm consumers. Only once they have demonstrated responsible due diligence, by adhering to a set of prescribed best practices, including increased third-party seller vetting and disclosure, expeditious notice and take down of counterfeit products, and barring bad actors from their platforms, would they be unencumbered from such liabilities.

Modernize Customs Laws

Congress should modernize the law governing US Customs, which was established 30 years ago, aiming to create a better balance between streamlining the flow of trade with the ever-more critical need to better protect US consumers from the flood of counterfeit and illicit goods entering the customs process. We applaud Senator Cassidy's leadership in working with government and the private sector to develop a draft bill to enhance protections, facilitate trade, increase information sharing and engagement with the private sector, and strengthen enforcement and penalties. In 2021, the US Customs and Border Patrol (CBP) established The 21st Century Customs Modernization Framework Task Force consisting of government and private sector stakeholders to facilitate discussion and provide

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recommendations to modernize the legal and operational framework for trade. TRACIT has actively participated and contributed to this initiative. We believe a strong legal framework embedded in legislation will go a long way to preventing illicit and counterfeit goods from crossing into the US.

TRACIT strongly recommends the establishment of a mechanism to create an e-merchant ID that would be required for sellers wishing to sell into the US via e-commerce platforms. The integrity of such a system could be maintained through a program similar to the U.S. Food and Drug Administration's (FDA) Foreign Supplier Verification Program (FSVP), established by the US Food Safety Modernization Act (FSMA). Such a system would enable e-commerce platforms, brands, law enforcement agencies and consumers to block bad actors that are not registered. This could be similar to a TSA pre-check for sellers of goods. Registered importers would be able to step into the green lane for Trusted Traders.

It is also time to revisit the level of de minimis exceptions in Sect. 321 of the Tariff Act for low-value shipments. The current \$800 level is already outdated and ineffective in addressing the rapid, recent increase in e-commerce sales directly to consumers via small parcels traveling through the US Postal Service and express carriers. The average value of goods shipped is \$100 and very few are valued above \$200.

Focus on stopping the use of Forced Labor

TRACIT commends the US Trade Representative (USTR) for its recognition in its Notorious Markets for Counterfeiting and Piracy Reviews for 2021 and 2022 of the serious dangers to workers who are exploited and forced to create, manufacture and distribute counterfeit and illicit products. As noted in the USTR's 2021 Report, TRACIT conducted a study and produced a report in December 2021: *The Human Cost of Illicit Trade: Exposing Demand for Forced Labor in the Dark Corners of the Economy* ([Featured Report: The human cost of illicit trade - Transnational Alliance to Combat Illicit Trade \(tracit.org\)](#)). TRACIT outlined how criminal organizations utilize forced labor to manufacture and distribute counterfeit and illicit products outside the purview of labor regulations and government oversight.

The 2021 USTR Report devotes six pages to this human rights crisis and calls for more investigation and data on the adverse impact of the use of forced labor and child labor in the global production of counterfeits. Fully ending these human rights abuses will only be possible by eradicating counterfeiting and other forms of illicit trade.

Since data is limited, and governments have not yet been successful in closing this gap, additional data collected in the field is needed to improve the understanding of how illicit supply networks operate, and how they recruit, use and abuse their labor force. We endorse the USTR's view that governments must actively gather more and better data on the incidence of forced labor in illicit operations to improve the evidence-base for national and international policy-making and standard setting. Governments must also strengthen investigative techniques to address human rights abuses in illicit trade and dismantle the organized criminal networks behind illicit trade.

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TRACIT is prepared to collaborate on advanced data collection and is willing to contribute information already collected from private intelligence and investigations, raids, seizures and other measures along illicit supply chains.

Enhance Free Trade Agreements (FTAs) and other international agreements

The US Government should continue to work with its trading partners to enhance worker protection provisions to explicitly guard against the use of exploited labor in the manufacture and distribution of goods and services across borders.

The US also should strengthen its leadership in multilateral organizations and work collaboratively to create a stronger global structure to combat the manufacture and sale of illicit and counterfeit goods. The US should work to prioritize illicit trade work programs in existing multilateral organizations, e.g., World Customs Organization (WCO), World Trade Organization (WTO), the United Nations (UN), the Organization for Economic Cooperation (OECD).

TRACIT is working globally to urge governments – including the US – to establish a “whole of government” approach, appointing officials from throughout each government including from Finance, Commerce, Homeland Security, Labor, Trade, Customs, and Postal systems to establish an action plan for detecting and blocking illicit goods, filling governance and regulatory gaps, and training law enforcement and customs officers. We urge countries to establish a reporting mechanism for consumers and businesses to alert law enforcement to suspected illicit trade. Working with the private sector, governments should raise consumer awareness to the dangers of counterfeit and illicit trade.

Conclusion

TRACIT stands ready to work with Congress to better protect consumers, workers, businesses, the US economy and national security by stopping the flow of counterfeit and illicit products into our country. We thank the Senate Finance Committee for its leadership on this critical imperative.

RESOURCES

OECD *Risks of Illicit Trade in Counterfeits to Small and Medium-Sized Firms*

TRACIT [*The Human Cost of Illicit Trade: Exposing demand for forced labor in the dark corners of the economy*](#)

TRACIT *The Link Between Illicit Trade and Sovereign Credit Ratings*

TRACIT [*Fraudulent Advertising Online: Emerging Risks and Consumer Fraud*](#)

TRACIT [*Mapping the Impact of Illicit Trade on the Sustainable Development Goals*](#)

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COUNTERFEIT PRODUCTS WITH HEALTH AND SAFETY IMPLICATIONS

You make it and they can fake it

All counterfeits present an absolute product safety risk. They are manufactured outside legal frameworks, are unregulated and do not comply with safety standards that are prescribed either internationally or locally within a country. If a counterfeit product is ingested, applied to the body or used as a safety device, the risks become even greater. But the list of products presenting exposure to health and safety risks is endless, starting with the products listed here:

Product Categories	Examples of Product Types	Associated Risks
Beauty Products	Shampoo, conditioner, cosmetics, hair styling products, soaps, lotions, moisturizers, deodorants, perfume, razors (manual and electric)	Bacterial contamination; inadequate or missing preservative systems; toxic/hazardous ingredients (chemical and biological hazards, heavy metals); non-disclosed or high levels of allergens; presence of banned ingredients; presence of mold; absence or decreased levels of drug and/or sanitizing/disinfectant active ingredients; electrical and/or burn hazards
Disinfecting/sanitizing Products	Liquid hand sanitizers, wipes, surface sprays, etc.	
Feminine Care Products	Tampons, Menstrual cups, sanitary pads, adult incontinence products	
Food and Beverages	Groceries, fresh products (cheese, eggs, etc.), hard liquor	
Medicines	Prescription and over-the-counter drugs, supplements, vaccines, products containing sunscreens	
Oral Care Products	Toothpaste, teeth whitening, mouth rinse, denture adhesives and/or cleaners, dental floss, toothbrushes (manual and electric)	
Pet Products	Food, toys, medications, grooming items, etc.	
Children's Products	Diapers, car seats, strollers, mattresses, toys, bedding, cribs, bottles, rattles, etc.	Noncompliance with safety standards; toxic/hazardous/flammable ingredients
Cleaning/Laundry products	Detergents (laundry, dish), hard surface cleaners, etc.	Toxic/hazardous/banned ingredients
Construction Products	Power tools, building supplies (supports, engineered joists, flooring, plumbing, etc.)	Fire/electrical hazards; critical engineering failures
Digital/Communication Products, Replacement Parts/Equipment or Networks	Laptops, cell phones, digital device chargers, batteries (rechargeable, alkaline, lithium, etc.), routers, modems, cabling (HDMI, VGA, LAN, indoor/outdoor), software	Fire/electrical hazards; noncompliance with manufacturing/safety standards; failure at critical moments
Electrical appliances/equipment and replacement parts	Refrigerators, water filters, ovens, dishwashers, microwaves, water heaters, washing machines, dryers,	Noncompliance with manufacturing/safety standards; fire/electrical hazards; toxic/hazardous chemicals

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	clothing irons, fire detectors, home safety/security equipment, etc.	
Furniture	Tables, chairs, mattresses, sofas, shelving, etc.	Noncompliance with manufacturing/safety standards; toxic/hazardous/flammable ingredients
Jewelry, Luxury Goods, Textiles	Clothing, belts, accessories, purses, jewelry, etc.	Allergic reactions; treated with chemicals that can be hazardous, flammable, toxic
Office supplies	Printer ink/toner cartridges	Toxic/hazardous chemicals; equipment damage
Personal Health Care Equipment, Medical Devices	Wheelchairs, hospital beds, thermometers, blood pressure monitors, in-vitro diagnostic kits, bandages, etc. Pacemakers, artificial joints, stents, breast implants, laser hair removal equipment, syringes, surgical utensils, etc.	Noncompliance with safety standards; fail at critical moments; long term health effects due to toxic/hazardous/flammable ingredients (chemical, biological, bacterial, heavy metals)
Personal Protective Equipment (PPE)	Face masks, eye protection, gloves, gowns, ear plugs, respirators, etc.	
Product Packaging	Tubes, jars, cans, buckets, cartons, tubs, bottles, etc.	
Pesticides	Bug sprays (crop maintenance, home usage)	Toxic/hazardous chemicals; environmental impact
Sports equipment	Footwear, protective gear (helmets, safety pads/guards, life jackets, etc.), camping gear, golf clubs, sports balls (baseball, basketball, softball, golf, etc.), hiking gear, etc.	Noncompliance with safety standards; fail at critical moments; toxic/hazardous ingredients
Transportation and replacement parts	Automobiles, planes, trains, hoverboards, pedestrian powered modes of transportation (Bikes, scooters, skates, skateboards, etc.)	Fire hazards, system severely impacted; compromised data transmission of confidential/critical, Personal identifiable, healthcare related, educational, military information