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Transnational Alliance to Combat Illicit Trade

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Introduction

The United Nations Guidelines on Consumer Protection (“the Guidelines”) were first adopted by the United Nations General Assembly on 16 April 1985 (Resolution 39/248) by unanimous consensus of the Member States, and later revised in 1999 and then again in 2015 (Resolution 70/186 of 22 December 2015).

The Guidelines provide a common set of principles which aid Member States in enhancing their national consumer protection legislation, as well as in setting standards within their national jurisdiction in relation to consumer protection.

The third session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy will discuss the implementation of the Guidelines. The Group will adopt Agreed Conclusions and decide on the work program for the next session.

In order to facilitate the deliberations and best practices on the topics to be discussed, Member States and observers have been invited to submit contributions to the UNCTAD Secretariat, allowing participants to prepare themselves for the consultations.¹

In light of recent developments in consumer protection legislation, increasing emphasis on technology and innovation in consumer goods, the importance of international collaboration, and the fact that international trade in consumer goods is a tool for development, the Transnational Alliance to Combat Illicit Trade (TRACIT) has the following recommendations for consideration by Member States when implementing the Guidelines:

¹ See <http://unctad.org/en/pages/MeetingDetails.aspx?meetingid=1674>

1. **Member States should adopt effective policies which counter illicit trade** in goods in order to better protect consumers from health, safety, environmental and socio-economic risks. Traffickers of illicit/illegal goods often prey upon vulnerable and disadvantaged consumers. Illicit trade has a negative impact on society, depriving governments of essential tax revenues which could be used to spur development initiatives;
2. **Member States should consider their commitments to achieving their UN Sustainable Development Goal (SDG) targets** during implementation of relevant UN Guidelines on Consumer Protection; and in doing so, consult with business and other stakeholders to promote research and data collection and conduct analyses on consumer and behavioural patterns critical to implementing sustainable consumer policies.
3. **Member States should implement measures to ensure sufficient protection to consumers engaging in e-commerce.** Alongside the billions of legitimate online transactions, e-commerce platforms have become vulnerable to misuse and the infiltration of illicit, illegal, fake and potentially unsafe products. There is an urgent need to address the prevalence of illicit products (including counterfeits) available to online consumers, and to put in place protections to safeguard them from fraud, exploitation and a variety of new online risks;
4. **Regulatory policies and tax policies promoted by Member States in relation to consumer goods should facilitate international trade** and promote transparency and predictability as a means of encouraging economic growth and development. The core of these policies should take into consideration consumer interests in the exchange of goods and services;
5. **Member States should adopt policies which encourage access to information, including relevant health, safety and other risk-related information,** for all consumer goods industries that will enable consumers to (i) more readily identify illicit, illegal and fake products; and (ii) make informed choices about legal products in accordance with their individual wishes and needs. Informed decisions enhance the individual health and well-being of consumers;
6. **Public-private partnerships should be encouraged in relation to promoting effective consumer protection regulations,** and governments should work with the business community to adopt policies which encourage innovation and facilitate access by consumers to better products. The positive role of the private sector should be recognized and leveraged in relation to its role in research and information-based initiatives which empower consumer choice.

Discussion and Recommendations

1. Illicit Trade has detrimental impacts on consumers

Illegal trade increases product safety concerns: Illicit products (and services) are outside the legitimate trade cycles of countries and do not follow safety standards that are prescribed either internationally or regulated nationally. This increases the risk of unsafe and unregulated goods being circulated in the market and made available to consumers—with direct negative consequences for their health and safety.

Section 44(a) and (VI) of the Guidelines relate to the protection of the health and safety of consumers, and to international collaboration; and Guidelines 5(c), 16 and 23 recognize the need to protect consumers from hazards to their health and safety. For goods with a health impact, there is a significant need to have more comprehensive policies which protect consumers from illicit trade. The illicit trade of goods impedes the ability of consumers to make choices based on accurate information and exposes consumers to increased risk.

When consumers unknowingly use illegal products, they become exposed to enhanced risk. This is particularly true in relation to the illicit trade of pharmaceuticals, tobacco products, alcohol, fraudulent foods and any consumable goods. Similarly, consumers are also exposed to environmental risks associated with illegal logging, overfishing and higher levels of pollution from adulterated fuels.

The World Health Organization (WHO) estimates that counterfeit medicines account for 10% of all medicines available globally.² Other sources estimate that USD 133 billion of oil and fuels are illegally stolen, adulterated or defrauded every year.³ Global illicit trade in tobacco has grown to more than \$35 billion annually,⁴ causing substantial tax losses of USD 40-50 billion each year and providing a major source of financing for organized criminal groups.⁵ Food fraud robs the global food industry of USD 30-40 billion each year.⁶

In terms of financial magnitude, illicit trade accounts for 8 to 15% world GDP,⁷ creating a significant drain on government tax revenues, which could be reinvested into the local economy as a means of spurring development and growth.

Member States should be encouraged to adopt frameworks which protect consumers against the risk of illicit goods, as well as consumer awareness and education programs.⁸ As indicated

² Interpol website. The dangers of counterfeit medical products. Available online at: <https://www.interpol.int/Crime-areas/Pharmaceutical-crime/The-dangers>

³ Desjardins, J. (2017, May 7). Fuel theft is a big problem. *Business Insider*. Retrieved from <http://www.businessinsider.com/fuel-theft-is-a-big-problem-2017-5>

⁴ Euromonitor International. (2018, February). Illicit Trade in Tobacco Products. *Strategy Briefing*. Retrieved from <http://www.euromonitor.com/illicit-trade-in-tobacco-products/report>

⁵ Michalopoulos, S. (2017, February 7). EU anti-fraud official: Tobacco smuggling is 'major source' of organized crime. *EURACTIV*. Retrieved from <https://www.euractiv.com/section/trade-society/interview/olaf-official-tobacco-smuggling-major-source-for-organised-crime/>

⁶ PWC (2016, 14 January). Fighting \$40bn food fraud to protect food supply. Retrieved from <https://press.pwc.com/News-releases/fighting--40bn-food-fraud-to-protect-food-supply/s/44fd6210-10f7-46c7-8431-e55983286e22>

⁷ See Interpol Office of Legal Affairs, The Legal Handbook Series: "Countering Illicit Trade in Goods. A Guide for Policy-Makers" June 2014

⁸ Section V(G) of the Guidelines

in the Guidelines, consumer groups, business and other relevant organizations of civil society should be involved in these efforts.⁹

Member States should enhance international collaboration in relation to the information that consumers should obtain, such as the legitimate sources of the products. For example, in the watch industry, the source is often Europe, and in particular Switzerland. Greater international collaboration could be taken up by governments through industry associations, intermediaries and other stakeholders to better inform consumers of the legitimate origin of products. This work could be further extended to e-commerce platforms and advertisers, along with physical merchants, to ensure that consumers have greater access to information that informs the legitimacy of the products offered for sale.

It is also noteworthy that innovation—through the introduction of security features, new designs and more sophisticated technology standards—enables legitimate brand owners to stay ahead of illicit traders and counterfeiters. In short, innovation makes it more difficult to manufacture counterfeit products or to market illegal versions of products.

Specific measures to enhance the implementation of section 44(a) and (VI) of the Guidelines as it relates to illicit trade, are the following:

- Ensure that education programs are in place which inform consumers of the harm of trade in illicit goods, with emphasis on the fact that trade in illicit goods impacts health, safety, environment and the global economy;
- Engage in public-private partnerships in order to implement effective strategies to combat illicit trade, as the business sector has the expertise and know-how to tackle the illicit trade of its own products;
- Ensure that effective international and national regulations are in place to combat illicit trade, including through the promotion of measures which secure supply chains and allow for the effective tracking and tracing of goods;
- Reduce demand for illicit products, such as debunking false claims of positive health effects of illegally-sourced wildlife, educating consumers on the real dangers of consuming unlicensed alcohol or substandard medicines, and providing access to greater information on the legal characteristics of products, including its origin;
- Rationalize tax policies to ensure that tax regimes initially aimed at protecting consumers do not create demand for more harmful illicit alternatives to these products.

⁹ Section V(G)(42) of the Guidelines.

2. Illicit trade undermines the achievement of the UN Sustainable Development Goals

Guidelines 5 (i), 6, 49, 62 and 93 call for protection of consumers from practices that adversely affect their health and safety while promoting sustainable consumption patterns. They also recognise that unsustainable patterns of production and consumption are the major cause of the continued deterioration of the global environment.

The trade in illegal goods undermines the achievement of the UN Sustainable Development Goals (SDG), and consumers are at the heart of many of the issues targeted by the SDG framework.

Illicit trade acutely undermines the achievement of specific SDGs. For example:

- Consumers' ability to make educated and eco-friendly decisions are undermined when certificates of origin are falsified, quality assurance programs hampered, claimed ingredients diluted with a cheaper product or entire species substituted.
- The practice of seafood mis-labelling is a prime example of where food fraud removes the consumer's ability to make informed food choices, while simultaneously threatening ocean sustainability by creating or sustaining markets for illegally sourced fish to be laundered into the legal seafood trade.

Illicit trade crime cannot be viewed as a separate problem to be addressed in isolation. A holistic approach is needed, and business is a critical partner in this process. The UN Guidelines on Consumer Protection recognise the role of every player in a market in promoting and fostering sustainable consumer patterns.

- Member States should consider their commitments to achieving their UN SDG target during implementation of relevant UN Guidelines on Consumer Protection.
- In formulating consumer driven policies, Member States should consult with businesses, governmental and non-governmental organisations and environmental experts.
- Member States should promote research and data collection and analyses on consumer and behavioural patterns to enable them to then implement sustainable consumer policies.

3. Rapid growth in e-commerce exposes consumers to new risks

Guidelines 63 and 64 reference the increasing use of e-commerce shopping platforms by consumers and urge Member States to revise existing consumer protection policies and regulations to ensure that consumers are afforded the same level of protection in the online world as in the physical world. As e-commerce delivers remote consumers and small- and medium-sized companies with new market access, measures must be taken to ensure that these benefits are not compromised by counterfeiters and other illicit traders.

E-commerce platforms have become vulnerable to misuse and the infiltration of illegal, illicit, fake and potentially unsafe products. Criminals have seized opportunities to gain further profits from distributing these products in the online supply chain. Financial fraud has become more prevalent in the recent years, with online payment systems being susceptible to hacking and misappropriation of funds. Spoofed websites offering illegal goods including counterfeit goods have known to steal financial information including personal details to facilitate identify theft and fraud; and credit and debit card fraud. Consequently, there is an urgent need to address their availability to consumers and to put in place protections to safeguard them from a variety of new online risks.

Specific measures to enhance the implementation of Guidelines 63 and 64 are the following:

- 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, focusing 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, detecting, removing and disabling access to illegal content to ensure the effective removal of illegal content, increased transparency and the protection of fundamental rights online, while preventing abuse of those principles by illicit traders. This must include intermediary responsibility to know their customers.
- Promote more effective prevention measures by encouraging the development and adoption of the appropriate use of advanced technologies, such as automated tools for rapid notice, takedown and stay down, filtering and redress and the use of risk scoring services, and preventive measures to be implemented by online payment solutions offering services on non-safe online platforms. Preventative measures 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 intermediaries may face liability for operating services based on promoting access to illegal, illicit or otherwise infringing materials and that so-called Internet Service Provider safe harbor laws are not misused by actors whose business is dependent 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.
- Raise awareness of misleading, deceptive or false advertisements that lead consumers to websites trading in illegal goods. Introduce mechanisms to enhance notice and takedown systems and to demote websites that carry such advertisements.

4. Consumer protection and international trade

The importance of consumer-centric measures from an international trade perspective are highlighted in Guideline 94, which calls for Member States “to ensure that policies and measures for consumer protection are implemented with due regard to their not becoming barriers to international trade and that they are consistent with international trade obligations.”

As trade ultimately relates to goods and services consumed by individuals, consumer interests should be considered at the center of international trade and development efforts.¹⁰ International trade facilitates economic development, as it helps to increase capital formation and serves as a stimulus for investment. It also allows for the creation of suitable conditions for the import of foreign capital, thus spurring economic growth.¹¹

Member States should ensure that when implementing consumer regulations, they are not creating technical barriers to trade. While countries should indeed ensure that the appropriate health and safety standards for products and services are implemented, such measures should not have the result of being a disguised barrier to trade and should take into consideration intellectual property rights.¹² National consumer protection policies must be consistent with international trade obligations.¹³

While Member States should implement regulations to achieve legitimate policy objectives, including the protection of the health and safety of consumers, such measures should not serve as a technical barrier to trade. These trade considerations should also prevail when Member States are adopting regulatory approaches in varied international fora, including in relation to beverages, food products, tobacco products and pharmaceuticals, which have an impact on international trade and development.

Specific measures to enhance section 94 of the Guidelines include the following:

- Ensure that tax and regulatory policies promoted by Member States in relation to consumer goods facilitate international trade and promote transparency and predictability as a means of encouraging economic growth and development. The core of these policies should take into consideration consumer interests in the exchange of goods and services.
- Ensure that consumer interests and benefits remain at the center of international trade related considerations;
- Ensure that measures adopted in relation to health and safety do not serve as technical barriers to trade;

¹⁰ See https://www.jec.senate.gov/public/_cache/files/fc5e8da1-a5bc-43b6-8ebe-ebbbfdf6e3fd/may-14-2015-republican-staff-analysis-consumer-trade-benefits.pdf

¹¹ *Id.*

¹² Section 94 of the United Nations Guidelines for Consumer Protection (hereinafter “the Guidelines”).

¹³ Section 13 of the Guidelines; See also World Trade Organization Technical Barriers to Trade (TBT) Agreement.

- Ensure that measures adopted by Member States in international fora related to goods, consider the interests of the consumer and their rights as enshrined in the Guidelines;
- Educate consumers of the negative consequences of purchasing and consuming illegal products including risks to health and safety, improper nutrition and food adulteration and environmental degradation.

5. Consumer Access to Information and Better Products

Guidelines 5(e), 27, and 81 discuss the importance of giving consumers access to information so that they can choose better products, and in doing so the significance of international collaboration. Key changes from the old version to the 2015 version of the Guidelines make clear that (i) there is an emphasis on the empowerment of consumers to make decisions for themselves; (ii) businesses have a positive obligation to provide relevant non-misleading information concerning their products, which should not be blocked from reaching consumers; and (iii) there is a need to emphasize education and consumer awareness.

Sections 5(e) and 27 of the Guidelines state that consumers should have access to information, so that they can make informed decisions and choices in accordance with their individual wishes and needs. This is particularly true in relation illicit goods that expose consumers to health, safety and environmental risks, but feature no risk-related information. Allowing access to health and risk-related information can help consumers make decisions to improve their individual health and well-being and have an overall public health benefit.

Regulations and information on product risks should be regularly updated to keep pace with product innovation that reduce consumer safety or health risks.

In the spirit of international collaboration, a global approach should be encouraged to ensure that “information relating to (...) products does not vary from country to country in a way that would have detrimental effects on consumers.”¹⁴ A global methodology which ensures access to information on product safety, product safety improvements, less harmful products, and product alternatives and should be increasingly uniform, to elevate consumer awareness and ensure that there is not an uneven detrimental impact on public health which varies from country to country.

Specific measures to enhance the implementation of section 5(e), 27, and 81 of the Guidelines include the following:

- Ensure that regulatory systems are adopted which allow for consumers to have access to information, including relevant health information, to facilitate their choices and enhance well-being;
- Ensure that regulation, labeling, advertising and other information provided to consumers on product risks keep pace with the introduction of new and innovative products that minimize or eliminate such risks;

¹⁴ Section 81 of the Guidelines.

- Ensure international collaboration and cooperation concerning the adoption of measures that impact consumers, specifically regarding the type of information and products they are provided with access to;
- Regularly update materials, such as the 2017 Consumer Protection Manual, to account for specifics related to food, beverages, tobacco, pharmaceuticals, and consumer education and awareness in relation to innovative products.

6. Public-Private Partnerships

Guideline 10 emphasizes the positive role of private enterprises in research should be considered when developing consumer protection policies; and Section IV delineates characteristics of good business practices. Governments should work in collaboration with the private sector, in all consumer goods industries, to make sure that effective measures are being pursued, which take into consideration the findings of private enterprises on science and innovation which allows for the creation of better products.

Support should be given to the review of information and research conducted by private enterprises, disclosed in a transparent and non-misleading manner, to allow consumers to make decisions. Regulatory policies pursued by Member States in relation to consumer goods should include feedback and buy-in from the private sector, who have the requisite expertise concerning the industry and the products. The private sector should have a participative voice in contributing to regulatory processes.

Failing to work with private enterprises will have the result of precluding the expertise of business entities closest to consumers, leaving consumers in the dark with regard to their options and choices, or the potentially less harmful consequence of certain products over others. Exclusion of the private sector in the development of regulatory strategies related to consumer goods could impede the right of consumers to have access to better products and to benefit from scientific advancement and progress.¹⁵

The Guidelines also impose affirmative obligations on the private sector to engage in good business practices, thus emphasizing the importance of encouraging public-private partnerships and collaboration.¹⁶ Our collective business association commits to engaging in good business practices, including obligations to engage in truthful non-misleading advertising. Governments should also ensure that frameworks are in place within their national jurisdictions to facilitate access by consumers to truthful non-misleading information communicated by businesses, so that consumers can make informed choices and decisions.

Specific measures to enhance the implementation of III(10) and (IV) of the Guidelines include the following:

¹⁵ Article 27 of the Universal Declaration of Human Rights (UDHR) and Article 15 of the International Covenant on Economic, Social and Cultural Rights. Article 27 of the UDHR provides that “[e]veryone has the right to (...) share in scientific advancement and its benefits.”

¹⁶ Section IV of the Guidelines.

- Ensure that the private sector is given a participative voice in regulatory processes pertaining to consumer goods, at both the international and national level;
- Ensure that measures are taken to enhance public-private partnerships, so as to leverage the expertise of the industry producing consumer goods; and
- Rely on the expertise of the private sector in relation to research and development initiatives concerning innovative products.

Conclusion

The Guidelines are a valuable tool in providing UN Member States with a comprehensive set of principles to be implemented at the national level pertaining to consumer protection. We believe consumers must increasingly be protected from the harms of illicit trade. And, at the same time, guidelines addressing consumer protection in legal markets should consider emerging risks, such as those apparent in e-commerce; should consider commitments to UN Sustainable Development Goals; should facilitate international trade as a means of economic growth and development; and should promote innovation as a mechanism to reduce product risks.

Public-private partnerships should be encouraged, and measures should be promoted to counter illicit trade in the interest of ensuring the health and safety of consumers. TRACIT is committed to promoting the Guidelines and working in collaboration with UNCTAD, UN Member States, consumer protection groups and other stakeholders to ensure that the mission and objectives of the Guidelines are fulfilled.