



# Anonymous Companies Help Finance Illicit Commerce and Harm American Businesses and Citizens

*A Need for Incorporation Transparency*

By David M. Luna

May 2019



**FACTCOALITION**

Financial Accountability & Corporate Transparency



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Founded in 2011, the Financial Accountability and Corporate Transparency (FACT) Coalition is a non-partisan alliance of more than 100 state, national, and international organizations working toward a fair tax system that addresses the challenges of a global economy and promoting policies to combat the harmful impacts of corrupt financial practices. More information about the coalition can be found at the back of this report or on the FACT Coalition website at [www.thefactcoalition.org](http://www.thefactcoalition.org).



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## Executive Summary

Illicit commerce remains the lifeblood of today's bad actors, criminal organizations, and terrorist groups. A very profitable illicit activity for many of today's criminals and illicit networks is their involvement in the trafficking and smuggling of counterfeit and pirated goods.

In the United States, there are enormous threats posed by counterfeits and internet pirates — impacting legitimate commerce, markets, and financial systems, including critical national industries and local economies, placing consumers at risk, and harming the market reputational value of American brands and companies.

- The OECD and European Union Intellectual Property Office (EU IPO) estimated the value of imported fakes worldwide at US\$509 billion in 2016, or up to 3.3 percent of world trade.
- In a 2017 report by the International Chamber of Commerce's Business Action to Stop Counterfeiting and Piracy (BASCAP) and the International Trademark Association (INTA), it is projected that the global economic value of counterfeit and pirated goods alone will reach close to US\$3 trillion by 2022. It is expected that the total employment losses globally due to counterfeiting and piracy will rise from 2 to 2.6 million jobs lost in 2013 to 4.2 to 5.4 million jobs lost in 2022.
- A recent report by Cybersecurity Ventures estimates that the financial costs from cybercrime will double from US\$3 trillion in 2015 to US\$6 trillion by 2021.

From recent scandals to successful criminal prosecutions, we have gleaned sharper insights into how criminal networks evade detection and how dirty money is hidden — through the use of anonymous shell and front companies. A few summaries of the cases outlined in this Report's Section V include the following:

- Anonymous companies have helped criminals across the United States sell in recent years several billion dollars in fake and counterfeited luxury handbags and apparel accessories branded as Burberry, Louis Vuitton, Gucci, Fendi, Coach, and Chanel, as well as sportswear and gear from the NFL, NBA, and MLB including Nike, Adidas, and Under Armour, among many others.
- Anonymous companies were used to import and sell to American consumers, through internet pharmacies, counterfeit medicines from India and China worth hundreds of millions of dollars. These counterfeits included fake versions of Arimidex, a breast cancer treatment, Lipitor, the cholesterol drug, Diovan, for high blood pressure, and other medications such as illicit OxyContin, Percocet, Ritalin, Xanax, Valium, and NS Ambien.
- Anonymous companies assisted in selling knock-off parts to the Pentagon that have cost the US military tens of millions of dollars.
- Anonymous companies helped an organized criminal network sell counterfeit cellphones and cellphone accessories on Amazon.com and eBay.com. They also misrepresented goods worth millions of dollars as new and genuine Apple and Samsung products.
- Anonymous companies were leveraged to help criminals sell millions of dollars' worth of counterfeit computer anti-virus software over the internet.

- Anonymous companies assisted in selling Venezuelan oil, false securities, and fraudulent contractual relationships in the United States that have cost American businesses millions of dollars.

As a direct consequence, the use of such anonymous companies impacts the economic and financial interests of US companies and markets, as criminals and counterfeiters expand their market share of fake products across American cities and on-line markets.

*Anonymous companies created by criminals help to finance the distribution of harmful counterfeits across the US economy that seriously harm and even kill Americans — from illicit opioids and fake medicines, food, and alcohol to fake parts in cars and airplanes to counterfeited apparel and toys that are sometimes made with deadly chemicals and toxic materials.*

There is a global trend toward transparency.

- The United Kingdom now has a public registry that includes the names of the beneficial owners of companies formed in the country. They have recently passed a law to require its overseas territories (i.e. Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Montserrat, and Turks and Caicos Islands) to create public registers as well.
- The European Union has adopted new rules to require all member nations to establish public registers of beneficial owners by 2020. In addition to the 28 members of the EU, this also effectively extends to members of the European Economic Area (Norway, Iceland, and Liechtenstein).
- Additional nations and jurisdictions that have enacted or are pursuing enactment of beneficial ownership registration laws include: Afghanistan, Brazil, Costa Rica, Curacao, Dominican Republic, Ghana, Guernsey, Isle of Man, Jersey, Nigeria, South Africa, Ukraine, and Uruguay.

## *Top Recommendations: End Abuse of Anonymous Shell Companies*

### 1. Enact Legislation to Require Beneficial Ownership Disclosure

The United States Congress must pass legislation to end the abuse of anonymous shell companies by requiring the collection of “beneficial ownership” information — the natural person who controls the entity and has an entitlement to the funds — at the point of corporate formation. The legislation should ensure that federal, state, and local law enforcement agencies as well as those with anti-money laundering responsibilities in the private sector have full access to the information. Foreign law enforcement should also have appropriate access to the beneficial ownership information.

### 2. Require Beneficial Ownership Disclosure from Government Contractors

Either Congress or the administration should require bidders for federal contracts, sub-contracts, and grants to disclose their beneficial ownership information at the time of their bids, as a means to ensure that counterfeiters, fraudsters, sanctioned individuals, and other criminals are neither able to undercut bids from honest businesses nor receive taxpayer money.

## I. Introduction

The global illegal economy is booming, financed by trillions of dollars being generated every year by kleptocrats, organized criminals, terrorists, and other threat networks. Illicit commerce remains the lifeblood of today's bad actors, criminal organizations, and terrorist groups. Through dirty money derived from criminal activities and illicit commerce, these malefactors finance their illicit empires to foment greater criminality, chaos, insecurity, and violence around the world.

In the United States, the threats posed by counterfeits and internet pirates harm legitimate commerce, markets, and financial systems including critical national industries, regional and local economies, and the reputational values of American brands and companies.

These threats also put the safety and health of all Americans in danger when criminals put counterfeit medicines, food, automotive and airplane parts, toys, apparel, footwear, pirated film and television content, and fast-moving consumer goods (FMCG) into our distribution networks and supply chains — including pharmacies, workplaces, hospitals, schools, cars, airlines, grocery stores, restaurants, retailers, and online marketplaces.

As criminal entrepreneurs profit from American creativity and innovation and help grow the illegal economy, so also grows the need for them to launder their illicit wealth through reinvestments into the legitimate economy. From the recent scandals related to the Panama Papers to the successful criminal prosecutions against organized crime, the public has gained insights into the nefarious use of anonymous companies, both foreign and domestic, for such purposes that have further fueled corruption, fraud, organized crime, and terrorism in many parts of the world.

Left unchecked, and without urgent responses, the criminal infiltration and penetration into the American economy imperils the integrity of public and private institutions, supply chains, businesses, communities, and the physical welfare of people across the country.

The continued abuse of anonymous companies, financial safe havens, and US banks by corrupt officials, criminals, counterfeiters, money launderers, and terrorists are converging harms that endanger US economic and national security and damage American interests globally.

**"In too many places around the world, criminals have built their illicit empires on dirty money and laundered funds that are used to infiltrate and corrupt government institutions. In this shadowy, illegal economy traffickers and narcotics kingpins act as CEOs and venture capitalists to finance instability, jeopardize public health and safety, emaciate communities' human capital, erode our collective security, and destabilize fragile governments."**

— David M. Luna

Former Chair, OECD Task Force on Countering Illicit Trade;  
Former Senior Director for National Security & Diplomacy, Bureau of International Narcotics and Law Enforcement Affairs, US Department of State



## II. Background: Current Threat Landscapes

### A. Dark Commerce: A Booming Illegal Economy

While there have been benefits to globalization, it has also provided opportunities for criminals, their supporting facilitators, and their networks to expand their corruptive influence. The scale of illicit operations directly impacts the US and other global economies. The growth of the illegal economy distorts markets, disrupts communities, and harms individual people around the world.

From the coca and opium poppy fields of Colombia and Peru, Afghanistan, and Southeast Asia to the counterfeit producers in China, India, and Paraguay; from arms dealers in Africa to the Free Trade Zones (FTZs) in Panama and the United Arab Emirates (UAE); and across illicit financial hubs throughout North America and Europe, kleptocrats, drug cartels, criminal syndicates, and terrorist networks launder and move their dirty money through the US and global financial system.<sup>3</sup> They also navigate trade superhighways that meet an insatiable demand for narcotics, contraband, and an array of illicit goods that meet consumers' appetites and serve thriving illicit markets around the world.

**"In this new world of dark commerce, which benefits states and diverse participants, trade is impersonal and anonymized, and vast profits are made in short periods with limited accountability to sellers, intermediaries, and purchasers.... [N]ew technology, communications, and globalizations fuel the exponential growth of dangerous forms of illegal trade."<sup>1</sup>**

— Dr. Louise I. Shelley  
Nancy Hirst Endowed Chair and University Professor, Schar School of Policy and Government, George Mason University, and Director, Terrorism, Transnational Crime and Corruption Center (TraCCC)

Figure 1: Estimated Global Illegal Trade, Corruption, and Illicit Markets.<sup>2</sup>

CRIMES	Estimated Annual Dollar Value
Money Laundering	At least \$2.6 trillion (between 2 and 5 percent of world GDP)
Transnational Crime	\$1.6 trillion to \$2.2 trillion
Bribery	Significant portion of \$1 trillion
Narcotics Trafficking	\$750 billion to \$1 trillion
Counterfeited and Pirated Products	\$500 billion to \$1 trillion
Environmental Crime (illegal wildlife trade, logging, IUU Fishing, trade in CFCs, and toxic waste)	\$91 billion to \$258 billion
Human Trafficking/Modern Slavery	Up to \$150 billion
Illegal Tobacco	\$40 to \$50 billion
Illegal Mining	\$12 to \$48 billion

Source: World Economic Forum, World Bank, UNODC, OECD, ILO, GFI

The most alarming part of today's dark commerce is not only the staggering amount of illicit wealth that is being created<sup>4</sup>, but the growth rate of illicit trade. A 2017 joint study commissioned by the International Trademark Association (INTA) and the International Chamber of Commerce's Business Action to Stop Counterfeiting and Piracy (BASCAP) found that the market for counterfeit and pirated goods is expected to double within five years.<sup>5</sup>

Determining the scale of both the illicit trade and the amount of money that is being laundered and hidden behind anonymous companies is a complex exercise. Specific data sets are generally only snapshots of any given period of time. However, according to the World Economic Forum (WEF), the global value of illicit trade and transnational criminal activities is estimated at between 8 percent to 15 percent of Gross Domestic Product (GDP).<sup>6</sup>

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*According to the World Economic Forum (WEF), the global value of illicit trade and transnational criminal activities is estimated at between 8 percent to 15 percent of Gross Domestic Product (GDP).<sup>7</sup>*

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In 2017, the World Bank projected the World's GDP at US\$80 trillion.<sup>8</sup> Even if we take the conservative 8 percent estimate from above, it is fair to assume that today's global illicit markets generate several trillions of dollars every year for transnational criminal organizations, complicit corrupt facilitators, and other illicit networks. The types of criminal activities involve the trafficking of narcotics, arms, humans, counterfeit and pirated goods, and illegal tobacco and alcohol; illegally-harvested timber, wildlife, and fish; pillaged oil, diamonds, gold, and other natural resources and precious minerals; stolen antiquities; pirated film and television content; and other illicit commodities and contraband.<sup>9</sup>

Corruption and money laundering currently provide several trillions of dollars to the global illegal economy that enable illicit networks to corrupt critical institutions and enforcement systems, undermining the rule of law and exacerbating an already dire security situation in many parts of the world.

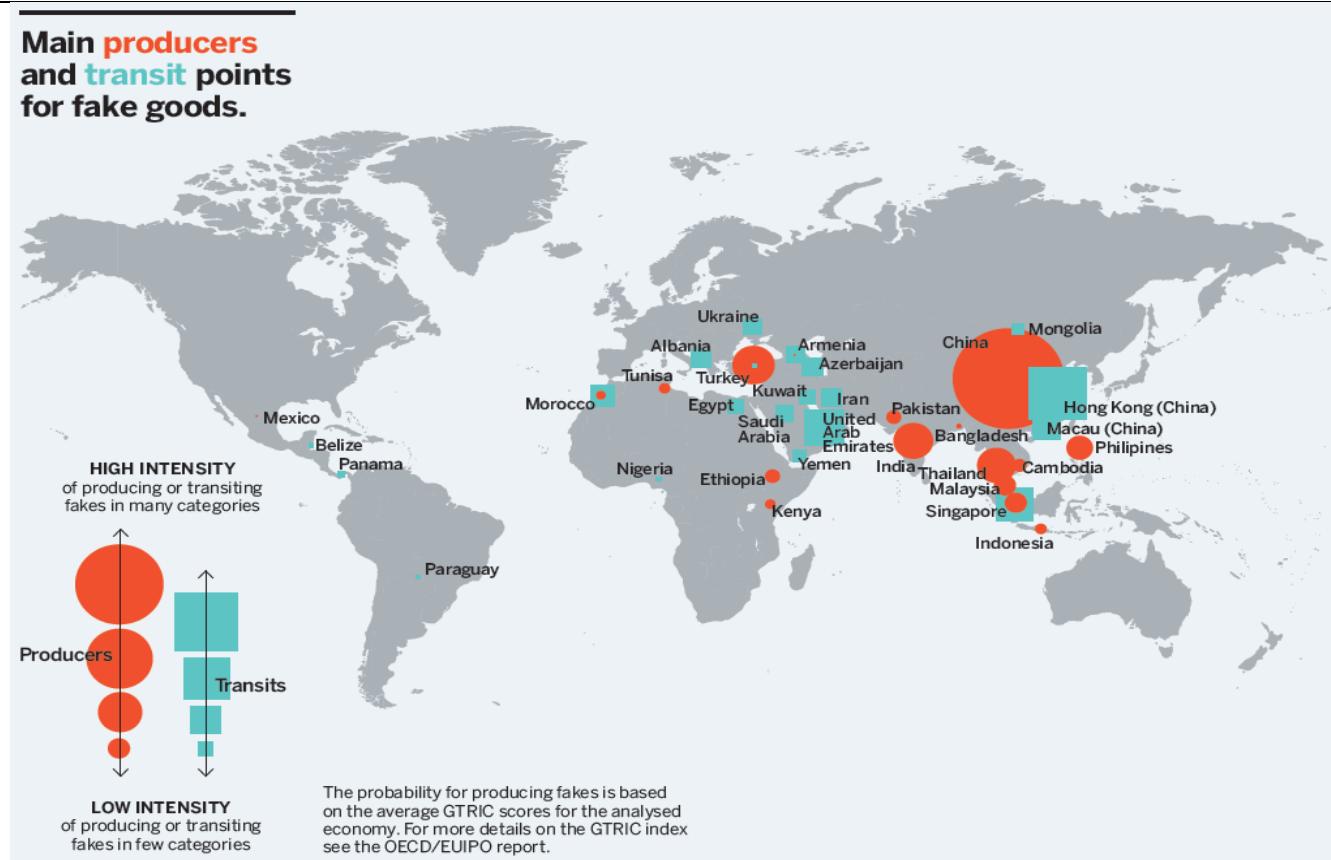
In a March 2019 report by the Organization for Economic Cooperation and Development's (OECD) Task Force on Countering Illicit Trade, "Trends in Trade in Counterfeit and Pirated Goods", the OECD and European Union Intellectual Property Office (EUIPO) estimated the value of imported fakes worldwide at US\$509 billion in 2016, or up to 3.3 percent of the global trade in goods.<sup>10</sup>

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*The OECD and European Union Intellectual Property Office (EUIPO) estimated the value of imported fakes worldwide at US\$509 billion in 2016, or up to 3.3 percent of the global trade in goods.<sup>11</sup>*

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Figure 2: Main Producers and Transit Points for Fake Goods.<sup>12</sup>



Source: Trends in Trade in Counterfeit and Pirated Goods, OECD & EUIPO 2019

Of this US\$509 billion in imported fakes worldwide, the top 10 product categories (See *Figure 4*) in terms of values of fakes in trade were: electronics & electrical equipment (US\$138bn); jewelry (US\$49.8bn); optical, photographic & medical equipment (US\$26.7bn); clothing & textile fabrics (US\$24.8bn); footwear (US\$13.9bn); toys (US\$11.8bn); foodstuff (US\$6.1bn); leather, handbags (US\$8.5bn); perfumery and cosmetics (US\$5.4bn); and watches (US\$4.2bn).<sup>13</sup>

The joint analyses by the OECD and EUIPO showed that China is the top producer of counterfeit goods in nine out of ten product categories, while Hong Kong (China), Singapore, and the United Arab Emirates are global transit hubs for the trade in counterfeit goods (See *Figure 2*).<sup>14</sup>

Brands suffering the most from counterfeiting were largely from OECD and EU member countries with US companies at the top of the list (See *Figure 3*).<sup>15</sup>

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*Brands suffering the most from counterfeiting were largely from OECD and EU member countries with US companies at the top of the list.<sup>16</sup>*

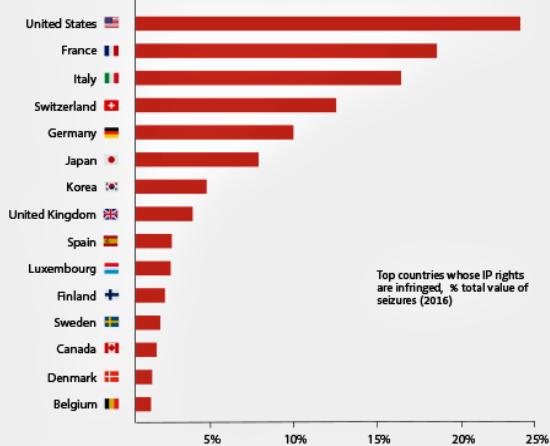
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Figure 3: Countries Hit Hardest by Trade in Fake Goods 2016.<sup>17</sup>



### TRENDS IN TRADE IN COUNTERFEIT AND PIRATED GOODS

#### Countries hit hardest by trade in fake goods, 2016



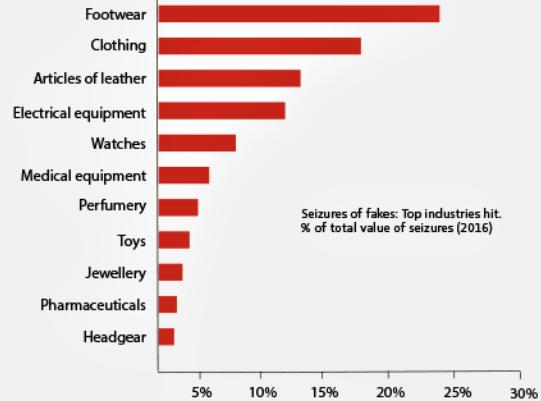
Source: Trends in Trade in Counterfeit and Pirated Goods, OECD & EUIPO 2019

Figure 4: Top Industries Hit by Trade in Fake Goods 2016.<sup>18</sup>



### TRENDS IN TRADE IN COUNTERFEIT AND PIRATED GOODS

#### Top industries hit by trade in fake goods (2016)



Source: Trends in Trade in Counterfeit and Pirated Goods, OECD & EUIPO 2019

Source: Trends in Trade in Counterfeit and Pirated Goods, OECD & EUIPO 2019

Source: Trends in Trade in Counterfeit and Pirated Goods, OECD & EUIPO 2019

Building on the work of the OECD Task Force, the 2017 joint report by BASCAP and the INTA, it is projected that the global economic value of counterfeit and pirated goods alone will reach close to US\$3 trillion by 2022 (See Figure 5).<sup>19</sup>

It is estimated that the total economic and social costs due to counterfeiting and piracy worldwide stood at US\$737 billion to US\$898 billion in 2013 and are expected to rise to US\$1.54 trillion to US\$1.87 trillion by 2022, suggesting an approximate increase of 108 percent (See Figure 5).<sup>20</sup>

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*The total economic and social costs due to counterfeiting and piracy worldwide stood at US\$737 billion to US\$898 billion in 2013 and are expected to rise to US\$1.54 trillion to US\$1.87 trillion by 2022, suggesting an approximate increase of 108 percent.<sup>21</sup>*

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It is also expected that the total employment losses globally due to counterfeiting and piracy will rise from 2 to 2.6 million jobs lost in 2013 to 4.2 to 5.4 million jobs lost in 2022 (See Figure 5).<sup>22</sup>

Figure 5: The Economic Impacts of Counterfeiting and Piracy.<sup>23</sup>

## THE ECONOMIC IMPACTS OF COUNTERFEITING AND PIRACY

	2013	2022 (forecast)
 <b>Value of counterfeit and pirated goods.</b>	US \$1.13 trillion €882.6 billion	US \$2.81 trillion €2,194.7 billion
 <b>Displacement of legitimate economic activity.</b>	US \$597 billion €449.6 billion	US \$1,244 billion €936.8 billion
 <b>Wider economic and social costs.</b>	US \$898 billion €676.2 billion	US \$1,870 billion €1,408.2 billion
 <b>Employment losses.</b>	2.6 million	5.4 million

Source: The Economic Impacts Of Counterfeiting And Piracy, A Report prepared for BASCAP and INTA by Frontier Economics.  
All figures reflected here have been provided by Frontier Economics.



Source: *The Economic Impacts of Counterfeiting and Piracy. A report prepared for BASCAP and INTA by Frontier Economics.*

## B. The Growing Threat of Illicit Markets Concerning Counterfeit and Pirated Goods

As in other parts of the world, dangerous contraband and counterfeits exact a heavy toll on the safety and health of Americans.

The use of such anonymous companies impacts the economic and financial interests of US businesses and markets, as criminals and counterfeiters expand their market share of fake products across American cities and online markets.<sup>25</sup> While tens of millions of fakes do real damage to companies financially, tens of thousands of fakes have caused grave physical and health injuries to countless American citizens — and many more globally. In the process of laundering illicit funds, opaque corporate vehicles have helped to inflate real estate prices and hollow out neighborhoods, hurting local businesses and forcing working families to live farther away from their jobs.<sup>26</sup>

Illegal goods such as illicit opioids, illegally mislabeled or contaminated “fake” foods<sup>27</sup> (e.g. Italian olives painted with copper sulphate solution, Sudanese sugar tainted with fertilizer, or chemically-doused seafood), falsified medicines, and toxic goods are harming and killing tens of thousands of people every year.<sup>28</sup>

**“Criminals and terrorists have always used anonymous shell companies to finance their operations, because they never have to disclose who actually owns these shell companies. There is no way for law enforcement to figure out who is involved in the transaction conducted by a shell company. Law enforcement tells me that whenever they’re following the money in an investigation, they always hit a dead end at an anonymous shell company. They can’t figure out who is behind it so they can’t follow the money any further.”<sup>24</sup>**

— Representative Carolyn B. Maloney  
New York’s 12th Congressional District

The alarming rise in fake products is occurring in a range of industries: from consumer goods that have an impact on public health and safety (such as pharmaceuticals, food and drink, medical equipment, or toys), to intermediary products (such as machines, spare parts, or chemicals), to luxury items (such as fashion apparel or deluxe watches).<sup>29</sup>

Counterfeit medicines alone destroy the lives of adults and children seeking to treat malaria, tuberculosis, heart disease, and other medical conditions. In many of these cases, the fakes either did not contain the right medicinal ingredients or, in other instances, contained high levels of impurities, contaminants, and poisonous chemicals.

Reporting has also shown how online pharmacies are a growing threat. According to the World Health Organization (WHO), more than 50 percent of the medicines purchased over the internet from illegal sites that conceal their physical addresses are counterfeits.<sup>30</sup> Such e-commerce provides criminals the opportunity to easily sell these counterfeit medicines to innocent consumers, without subjecting themselves to any enforcement risks.

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*According to the World Health Organization (WHO), more than 50 percent of the medicines purchased over the internet from illegal sites that conceal their physical addresses are counterfeits.<sup>31</sup>*

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Unsuspecting consumers can also find themselves at risk for malware from accessing pirated film and television content. According to 2018 data from Carnegie Mellon University, more time spent on sites with infringing content led to an increase in malware on users' computers. Researchers noted, in particular, that the doubling of a user's time on an infringing site accounted for a 20 percent increase in total malware files and a 20 percent increase in malware files after removing potential adware.<sup>32</sup> Without question, malware's effects on consumers and the US economy are vast, including: identity theft, credit card fraud, spam emails, and DDoS attacks.<sup>33</sup>

The risk to consumers has also grown as piracy activities evolve. An April 2019 report from the Digital Citizens Alliance found that growing use of "illicit devices" to stream pirated film and television content brought malware to consumers' doorsteps. Of a DCA survey of 2,073 Americans, 44 percent of respondents that reported using such a device in their home had an issue with malware in the prior 18 months.<sup>34</sup>

The Trump Administration continues to work with the US Congress and a diversity of market stakeholders and communities at the federal, state, and local levels on intellectual property policy, enforcement and protection issues. In advancing future strategies for action, the Trump Administration is committed to promote a robust intellectual property environment that "reduces counterfeiting, copyright piracy, trade secret theft, and patent infringement, and that provides government agencies, rights holders, and other stakeholders with effective legal tools for addressing these illicit activities."<sup>35</sup>

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*"We will stand up to any country that unlawfully forces American companies to transfer their valuable technology as a condition of market access. We will combat the counterfeiting and piracy that destroys American jobs, we will enforce the rules of fair and reciprocal trade that form the foundation of responsible commerce."*<sup>36</sup>

**President Donald J. Trump**

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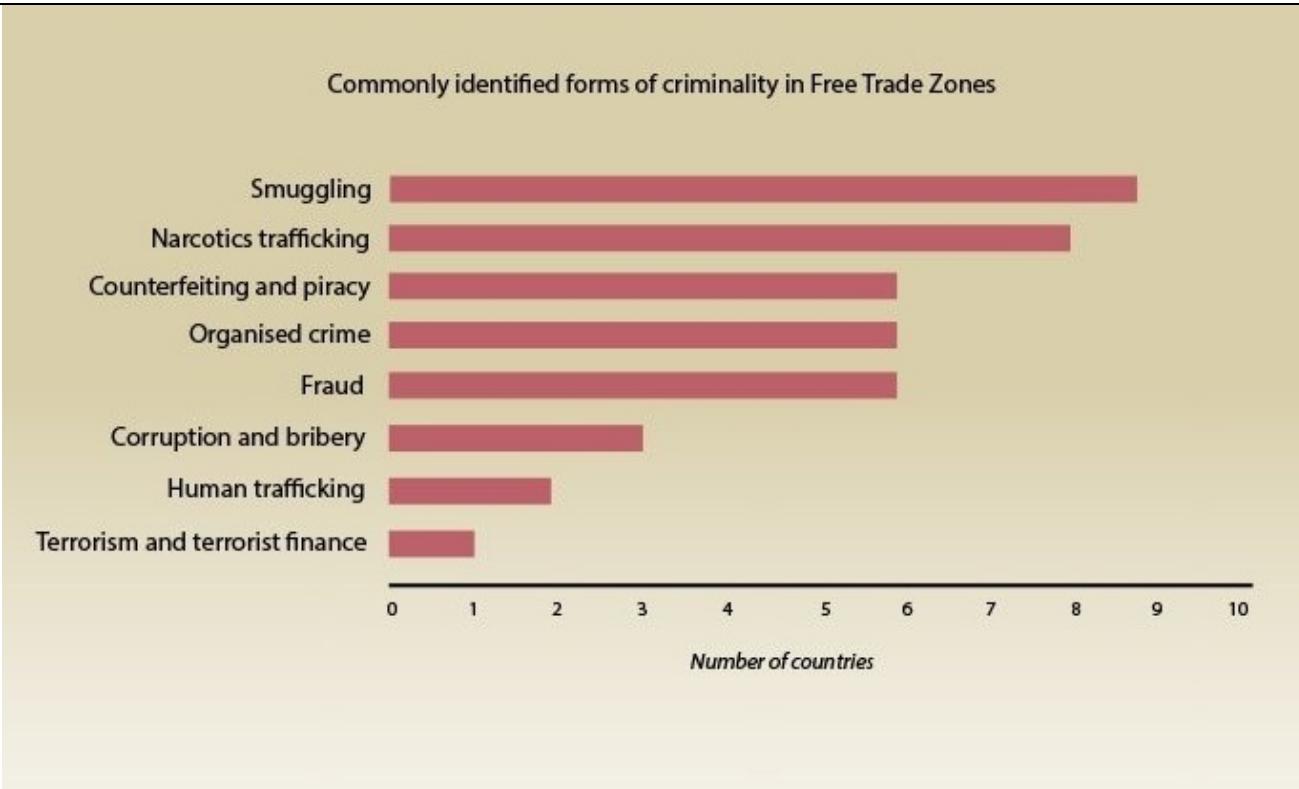
The OECD has conducted numerous, quantitative national case studies on the trade in counterfeits that infringe intellectual property rights of right holders from a given country. These national case studies have provided policymakers not only with reliable, evidence-based information on the overall threat to an economy, but also about its pernicious effects on lost industry profits, tax revenues, and jobs in the analyzed country.

Over the past year, there have been efforts to encourage the US government to work with the OECD on a possible national case study that can help inform numerous diverse communities and market stakeholders on the existing and future harms of counterfeit and pirated goods to American innovation, the health and safety of the American people, harms to US companies and industries, and the security impacts to the American homeland and national interests overseas.

### C. Free Trade Zones (FTZs): Illicit Hubs for Dark Commerce and Hiding Dirty Money

Free Trade Zones can have a catalytic effect on economies, including attracting Foreign Direct Investment and helping to expand economic growth. But in too many parts of the world, FTZs are also exploited on a daily basis by some to facilitate illicit activities that produce broader market reputational harm and put the physical security of many communities in danger (See Figure 6).<sup>37</sup>

*Figure 6: Commonly Identified Forms of Criminality in Free Trade Zones.<sup>38</sup>*



*Source: FATF, 2010-in OECD Governance Frameworks to Counter Illicit Trade (2018)*

For example, as reported by the US State Department in the 2018 Country Reports on Terrorism, the free trade zones in Panama and the Tri-Border Area of Argentina, Brazil, and Paraguay remained regional nodes for money laundering and were vulnerable to terrorist financing.<sup>39</sup>

Illicit trade and associated webs of corruption and criminality in one FTZ can have serious ripple effects in other FTZs all around the world. Such connectivity and convergence between the world's various free trade zones help to create a bigger cross-border threat, as various reports have underscored.<sup>40</sup> For example, payments for counterfeit products being trafficked through the United Arab Emirates from China and on to Africa and Europe may eventually wind up in Panama where they then — through anonymous shell companies — help to fund other types of illegal activity, be it more illicit trade, other forms of criminality, or terrorist attacks.<sup>41</sup>

**"We must elevate our international efforts across borders to fight illicit trade. A global problem requires a global solution. We continue to support comprehensive anti-illicit trade strategies that focus on more effective law enforcement, actionable intelligence, information-sharing, and public-private partnerships to disrupt black markets and illicit trade flows. Yet even this is not enough. To truly make progress against these criminal enterprises, we must also have stronger legal frameworks to enhance transparency and target the illicitly obtained funds. Anonymous shell companies and unregulated free trade zones serve as vehicles to hide and launder money. They enable criminals to further profit from the booming global illegal economy, destabilizing communities and hindering foreign investment across the globe. It is time to close these criminal loopholes and fix the problem."**<sup>42</sup>

— Alvise Giustiniani, Vice President, Illicit Trade Prevention, Philip Morris International

#### *D. Counterfeits Exploding in Cyberspace and Online Marketplaces*

The success of Amazon, Alibaba, E-Bay, and many other innovative, internet marketplaces has led to an explosion of millions of online stores.<sup>43</sup> However, as the saying goes: "if you can make it, they can fake it." Shutting an online store that is selling counterfeit products typically leads to criminals opening a new one within hours.<sup>44</sup> This problem is often exacerbated by e-commerce platforms' reticence to verify sellers' identities combined with the ease and speed with which criminals can form new anonymous companies to evade detection. Intellectual property theft is a serious crime that is getting worse every day due to the fast-growing online markets around the world.<sup>45</sup>

The expansion of internet shopping and cybercrime presents a growing threat to companies and consumers alike. E-commerce sales of an array of counterfeit products are distributed through internet, social media websites, and search engines, where there can be hundreds of millions of counterfeit listings online on a daily basis.<sup>46</sup>

A recent report by Cybersecurity Ventures estimates that the financial costs from cybercrime will double from US\$3 trillion in 2015 to US\$6 trillion by 2021.<sup>47</sup> This report also predicts that there will be 6 billion internet users by 2022 (75 percent of the projected world population of 8 billion) and more than 7.5 billion internet users by 2030 (90 percent of the projected world population of 8.5 billion, 6 years of age and older).<sup>48</sup>

When one couples these statistics with the fact that the global illegal economy is booming and that cybercrime is exploding, one has to be incredibly concerned about the massive convergence threats in the future related to the nexus between cybercrime and intellectual property infringement.

## E. Convergence Crime and Money Laundering Help Multiply Transnational Threats

What happens in one market impacts many others. One illicit threat spawns many other harms. No country, no region, no community is untouched by the corruptive influence of global crime, exploitative bad actors, and illicit networks. As threat multipliers, such converging threats metastasize and imperil broader economic and national security objectives.

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*No country, no region, no community is untouched by the corruptive influence of global crime, exploitative bad actors, and illicit networks.*

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This is certainly the case with regard to the use and exploitation of anonymous companies by today's criminals and counterfeiters. As illustrated by the revelations in the 2016 Panama Papers and 2017 Paradise Papers, anonymous companies help finance other crimes and hide the illicit proceeds.<sup>49</sup>

What happened in Panama's financial safe havens has had a ripple effect in other markets and "makes the business of offshore accounts into a sort of global shell game".<sup>50</sup> US Senator Marco Rubio, chairman of a Senate subcommittee that covers transnational crime, noted that anonymous shell companies hurt Americans as criminals fly under the radar of law enforcement and reinvest their dirty monies in real estate.<sup>51</sup>

Unfortunately, without making the fight against anonymous companies a higher priority and requiring the disclosure of beneficial ownership information, current regulatory and legal regimes do not provide the necessary tools for US law enforcement agencies to track, trace, and seize hidden illicit proceeds either within the country, or in other jurisdictions that have a direct harm to American businesses and citizens.

To win the fight against illicit trade, including combatting sophisticated criminal networks and the counterfeit goods that they introduce to the marketplace, we must close the gaps in current laws that enable anonymous incorporation.<sup>52</sup>

**"Like any Internet-based venture, the operations of a website dedicated to enabling or promoting online copyright theft would not be possible without the use of a wide spectrum of supporting services. Combating systematic online infringement of copyright requires the active cooperation of all participants in the e-commerce ecosystem, including online advertising players (advertisers, ad agencies, ad networks, and the providers of advertising placement and related services); payment processors; hosting providers (including reverse proxy providers and related optimization services); domain name registrars and registries; and search engines. As entities with a direct stake in a secure and stable Internet, and in the healthy growth of e-commerce (including e-commerce in products and services protected by copyright), cooperation against threats to that security, stability and health is part of a sound business strategy for all Internet intermediaries. Governments in many countries should be doing much more than they are currently to foster and encourage such cooperation, and the development of best practices to advance the common goal of a safer, cleaner online marketplace."**<sup>53</sup>

— Steven J. Metalitz, International Intellectual Property Alliance

### III. US Law Enforcement Concerned About the Challenges of Organized Crime Using Anonymous Companies

**Kenneth A. Blanco, Director, Financial Crimes Enforcement Network (FinCEN), US Department of the Treasury:**

"The misuse of legal entities to disguise illicit activity has been a key vulnerability in the US financial system. Corporate structures have facilitated anonymous access to the financial system for criminal activity and terrorism. Narcotraffickers, proliferation financiers, money launderers, terrorists and other criminals have been able to establish shell companies, which then use accounts at financial institutions, directly or indirectly, without ever having to reveal who ultimately is behind the transactions being facilitated. This has made it difficult for law enforcement to pursue investigative leads, and for financial intelligence units to produce those leads in the first instance. And, just as important, this has made it difficult for financial institutions to apply effective risk-based AML programs."<sup>54</sup>

**M. Kendall Day, Acting Deputy Assistant Attorney General, US Department of Justice:**

"The pervasive use of front companies, shell companies, nominees, or other means to conceal the true beneficial owners of assets is one of the greatest loopholes in this country's AML regime. Indeed, the Financial Action Task Force (FATF), the inter-governmental body responsible for developing and promoting policies to protect the global financial system against money laundering and other threats, highlighted this issue as one of the most critical gaps in the United States' compliance with FATF standards in its most recent evaluation. FATF noted that the lack of beneficial ownership information can significantly slow investigations because determining the true ownership of bank accounts and other assets often requires that law enforcement undertake a time-consuming and resource-intensive process. For example, investigators may need grand jury subpoenas, witness interviews, or foreign legal assistance to unveil the true ownership structure of shell or front companies associated with serious criminal conduct."<sup>55</sup>

**Steven D'Antuono, Section Chief, Financial Crimes Section, Federal Bureau of Investigation (FBI):**

"Under our existing regime, corporate structures are formed pursuant to state-level registration requirements, and while states require varying levels of information on the officers, directors, and managers, none requires information regarding the identity of individuals who ultimately own or control legal entities – also known as beneficial ownership – upon formation of these entities... Criminals exploit these gaps for their illicit purposes, often seeking to mask the nature, purpose, or ownership of their accounts and the sources of their income through the use of front companies, shell companies, or nominee accounts... [T]he lack of an obligation to collect beneficial ownership information at the time of company formation is a significant gap. More effective legal frameworks are needed to ensure that criminals cannot hide behind nominees, shell corporations, and other legal structures to frustrate law enforcement, including stronger laws that target individuals who seek to mask the ownership of accounts and sources of funds."<sup>56</sup>

**Cyrus R. Vance Jr., New York County District Attorney:**

"[O]btaining data on financial transactions can be challenging because our country's lax incorporation laws make it easy for criminals to hide money behind anonymous shell companies and launder it through US and foreign banks and their branches. It is almost a certainty that, at this very moment, a human trafficker, terrorist cell, drug cartel, or [a] corrupt government official is using an anonymous US shell corporation to finance illicit activities. On a near-daily basis we encounter a company or network of companies involved in suspicious activity, but we are unable to glean who is actually controlling and benefiting from those entities, and from their illicit activity. In other words, we cannot identify the criminal because the criminal has used layers of shell companies to frustrate investigators and protect himself from prosecution."<sup>57</sup>

**Dominick L. Stokes, Vice President for Legislative Affairs, Federal Law Enforcement Officers Association (FLEOA):**

"Suspected terrorists, drug trafficking organizations and other criminal enterprises continue to exploit the anonymity afforded to them through the current corporate filing process in a few states. Hiding behind a registered agent, these criminals are able to incorporate without disclosing who the beneficial owners are for their company(s). This enables them to establish corporate flow – through entities, otherwise known as "shell companies," to facilitate money laundering and narcoterrorist financing. Even through the due process of proper service of a court order, law enforcement officers are unable to determine who the beneficial owners are of these entities. This has to stop. While we fully recognize and respect the privacy concerns of law abiding citizens, we need to install a baseline of checks and balances to deter the criminal exploitation of our corporate filing process."<sup>58</sup>

## IV. How It Works: Laundering Money Through Anonymous Shell Companies

It has become evident that the anonymous company structure is being abused regularly, if not daily. Anonymous companies are exploited by an array of criminals, rogue states, and terrorists to both launder funds from illicit markets to licit ones and mask the true beneficial owners of these corporate structures.<sup>59</sup>

In illicit financial centers that function as offshore hubs of secrecy, professional service facilitators — accountants, incorporators, lawyers, and others — help criminals, corrupt officials, and other bad actors create anonymous companies and other legal structures to hide their funds, launder them into the international banking system, and reinvest them into legitimate commerce and investments.

The International Monetary Fund (IMF) has estimated that money laundering constitutes approximately 2 to 5 percent of the world's gross domestic product (GDP) each year, or approximately US\$1.5 trillion to US\$3.7 trillion in 2015.<sup>60</sup>

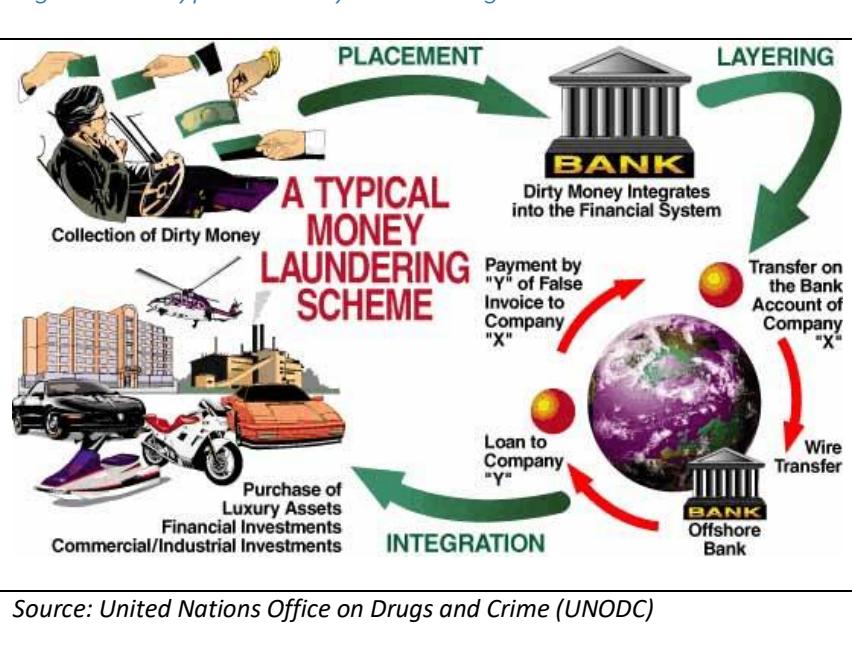
However, to more fully understand the array of harms that anonymous companies can cause in the United States and many other countries, we must first understand how money laundering works at the operational level.

Money laundering is an art form and process by which criminals “disguise the original ownership and control of the proceeds of criminal conduct” by making such criminal proceeds appear to have been “derived from a legitimate source” instead of their illegal origin.<sup>61</sup> In other words, it is the dirty money obtained through an illegal or criminal activity that is then processed through and integrated into the legal monetary market.

According to the United Nations Office on Drugs and Crime (UNODC), money laundering is a dynamic three-stage process (See *Figure 7*).<sup>63</sup> The International Compliance Association (ICA) provides a similar framework.<sup>64</sup> They both agree that the stages are:

- Placement, the stage at which criminally derived funds are introduced into the financial system;
- Layering, the stage of the process in which the funds are disguised (“washed”) and its ownership and source is disguised;
- Integration, the final stage at which the “laundered” property is reintroduced and reinvested into the legitimate economy via purchases of real property or luxury assets and an array of investments.

*Figure 7: A Typical Money Laundering Scheme.*<sup>62</sup>



According to the US Treasury Department, there are multiple ways to approach each stage to make dirty money appear legal.<sup>65</sup> Within the placement stage, some options allow the illicit funds to be introduced (or “placed”) into the financial system through cash deposits, monetary instruments (money orders, value cards, checks), or through casinos.<sup>66</sup> The layering stage is the most elaborate, where money launderers may move “funds electronically from one country to another” through a series of complex illicit-llicit financial transactions using multiple overseas accounts and anonymous corporate structures to conceal the illegal source of the funds and elude detection, including through “payments of goods or services, thus giving them a legitimate appearance”.<sup>67</sup> The final stage “integration” is then utilized to reintroduce the funds back into the legal economy, and to provide the “clean” cash or value back to the criminal. Such funds are frequently used to buy real property, artwork, yachts, jewelry, vehicles, or other assets.<sup>68</sup>

Money laundering is often difficult to detect due to opaque corporate vehicles that are manipulated and exploited by criminals to hide their dirty money.

These anonymous companies facilitate money laundering through the lack of transparency of beneficial ownership information.<sup>69</sup> The lack of information can be used to disguise the identity of known or suspected criminals, the real purpose of an account or property held by a corporate vehicle, or the source or use of funds or property associated with a corporate vehicle.<sup>70</sup>

A good example of cleaning dirty money, disguising and laundering it, is through trade-based money laundering (TBML). TBML is increasingly leveraged by criminals to launder money, transfer or move value, and avoid paying the requisite tax on goods by under- or over-invoicing the value of goods.<sup>71</sup> In fact, in examining 2013 US trade data, Dr. John Zdanowicz, a TBML expert, estimated that 6 to 9 percent of overall US trade is “tainted by customs fraud and perhaps trade-based money laundering.”<sup>72</sup>

In its 2015 National Money Laundering Risk Assessment, the US Department of the Treasury estimated that about US\$300 billion in illegally-concealed proceeds is generated annually in the United States alone.<sup>73</sup> That money comes from many sources, including fraud, narcotics-trafficking, international organized crime, foreign corruption and kleptocracy, trade-based money laundering, and other criminal activities.

The Financial Action Task Force (FATF) recently noted in their Mutual Evaluation Report of the United States, regarding Recommendation 24 – transparency and beneficial ownership of legal persons – that the US was non-compliant because it does not require disclosure of beneficial ownership information when a company is formed.<sup>74</sup>

**“Anonymous shell companies have been implicated in a myriad of schemes to launder the proceeds of criminal activity and defraud legitimate businesses and governments around the world. New rules to combat illicit finance have been enacted in many countries but the US does not require the collection of beneficial ownership information.”<sup>75</sup>**

- Oliver Bäte, CEO, Allianz;
- Josh Bayless, CEO, Virgin Group;
- Marc Benioff, Founder, Chairman and CEO, Salesforce;
- Andrew Liveris, Chairman and CEO, The Dow Chemical Group;
- François-Henri Pinault, CEO and Chairman of the Board of Directors, Kering Group; and
- Paul Polman, CEO, Unilever

## V. Case Studies: Anonymous Companies and Illicit Commerce

### *Clear and Present Dangers to Americans*

Most states within the United States remain open to criminals that want to incorporate an anonymous shell company to hide illicit profits.<sup>76</sup> Under many state entity formation laws in the United States, the real owners of companies are not required to be disclosed, thus enabling corporate anonymity. It was recently reported that it requires less information to incorporate an anonymous shell company in the United States than is necessary to obtain a library card – where one provides “far more personal information to a state” than to create a company.<sup>77</sup>

**Obscured Beneficial Ownership:** Increasingly, sophisticated criminals seek access to the US financial system by masking the nature, purpose, or ownership of their accounts and the sources of their income through the use of front companies, shell companies, or nominee accounts with unknown beneficial owners. Front companies typically combine illicit proceeds with lawful proceeds from legitimate business operations, obscuring the source, ownership, and control of the illegal funds. Shell companies typically have no physical operations or assets, and may be used only to hold property rights or financial assets. Nominee-held “funnel accounts” may be used to make structured deposits in multiple geographic locations and corresponding structured withdrawals in other locations. All of these methods obscure the true owners and sources of funds.<sup>78</sup>

*Source: Federal Bureau of Investigation (FBI)*

Over the years, US law enforcement agencies have indicted and prosecuted numerous criminals and counterfeiters for conspiracies to traffic and smuggle counterfeited and pirated goods into the United States for sale on streets across America, the black market, or on the internet and of laundering for their dirty monies through the US financial system. Through a combination of prolonged and difficult investigations, whistleblowers, and — on occasion — luck, the following are a sample of counterfeit and piracy cases that have come to light.

*Anonymous companies helped an organized criminal network in a multi-million-dollar counterfeit cellphone scheme*

In 2018, ten individuals were indicted in the Federal District of Idaho over a multi-million-dollar fraudulent scheme selling counterfeit cellphones and cellphone accessories that were misrepresented as new and genuine Apple and Samsung products on Amazon.com and eBay.com.<sup>79</sup> The counterfeit cellphones and cellphone accessories were obtained in bulk from manufacturers in Hong Kong, repackaged in Idaho, and then individually resold to consumers online as genuine and new.<sup>80</sup>

*Anonymous companies helped an organized criminal network import US\$300 million in luxury counterfeited goods*

In 2014, several Chinese and US-based individuals pleaded guilty to profiting from the trafficking of counterfeit goods through a series of shell companies based in the United States and Hong Kong.<sup>81</sup> From August 2008 through February 2012, convicted criminals conspired to run an international counterfeit goods smuggling and distribution operation by importing hundreds of containers of counterfeit goods, primarily handbags, footwear, and perfume from China into

the United States.<sup>82</sup> These goods – including counterfeit Nike sneakers and UGG boots; Louis Vuitton, Coach, and Gucci handbags; and cigarettes, among other items – if legitimate, would have had a retail value of more than US\$300 million. The conspirators sought help in importing counterfeit goods into the United States and used a corporation to import the goods through Port Newark-Elizabeth Marine Terminal in Elizabeth, New Jersey. This corporation was actually a front company set up by law enforcement to act as an importer. The conspirators imported the counterfeit goods using fraudulent customs paperwork, which, among other things, falsely declared the goods within the containers. To hide the origin of the profits from the sale of fake goods, some of the conspirators laundered the proceeds of counterfeit goods trafficking, the sale of narcotics, and illegal gambling activity through bank accounts opened in China, the United States, and elsewhere.<sup>83</sup>

*Anonymous companies helped criminals sell US\$100 million worth of fake luxury handbags and apparel accessories in one of the largest counterfeiting luxury goods cases in US history with criminal associates that sympathized with terrorist groups*

In 2010, criminals from a large organized illicit network were convicted in Virginia by a jury in one of the largest counterfeit goods prosecutions in US history.<sup>84</sup> Defendants were convicted of importing from China more than 300,000 fake luxury handbags and wallets worth more than US\$100 million, bearing counterfeit trademarks including those of Burberry, Louis Vuitton, Gucci, Fendi, Coach, Chanel, and other luxury brands.<sup>85</sup> In laundering the proceeds, these criminals created 13 anonymous shell companies shifting money from one entity to another to delay detection.<sup>86</sup> According to the indictment, the criminals “engaged in a corporate shell game whereby they would import counterfeit luxury goods in the name of different corporations using different names. If customs authorities in a US port identified one of their corporations as an importer of counterfeit luxury goods, [the criminals] would continue to import such goods in the same port under a different corporate name. [The criminals] would shift from one shell corporation to another to facilitate their conspiracy to import counterfeit luxury goods.”<sup>87</sup> This particular Asian criminal syndicate partnered with at least eight manufacturing plants in China to import and traffic in these counterfeit luxury goods, which were also supplied to smaller operators including some controlled by Hezbollah and Hamas sympathizers.<sup>88</sup>

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*Anonymous companies helped criminals evade US\$34M in tobacco taxes*

A three-year investigation exposed systematic and widespread fraud and tax evasion in the distribution of some tobacco products in California. To evade taxes and undercut their competitors (honest, law-abiding companies), illicit distributors set up businesses outside of California, then smuggled tobacco into California using anonymous shell companies to receive the products, false documents to underestimate the amount of tobacco received, and untraceable cash sales to transfer money.<sup>89</sup>

*Anonymous companies assisted in selling counterfeit parts to the Pentagon*

In 2011, US government agencies awarded 93 contracts worth over US\$1.6 million (90 percent from DOD) to individuals that defrauded the Department of Defense. An investigation revealed that Eagle Logistic Solutions and Eagle Logistics Aerospace, two anonymous Wyoming companies registered at the same address, won four contracts worth more than US\$50,000, and sold knock-off parts to the Pentagon. In one case, the government found that the firms “knowingly supplied air and fluid-filtering kits for military tractor-trailers between 2001 and 2005 that were reverse-engineered in Turkey to look like they were made by Parker Hannifin, the required manufacturer.”<sup>90</sup>

*Anonymous companies assisted in enabling convicted criminals to defraud the US Army on government contracts*

In 2010, several Missouri-based individuals created a shell company to win bids to procure telecommunications and networking equipment for the US Department of Defense (DOD). Instead of providing legitimate equipment to the DOD, this shell company supplied counterfeit products.<sup>91</sup> Convicted criminals defrauded the US Government in a US\$1 million wire fraud scheme to sell counterfeit and modified computer equipment to the US Army.<sup>92</sup> After receiving a contract from the Army, Missouri Office Systems and Supplies, Inc. (MOSS) conspired with PRM Technology Equipment LLC, incorporated in North Carolina, to procure and provide more than US\$1 million worth of counterfeit computer products from Hong Kong and China and Cisco products that were used and modified post-manufacture, outside of Cisco’s authorized distribution channels. The counterfeits were in turn delivered to the US Army Recreation Machine Program (ARMP).<sup>93</sup>

*Anonymous companies assisted in financing an illicit trade in misbranded food that endangered consumers*

In 2017, numerous criminals were indicted for willfully trafficking in counterfeit goods and conspiracy to commit criminal copyright infringement and to introduce 3.7 million bottles of misbranded counterfeit 5-Hour ENERGY into interstate commerce.<sup>94</sup> These unsafe counterfeits put millions of users of this consumer product at risk by endangering their health and safety. Defendants’ company Tradeway International Inc., which was doing business as Baja Exporting, LLC in California, sold the counterfeit-labelled product throughout the United States. These counterfeits were manufactured using an unsanitary facility, untrained day workers, and mixed unregulated ingredients in vats in an attempt to mimic the real 5-Hour ENERGY products.<sup>95</sup>

*Anonymous companies assisted in selling Venezuelan oil, false securities, and fraudulent contractual relationships in the United States*

In July 2018, the United States Attorney’s Office for the Southern District of Florida indicted 8 individuals with conspiracy to commit criminal racketeering related to a US\$1.2 billion international scheme to launder funds embezzled from Venezuelan state-owned oil company, Petróleos de Venezuela, S.A. (PDVSA).<sup>96</sup> Numerous anonymous companies incorporated in the United States were complicit and involved in laundering fraudulent transactions involving the sale of false securities, the sale of high-end real estate, and fraudulent contractual relationships.<sup>97</sup>

*Anonymous companies assisted in the importation and sale of counterfeit medicines from both India and China to American citizens and the transfer of funds from their sale through an internet global pharmacy and other illicit commodities that transited through Free Trade Zones*

Online pharmacy pioneer, Andrew Strempler, was sentenced to 4 years for conspiracy to commit mail fraud after an investigation by the Food and Drug Administration (FDA) found that his internet pharmacy business, RX-North, had

sold counterfeit medicines to American consumers including fake versions of Arimidex, a breast cancer treatment, Lipitor, the cholesterol drug, and Diovan for high blood pressure.<sup>98</sup>

*Anonymous companies assisted in the distribution of US\$100 million worth of counterfeit Schedule II, III, and IV controlled substances to internet customers throughout the United States*

From March 2009 to April 2012, Muhammad Aijaz Sarfraz and his co-conspirators operated numerous illegal websites through which they undertook an international counterfeit drug and criminal money laundering operation.<sup>99</sup> The counterfeit pills included popular prescription medications such as OxyContin, Percocet, Adderall, Ritalin, Hydrocodone, Xanax, Valium, Ambien, and others.<sup>100</sup> The counterfeit drugs, which were generally manufactured in China, Singapore, Malaysia, India, Pakistan, and Hong Kong, often contained incorrect active pharmaceutical ingredients or the wrong quantity and dosage strength of those substances. Sarfraz and other conspirators moved their criminally-derived proceeds through a network of banks and shell companies.<sup>101</sup>

*Anonymous companies leveraged to help criminals sell millions of dollars' worth of counterfeit computer anti-virus software over the internet*

In June 2011, US authorities seized nearly US\$15 million from a Swiss bank account belonging to fugitive Shaileshkumar "Sam" Jain, who had fled the United States following his indictment in 2008 on federal charges for trafficking and selling millions of dollars' worth of counterfeited Symantec computer goods on various fraudulent internet websites.<sup>102</sup> "To hide the proceeds from his criminal activities, Jain established shell corporations [in the United States] and overseas and opened bank and investment accounts in the United States, Uruguay and Switzerland," according to US law enforcement.<sup>103</sup>

*A transnational criminal network based in Colorado leveraged more than 20 anonymous shell companies to finance a global illicit counterfeiting ring*

In 2017, a Colorado police officer and other criminal defendants were convicted of racketeering, money laundering, and conspiracy for illegally selling counterfeit NFL sports merchandise of the Denver Broncos and other professional and college teams throughout the country.<sup>104</sup> According to US law enforcement officials, the group had imported the fake merchandise from known counterfeiters and exporters located in Hong Kong and mainland China.<sup>105</sup> David A. Thompson, special agent in charge of HSI in Denver, stated that, "This investigation uncovered hundreds of thousands of dollars in money wired to China to finance these counterfeit products and more than 20 shell companies furthering this illegal activity."<sup>106</sup>

*Anonymous companies provide a conduit for criminal networks in West Africa to sell stolen oil internationally and escape accountability*

A report by the London-based think tank Chatham House found that proceeds of stolen oil — and the oil itself — move through anonymous companies to escape accountability. As reported in *The Economist*, "Profits are laundered abroad in financial hubs, including New York, London, Geneva and Singapore. Money is smuggled in cash via middlemen and deposited in shell companies and tax havens... Some of the proceeds—and stolen oil—end up in the Balkans, Brazil, China, Indonesia, Singapore, Thailand, the United States and other parts of west Africa."<sup>107</sup>

## VI. Global Trends in Incorporation Transparency

Around the world, more countries are realizing the looming threats posed by the infiltration of illicit financial flows that empower adversaries and undermine the legitimate economy.<sup>109</sup> In the process of confronting the deluge of dirty money into their economies, numerous jurisdictions are legislating new policies to require corporate entities to disclose the true owners (a.k.a. beneficial owners) who ultimately control an entity and have entitlement to the funds.<sup>110</sup>

Unfortunately, the United States remains a top destination for creating anonymous companies for hiding all sorts of assets and monies.<sup>111</sup> A 2014 report by scholars at the University of Texas-Austin, Brigham Young University, and Griffith University noted that the United States was the easiest jurisdiction in which criminals and terrorists could open anonymous companies to cloak their identities and launder money with few questions asked.<sup>112</sup> Corporate service providers continue to incorporate in the United States with minimal due diligence and no beneficial ownership information.<sup>113</sup>

Greater transparency would empower law enforcement agencies across borders to harness such information to investigate corrupt financial practices and an array of illicit trade harms, including those caused by today's counterfeiting criminal networks.<sup>114</sup>

### *United States (US)*

- The US Department of the Treasury recently extended and expanded to twelve jurisdictions coverage of their Geographic Targeting Orders (GTOs).<sup>115</sup> GTOs require title insurance agents to collect beneficial ownership information for companies engaged in higher cost, cash financed real estate transactions.<sup>116</sup>
- In the Fiscal Year 2018 National Defense Authorization Act, Congress included a provision for the Department of Defense to collect beneficial ownership information of landlords when leasing high security office space.<sup>117</sup>
- In May of 2018, new rules promulgated by the Department of the Treasury through the Financial Crimes Enforcement Network went into effect.<sup>118</sup> They implemented rules requiring banking institutions to collect beneficial ownership information for companies seeking to open accounts.
- In the February 2019 budget agreement, Congress included a provision to direct the US Executive Directors of each international financial institution to vote against loans or other financing for projects unless entities provide beneficial ownership information.<sup>119</sup>
- Congress remains interested in the array of national security dimensions of beneficial ownership information.<sup>120</sup> Such a convergence of national security threats may pave the way for Congress to pass legislation that would require the collection of beneficial ownership information.<sup>121</sup>

**"I do believe generally [that the Corporate Transparency Act is] headed in the right direction, and I appreciate [Rep. Carolyn Maloney's] work on this. I hope this is something that, on a bipartisan basis, we can get accomplished."**<sup>108</sup>

— Steven T. Mnuchin  
Secretary of the Treasury  
April 9, 2019

## *United Kingdom (UK)*

- In 2016, the United Kingdom became one of the first countries to establish a national registry that publicly disclosed information on the beneficial ownership of companies.<sup>122</sup>
- In 2018, the UK voted to require its Overseas Territories with financial centers — Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Montserrat, and Turks and Caicos Islands — to implement public registries of beneficial ownership information by the end of 2020.<sup>123</sup>
- The UK Parliament has recently enacted new measures that would empower British law enforcement agencies to investigate criminality in the use of such UK-registered companies, including the leverage of Account Freezing Orders (AFO) to remove dirty money from the UK financial system. In implementing these new AFOs, Donald Toon, director for economic crime at the UK's National Crime Agency (NCA), underscored: "Unexplained wealth orders have the potential to significantly reduce the appeal of the UK as a destination for illicit income. They enable the UK to more effectively target the problem of money laundering through prime real estate in London and elsewhere. We are determined to use all of the powers available to us to combat the flow of illicit monies into, or through, the UK."<sup>124</sup>

## *European Union (EU)*

- In 2015, the EU agreed that all 28-member states (including the UK) establish national beneficial ownership registries and make that information available to various entities, including financial institutions, to meet customer due diligence requirements.<sup>125</sup>
- In 2018, the European Union required that its member states collect and make public the beneficial ownership information of companies formed within their bloc by 2020.<sup>126</sup>
- These requirements also effectively extend beyond the 28 members of the European Union to also include members of the European Economic Area — Norway, Iceland, and Liechtenstein, which are required to follow all European Union directives in order to remain in the open market.

## *Rest of the World*

In addition to the UK, the UK Overseas Territories, the EU member states, and the European Economic Area member states, a number of other jurisdictions have enacted beneficial ownership registration laws. They include Brazil, Costa Rica, Curacao, Dominican Republic, Ghana, Guernsey, Isle of Man, Jersey, Ukraine, and Uruguay.

That said, there are an estimated 235 countries, territories, or jurisdictions where companies can be incorporated, according to Global Witness.<sup>127</sup> Only about 6 percent of these jurisdictions have online registries in which some basic company information can be publicly-accessed, and less than 50 percent of these jurisdiction provide additional information, including specific data on directors and shareholders.<sup>128</sup>

In addition to specific efforts by some of the G20 countries noted above, these countries have taken positive steps, but progress has generally been slow in recent years. The majority of G20 members have not taken much action to fully implement their agreed upon commitments to the G20 Beneficial Ownership principles.<sup>129</sup> In Africa and Latin America, several countries appear to be making some progress on beneficial ownership and towards establishing national registries, but much work remains to be done to reach ideal levels of transparency.<sup>130</sup>

## In Summary

As of June 2018, 34 jurisdictions have enacted laws requiring the registration of beneficial ownership information. They include: Austria, Belgium, Bermuda, Brazil, British Virgin Islands, Bulgaria, Cayman Islands, Costa Rica, Croatia, Curacao, Czech Republic, Denmark, Dominican Republic, Estonia, Finland, France, Germany, Ghana, Gibraltar, Guernsey, Hungary, Isle of Man, Italy, Jersey, Latvia, Lithuania, Malta, Portugal, Slovenia, Sweden, Turks & Caicos Islands, Ukraine, United Kingdom, and Uruguay. An additional 11 jurisdictions are legally required to implement beneficial ownership registers by 2020. They include Anguilla, Cyprus, Greece, Ireland, Luxembourg, Montserrat, Netherlands, Poland, Romania, Slovakia, and Spain.<sup>132</sup>

**“Beneficial ownership through shell companies has been a [serious] vulnerability to our financial system and an impediment for law enforcement for much too long... We need to have a central repository for beneficial ownership... By collecting beneficial ownership information, and making it available to law enforcement, valuable investigative time will be saved.”<sup>131</sup>**

— Dennis M. Lormel,  
President & CEO, DML Associates, LLC  
Former Chief, Financial Crimes Section, FBI, US Department of Justice



## VII. Recommended Courses of Action

### *1. Enact Legislation to Require Beneficial Ownership Disclosure*

The United States Congress must pass legislation to end the abuse of anonymous companies by requiring the collection of “beneficial ownership” information — the natural person who controls the entity and has an entitlement to the funds — at the point of corporate formation. The information should be updated whenever the ownership changes. The legislation should ensure that federal, state, and local law enforcement agencies as well as those with anti-money laundering responsibilities in the private sector have full access to the information. Foreign law enforcement should also have appropriate access to the beneficial ownership information.

Doing so will enable law enforcement agencies at the international, federal, state, and local levels to more effectively target corrupt financial practices and transnational criminal activities, including the trafficking of counterfeit and pirated goods.

**“To ensure that persons who form corporations or limited liability companies in the United States disclose the beneficial owners of those corporations or limited liability companies, in order to prevent wrongdoers from exploiting United States corporations and limited liability companies for criminal gain, to assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, and other misconduct involving United States corporations and limited liability companies, and for other purposes.”<sup>133</sup>**

- H.R. \_\_\_ “Corporate Transparency Act of 2019”

### *2. Require Beneficial Ownership Disclosure from Government Contractors*

Either Congress or the administration should require bidders for federal contracts, sub-contracts, and grants to disclose their beneficial ownership information at the time of their bids, as a means to ensure that counterfeiters, fraudsters, sanctioned individuals, and other criminals and corrupt facilitators are neither able to undercut bids from honest businesses nor to receive taxpayer money.

### *3. Deny Entry to Counterfeitors and Corrupt Actors*

The United States government should deny entry into the United States to complicit and corrupt actors and their facilitators, including criminals engaged in the illicit trade of counterfeited and pirated goods. Bad actors should not benefit from their corruption and criminality.

### *4. Make All Felonies Predicate Offences for Money Laundering*

The United States is one of only a small number of industrialized countries that enumerates a list of predicate offenses for money laundering, rather than referencing all serious crimes as recommended by the international anti-money laundering standards body, the Financial Action Task Force (FATF). Worse, the United States uses one list for crimes committed in the US and another list for crimes committed abroad. Most industrialized countries instead use a “threshold” approach to predicate offenses, where all crimes that carry a certain minimum sentence or fine are considered predicate offenses. In the United States, the equivalent would be to amend the money laundering statutes to make all felonies predicate offenses for money laundering. Legislation to make all felonies predicate offenses for money laundering has been introduced by both Sen. Charles Grassley (R-IA) and Rep. Maxine Waters (D-CA) in previous Congressional sessions but has not yet been adopted.

## *5. Establish a Global Network of Trade Transparency Units (TTUs)*

One key countermeasure for trade-based money laundering (TBML) is to establish trade-transparency units (TTUs) between affected countries. TTUs are formed when two countries agree to exchange transaction-level trade data on trade between individuals or trading companies of the two countries in order to detect and combat wrongdoing. For the vast majority of global trade, government authorities are only able to see one side of cross-border trade transactions. Importers and exporters are subject to reporting in the jurisdiction where they operate, but not in the jurisdictions where their counterparties operate. This practice means that parties on either side of a cross-border transaction are able to report different information to their respective authorities, without the authorities of either jurisdiction being aware of the discrepancies.

The concept behind TTUs is simple. By providing government authorities access to information reported on both sides of a trade transaction, anomalies can be spotted. The anomalies, like the misinvoicing of price, value, quantity, or quality of goods, could be indicative of simple customs fraud, TBML, or even underground financial systems. TTUs can provide additional value in TBML analysis by adding law enforcement data, financial intelligence, and commercial information. The creation of these additional data sources is key to identifying more sophisticated schemes, where false information is reported identically on both sides of a transaction.

The United States pioneered the concept of TTUs. Today, approximately 16 TTUs exist around the world, loosely cooperating under a US-sponsored TTU umbrella. Most are in Latin America. Other countries around the world are interested in TTUs. Not only is trade transparency a proven countermeasure to TBML, but, by cracking down on customs fraud, it enhances revenue collection. TTUs have only been in existence a few years, but the network has already recovered well over US\$1 billion.<sup>134</sup>

Specific line item funding should be provided to fund a TTU in the United States so as to enhance its analytic capabilities and augment the personnel necessary to foster trade transparency across the country and to continue to expand the international network of TTUs.

## *6. Expand Due Diligence Obligations to All Gatekeepers to the Financial System*

In December 2016, the FATF came out with its latest mutual evaluation report on the progress of the United States in meeting international anti-money laundering (AML) and counter-terrorism financing standards.<sup>135</sup> While the report gave the United States strong marks overall, it highlighted two key deficiencies. First, it stated that the lack of timely access to adequate, accurate, and current beneficial ownership information remained one of the fundamental gaps in the US AML regime. Second, the evaluation noted that lawyers, accountants, real estate agents, and other significant professional service providers operating in the US were still largely exempt from the AML requirements levied on financial institutions under the Bank Secrecy Act, and that this exemption presented a real vulnerability given the propensity for abuse in this area.

Congress should pass legislation requiring persons who form legal entities, including transactional lawyers, to carry out AML due diligence. Specifically, the legislation should require formation agents to conduct a risk-based due diligence review before accepting a client; to identify higher risk clients; to conduct risk-based monitoring of client funds and activities; and to report suspicious transactions to law enforcement. These AML obligations have long been part of the international AML standards set by FATF, and the US should take the steps necessary to meet its FATF commitments.

## VIII. Conclusion: Target Dirty Money, Disrupt Illicit Markets, Expose Anonymous Companies

Illicit trade is a serious security threat multiplier, which fuels a multi-trillion-dollar global illegal economy every year. It harms every sector, market, industry, and community every day. Today's bad actors, criminal organizations, and terrorist groups are building their illicit empires on illicit trade with illicit profits that are simply staggering. Through dirty money derived from criminality, these malefactors finance corruption, chaos, insecurity, violence, and instability around the world.

Anonymous companies provide an accessible and licit vehicle to finance greater illicit threats and enable criminals to hide behind a veil of secrecy. As long as kleptocrats, criminals, and terrorists have the ability to hide and move their illicit wealth, American national security and commercial interests remain at risk. US law enforcement agencies and globally-recognized experts call for enhanced transparency and access to information on the beneficial owners of companies. It is a critical tool to mitigate a myriad of security threats and vulnerabilities across sectors.

We cannot continue to hamstring and undercut those on the front lines of law enforcement that protect our nation, financial system, businesses, and citizens. As many senior security experts have underscored in recent years, we need meaningful action to empower our law enforcement agencies with the robust authorities, tools, and resources to effectively prosecute the fight against illicit trade and money laundering, and to prevent dirty money from tainting and corrupting the rule of law and our democratic institutions.

**"If Congress wants to give sanctions real teeth, they should pass beneficial ownership legislation and more aggressively seek domestic asset forfeitures of sanctioned individuals. After all, there are few things that kleptocrats and transnational criminals love more than their Malibu mansions, New York condos, Miami villas, and Delaware yachts. A private beneficial ownership registry at home would take the US's highly targeted sanctions a step further, increasing the likelihood they will actually change the behavior of US adversaries."**<sup>136</sup>

— Clay R. Fuller, Ph.D.  
Foreign and Defense Policy  
Fellow, American Enterprise  
Institute

## How to Report Counterfeited and Pirated Goods and Related Fraud and Criminality

**National Intellectual Property Rights Coordination Center (IPR Center):** The US Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) led IPR Center stands at the forefront of the United States Government's response to global intellectual property (IP) theft and enforcement of its international trade laws. The mission of the IPR Center is to ensure national security by protecting the public's health and safety, the US economy, and our war fighters, and to stop predatory and unfair trade practices that threaten the global economy.

To accomplish this goal, the IPR Center brings together 23 partner agencies, consisting of 19 key federal agencies, Interpol, Europol and the governments of Canada and Mexico in a task-force setting. The task force structure enables the IPR Center to effectively leverage the resources, skills, and authorities of each partner and provide a comprehensive response to IP theft. The IPR Center also engages in public-private partnerships to increase information sharing in order to combat the illegal importation and distribution of counterfeited and tainted goods.

**Report Violations of intellectual property rights, including counterfeiting and piracy, to the IPR Center:** <https://www.iprcenter.gov/referral/view> or Telephone: 1-866-DHS-2-ICE

Source: National Intellectual Property Rights Coordination Center (IPR Center)

# About the Author and Publisher

## *About the Author*

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A former US Diplomat and national security official, Mr. Luna is a frequent speaker on transnational threats, international affairs, geopolitical risks, illicit trade, and the global illegal economy (“dark side of globalization”), including transnational organized crime, corruption, money laundering, terrorist financing, intellectual property rights enforcement, counterfeit and pirated goods, cybersecurity/cybercrime, environmental crime, and smuggling/trafficking crimes that impact economies and communities around the world, and destabilize global security and world order.

With 22 years of federal service in the US Government, Mr. Luna held numerous senior positions with the US Department of State, Bureau of International Narcotics and Law Enforcement Affairs (INL), including directorships for national security, transnational crime, and illicit networks, and anti-corruption and good governance; and served as an advisor to the Secretary’s Coordinator for the Rule of Law. Mr. Luna also served as an Assistant Counsel to the President, Office of the Counsel to the President, The White House, as well as in other positions with the US Department of Labor, and the US Senate Committee on Banking, Housing, and Urban Affairs.

Mr. Luna is the new chair of the Anti-Illicit Trade Committee of the United States Council for International Business (USCIB) and is also currently a Senior Fellow for National Security at the Terrorism, Transnational Crime, and Corruption Center, Schar School of Policy and Government, George Mason University.

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## *About the FACT Coalition*

The **Financial Accountability and Corporate Transparency (FACT) Coalition** is a non-partisan alliance of more than 100 state, national, and international organizations promoting policies to combat the harmful impacts of corrupt financial practices.

The Coalition calls for an end to corrupt financial practices that prop up autocratic regimes and undermine democratic institutions, allow for and foster human rights abuses, and are a leading contributor to global poverty. The underlying problems are global in scope and require multilateral cooperation. While a growing number of nations are stepping up to address these issues, the US needs to lead on the international stage and fight to eliminate roadblocks to effective reform.

FACT works closely with our international partners while focusing on educating US policymakers on internal reform measures — encouraging those policymakers to provide positive leadership internationally.

Long term, through transparency and accountable international agreements, we seek to create stable funding sources for development and incentivize future investments that measurably reduce global poverty.

For more information, visit [thefactcoalition.org](http://thefactcoalition.org).

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