
OECD draft Guidance to Counter Illicit Trade: enhancing transparency in Free Trade Zones

Having Regard to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

Having Regard to the FATF Recommendations and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights;

RECOGNISING that illicit trade operates in the shadow of the global economy, with increasingly sophisticated traffickers dealing in a range of prohibited and counterfeited goods and services;

RECOGNISING that illicit trade and criminal networks are a growing security concern globally, and their convergence presents threats to communities and societies as a whole, enabling lucrative criminal enterprise terrorism financing and creating greater instability and violence around the world;

RECOGNISING that various existing international standards are in place to prohibit or regulate different sectors of illicit trade, including the trafficking of humans, narcotics, counterfeits, endangered and illegally harvested species of fauna and flora, antiquities and conventional arms; and promote the implementation of legal, regulatory and operational measures to combat the proceeds of illicit trade

CONSIDERING the lack of a multilateral set of guidance that provides governments with tools to deter and reduce illicit trade regardless the commodity, cutting across different illicit markets;

RECOGNISING the need to enact proactive measures to reduce the supply and deter the demand for illicit goods and services across a range of illicit markets;

RECOGNISING that Free Trade Zones (FTZ) have proliferated in number, can stimulate legitimate economic growth and play a central role in business for many countries and leading manufacturers;

RECOGNISING that standards, oversight and regulations governing FTZs have not in all cases kept up with the growth in number of economic operators and volume of trade in goods and services;

RECOGNISING that in some FTZ customs and law enforcement authorities do not have timely physical access to the premises, and face difficulty to obtain information on the activities of economic operators established within, as well as information pertaining to the ownership of goods that transit through or are produced within; even where other relevant international standards require them to be able to;

ACKNOWLEDGING that criminal entrepreneurs take advantage of inadequate oversight and the lack of transparency in FTZ to commit trade fraud, smuggle contraband, facilitate the proliferation of weapons and launder the proceeds of crime;

NOTING the opportunity to hold to account FTZ authorities that are complicit with, or negligent in the oversight of, economic operators that conduct or enable illicit trade that is harmful to persons, businesses and the environment;

On the proposal of the Public Governance Committee:

I. Recommends that Members and non-Members, having adhered to the Recommendation (hereafter “Adherents”), promote transparency, and reduce and deter the abuse of Free Trade Zones as conduits for illicit trade.

To this effect, Adherents should:

1. Take measures to encourage FTZ to comply with the “Code of Conduct for Clean Free Trade Zones” set out below. Such measures include, but are not limited to:

The conduct of strict control of consignments arriving from, or that are suspected of having transited through, FTZ that do not comply with the “Code of Conduct for Clean Free Trade Zones”.

2. Ensure that the legal framework for FTZ established in their territory, or that are otherwise governed under their administrative control:

Provides for the right of competent customs and other law enforcement authorities to require data related to the movement of goods and carry out ex officio checks at any time on goods stored and services conducted in FTZ;

Allows for customs and other law enforcement authorities to take appropriate actions in the execution of their authorities;

Empowers customs and other law enforcement authorities to examine merchandise before or at the time of admission to a FTZ, or at any time thereafter, if the examination is considered necessary to facilitate the proper administration of any law, regulation, or instruction which Customs is authorized to enforce.

Empowers customs authorities to impose prohibitions or restrictions on the activities carried out within FTZ, having regard to the nature of the goods in question, their respect of intellectual property laws, or the requirements of customs supervision, or security and safety requirements.

Empowers customs authorities to prohibit persons who do not provide the necessary assurance of compliance with customs provisions from carrying out an activity in a FTZ;

Prohibits persons convicted of illegal activities, legal or natural, from operating within the FTZ;

Ensures that the perimeter and entry and exit points of the area of FTZ are subject to customs supervision.

Ensures that goods, persons and means of transport entering and leaving the FTZ are subject to controls.

Ensures that the economic operators that are allowed to operate within FTZ are physically located within the FTZ, and that they communicate to the customs authorities the identity of the clients in their operations. Where the client acts as an agent or representative, then the economic operator should also communicate

the identity of the principal (i.e. the person who ultimately owns or controls the agent), to the customs authorities.

3. Require FTZ authorities to make available aggregated statistical data on goods entering and leaving the Free Trade Zone on the basis of their tariff classification, and information that identifies the owner(s) of goods.
4. Promote adoption of this guidance and of the Code of Conduct in their bilateral and multilateral trade agreements.
5. Make greater use of international agreements that include provisions for mutual international legal assistance in order to combat illicit trade conducted through FTZ.

When entering into new agreements that include such provisions, including multilateral and bilateral trade agreements, Adherents should specifically refer to the need to combat illicit trade conducted through FTZ that have not adopted the Code of Conduct for Free Trade Zones.

When administering such agreements, designate the competent authorities and their points of contacts in order to facilitate the communication between and among the responsible authorities of the parties to the agreement in question.

6. Encourage international cooperation in the exchange of law enforcement information, and consult with appropriate authorities and affected industries in investigations and other legal proceedings concerning specific cases of misuse of FTZ related to illicit trade. This includes such means as:

Sharing financial and administrative information, spontaneously or upon request, to support the provision of evidence in judicial proceedings, or to ensure and further the effective supervision and control of and the prevention of the misuse of FTZ.

Making better use of the current arrangements for Customs to Customs cooperation, as required through Customs Mutual Assistance Agreements, for the sharing of information and other necessary communication at the technical level.

Cooperation and assistance in the development and implementation of policies and practices to counter illicit trade in FTZs, including technical assistance to share and develop improved systems for record keeping by FTZ authorities and economic operators.

7. Promote awareness amongst the business community (e.g. major intermediaries including shipping agents, freight forwarders, customs brokers and logistics companies) to understand the major risks related to FTZ.
8. Foster public private partnerships to counter illicit trade emanating from FTZ that have not adopted the Code of Conduct for Clean Free Trade Zones. This includes reinforcing efforts to encourage the business community that makes use of FTZs, or that finances operators within FTZ, to refrain from doing business in FTZ that are not certified for compliance with the Code of Conduct for Free Trade Zones.
9. Monitor the activities of FTZ and publish annual indicators that help to evaluate their use to favour illicit trade.

Such evaluation should be based on relevant enforcement statistics, including customs detentions and seizures of goods originating, or in provenance from FTZ, and orders to disrupt services performed within FTZ.

-
10. Conduct targeted operations with respect to shipments originating from FTZ that do not adopt, or are not certified as in compliance with, the Code of Conduct for Clean Free Trade Zones.

II: Recommends that Adherents ensure the following Code of Conduct for Free Trade Zones and monitor their compliance.

Compliant Free Trade Zones are those that:

1. Provide unconditional access to the customs and law enforcement agencies of the jurisdiction where they are established to carry-out unobstructed, ex officio enforcement checks of operators in support of investigations of violations of applicable law.
2. Notify customs authorities in advance of any industrial, commercial or service activity taking place in the FTZ.
3. Prohibit operators and persons who do not provide the necessary assurance of compliance with the applicable customs provisions from carrying out an activity in the FTZ.
4. Ensure that economic operators active in the FTZ maintain detailed digital records of all shipments of goods entering and leaving the zone, as well as all goods and services produced within it, sufficient to know what is inside the zone at any given time. The digital records shall:
 - Document sales and purchase operations of goods and services within the FTZ, and be provided to the competent customs authority or law enforcement body upon its request.
 - Maintain a complete and accurate record of all commercial transactions to enable full accountability of materials used in production processes that may be reconciled with the volume and value of their commercial transactions. These records should be:
 - i. Maintained for a period of a least four years.
 - ii. Made available in a timely manner to the FTZ authority and competent public authorities upon request.
 - iii. Maintained in a format as required by the customs or other competent authority, such that it can be used for risk profiling by the competent enforcement authority.
5. Transmit in a timely manner to public authorities, on simple request by the competent authority in the jurisdiction where the zone is established, any information contained in the digital records.
 - Ensure that economic operators active in the FTZ are required to grant access to their detailed digital records upon request of the FTZ authority, the customs authorities or any other competent public authority in the jurisdiction where the zone is established.
 - Appoint a dedicated point of contact with the necessary skills and resources to respond effectively to such requests for information from public authorities, and to lead due diligence and compliance verifications on companies and persons operating within FTZ.
6. Deter cash payments for any commercial or financial transaction of the economic operators active in the FTZ occurring inside or originating from the FTZ, and for large cash transactions, document the details and report to the customs authority.

Commission an internationally accredited, independent third party verification firm to carry out certification that the zone has implemented the Code of Conduct. Such certification shall be performed at least once a year. The accreditation firm should be changed every 3 years.

Make public the results of the certification through publication on the OECD website.