Trade-Based Money Laundering: A Global Challenge

A policy memo by Global Financial Integrity, Fedesarrollo,
Transparency International Kenya and ACODE

JANUARY 2023

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Acknowledgements

This publication was produced as part of *Capacity Building to Address Illicit Financial Flows and Boost Domestic Resource Mobilization*, a project implemented by Global Financial Integrity (GFI) in partnership with leading civil society organizations in Kenya, Uganda and Colombia and with the support of the Government of Norway. The project aims to curtail illicit financial flows (IFFs), which are illegal movements of money or capital from one country to another. Left unchecked, IFFs contribute to insecurity and deprive developing countries of much-needed resources and revenues. Through research, advocacy, and capacity-building, the project seeks to raise awareness of this issue and promote effective policy solutions that leverage the expertise of civil society, governments, and international organizations.

This policy memo is a joint publication by GFI, Fundación para la Educación Superior y el Desarrollo (Fedesarrollo), Transparency International Kenya and Advocates Coalition for Development and Environment (ACODE). It was edited and compiled by Julia Yansura of GFI. It benefited greatly from comments from Tom Cardamone, Channing Mavrellis and Katherin Alfonso of GFI; Harriet Wachira, Edwin Birech and Lewis Ngelese of Transparency International Kenya; and the team at ACODE in Uganda. Graphic design was provided by Camille Babington of Visual Teaching Technologies.

This report is made possible with support from the Government of Norway.

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Acronyms and Terms

Term	Explanation
ACCU	Air Cargo Control Unit (Uganda)
ACODE	Advocates Coalition for Development and Environment (Uganda)
AML	Anti-money laundering
BMPE	Black market peso exchange
DIAN	Dirección de Impuestos y Aduanas Nacionales (Colombia)
EFRIS	Electronic Fiscal Receipting and Invoicing Solution (Uganda)
FATF	Financial Action Task Force
Fedesarrollo	Fundación para la Educación Superior y el Desarrollo (Colombia)
FIU	Financial intelligence unit
FSRB	FATF-style regional body
GAFILAT	Grupo de Acción Financiera de Latinoamérica (Latin America)
GDP	Gross domestic product
GFI	Global Financial Integrity (United States)
HSI	Homeland Security Investigations (United States)
IFFs	Illicit financial flows
IVTS	Informal value transfer system
TBML	Trade-based money laundering
TPCA	Tax Procedures Code Act (Uganda)
TTU	Trade Transparency Unit
UIAF	Unidad de Información y Análisis Financiero (Colombia)
UNCTAD	United Nations Conference on Trade and Development
UN ECLAC	United Nations Economic Commission for Latin America and the Caribbean
URA	Uganda Revenue Authority
USD	United States Dollar
USH	Ugandan Shilling

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Introduction

This policy memo is a joint publication by GFI, Fedesarrollo, Transparency International Kenya and ACODE, organizations that are based in the United States, Colombia, Kenya and Uganda, respectively. The memo draws on the technical and regional expertise of each of the organizations, seeking to analyze the complex challenges of Trade Based Money Laundering (TBML) from a truly global policy perspective.

Broadly speaking, illicit financial flows (IFFs) are illegal movements of money or capital from one country to another. GFI classifies this movement as an illicit flow when funds are illegally earned, transferred, and/or utilized across an international border.[1] The global scale of IFFs is considerable. According to the United Nations Conference on Trade and Development (UNCTAD), Africa loses US$88.6 billion annually to IFFs.[2] In the case of Latin America and the Caribbean, the United Nations Economic Commission for Latin America and the Caribbean (UN ECLAC) estimates that from 2004-2013, illicit financial outflows represented 1.8% of regional gross domestic product (GDP) and 3.1% of regional trade, with losses totalling US$765 billion for the 10-year period.[3] Moreover, IFFs undermine institutions, contribute to insecurity, harm communities and the environment, and deprive countries of much-needed tax revenues.

One of the most prevalent channels for IFFs is through the international trade system. As of 2021, GFI estimates that the annual value of trade-related IFFs in and out of developing countries amounted to, on average, about 20 percent of the value of their total trade with advanced economies.[4]

One area of particular concern is TBML, which the Financial Action Task Force (FATF) defines as the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimize their illegal origin or finance illicit activities.[5] As FATF notes, "the aim of TBML—unlike trade-related predicate offenses—is not the movement of goods, but rather the movement of money, which the trade transactions facilitate."[6; 7] TBML involves acts designed to conceal or disguise the true origin of criminally derived proceeds so that the unlawful proceeds appear to have been derived from legitimate origins or constitute legitimate assets. It is a highly effective way of integrating large volumes of criminal proceeds with legitimate income, and is attractive to organized crime groups because it is very hard to detect, track and investigate due to its transnational nature and the complexity of the international trade system. Recent cases have highlighted the sophisti-

1 "Illicit Financial Flows," Global Financial Integrity, accessed August 2022, available at https://gfintegrity.org/issue/illicit-financial-flows/.

2 United Nations Conference on Trade and Development, *Tracking Illicit Financial Flows for Sustainable Development in Africa* (New York: United Nations Publications, 2020), 2, available at https://unctad.org/system/files/official-document/aldcafrica2020_en.pdf.

3 Andrea Podestá, Michael Hanni and Ricardo Martner, United Nations Economic Commission on Latin America and the Caribbean, *Flujos financieros ilícitos en América Latina y el Caribe* (Santiago: UN ECLAC, 2017), available at https://repositorio.cepal.org/bitstream/handle/11362/40921/S1601230_es.pdf?sequence=1&isAllowed=y.

4 See Global Financial Integrity, *Trade-Related Illicit Financial Flows in 134 Developing Countries 2009-2018* (Washington, DC: GFI, 2021), available at https://gfintegrity.org/report/trade-related-illicit-financial-flows-in-134-developing-countries-2009-2018/.

5 Financial Action Task Force and Egmont Group, *Trade-Based Money Laundering: Trends and Developments* (Paris: FATF, 2020), available at Trade-Based-Money-Laundering-Trends-and-Developments.pdf (fatf-gafi.org).

6 Financial Action Task Force and Egmont Group, *Trade-Based Money Laundering: Recognizing Criminal Abuse of Trade Transactions* (Paris: FATF, 2020), 1, available at https://www.fatf-gafi.org/media/fatf/documents/Handout-Trade-Based-Money-Laundering-Private-Sector.pdf.

7 Trade-related predicate offenses might include smuggling of narcotics or wildlife trafficking, for example.

cated methods used to exploit the complex supply chains of international trade to launder criminal assets.

When TBML goes unchecked, it has adverse effects on economies and societies as it perpetuates criminal activities such as illicit wildlife trade, bribery, corruption, and tax evasion. It subjects legitimate business to unfair competition in areas of goods and services due to unbalanced economies as a result of artificial manipulations. Additionally, TBML results in revenue losses, especially for developing countries struggling to meet their domestic resource mobilization targets.

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Methods of TBML

TBML uses a variety of methods and typologies that are described in detail in the following section.

Over- and under-invoicing of goods and services

Over- and under-invoicing of goods and services entails misrepresenting the value of a transaction on an invoice to illegally transfer value across borders. These two methods can be used for multiple purposes. For instance, the over-invoicing of imported goods can be used as a method to transfer criminal proceeds out of a country. This would provide the appearance of honest business dealings, thus allowing illicit actors to transfer the proceeds of crime undetected. According to the FATF, misinvoicing is one of the most common TBML methods.[8]

Falsely describing goods and services

Similar to over- and under- invoicing, falsely describing products involves a misrepresentation of the quality or type of goods or services in order to manipulate the transaction value; for example, shipping a high quality good, but listing a lower quality product on the invoice and customs documents in order to reduce the tax obligation. This technique was used by motor vehicle importers in Kenya and Uganda: the scam involved importing brand new luxury vehicles but describing them as second-hand in the import documents so as to pay lower import duties.[9] The inverse could also apply, where the goods are described as being of higher value than they actually are to justify the movement of additional funds.

Multiple invoicing of goods and services

Multiple invoicing involves issuing more than one invoice for the same trade transaction. By invoicing the same goods or services more than once, a money launderer or terrorist financier can justify multiple payments for the same shipment of goods or delivery of services. Parties engaged in multiple invoicing often use several different financial service institutions to increase the complexity of the transaction and make the multiple payments harder to detect.

Over- and under-shipment or phantom shipment of goods and services

The over- or under-shipment of goods and services involves creating a mismatch in the quantity of invoiced goods versus the amount of goods actually shipped. Often, the seller and buyer may collude and arrange for the routine processing of shipping and customs documents for a cargo shipment with no goods at all, i.e. a phantom shipment. By overstating or understating the quantity of goods shipped or services provided, the buyer and seller can transfer value from one to the other when the buyer submits payment.

8 FATF - Egmont Group, *Trade-Based Money Laundering: Trends and Developments* (Paris: FATF, 2020), available at Trade-Based-Money-Laundering-Trends-and-Developments.pdf (fatf-gafi.org).

9 "Uganda, Kenya bust car clearance racket," *The East Africa*, June 18, 2016, available at https://www.theeastafrican.co.ke/tea/business/uganda-kenya-bust-car-clearance-racket--1351444.

Black market peso exchange

Another method that is used, particularly in narcotics-related TBML in the Western Hemisphere, is the black market peso exchange (BMPE). BMPE is one of the most complex TBML methods. It is used by criminal groups to solve the problem of how to move the proceeds of drug sales (often in the United States, in dollars) to drug producer countries (often in Latin America, in pesos) without being caught.

In this method, currency exchangers, so called "peso brokers" help drug trafficking organizations to repatriate narcotics proceeds. Often, brokers purchase the criminal proceeds, in the form of cash, from the traffickers at a reduced rate (for example, paying US$0.90 for every US$1.00) or they charge a fee. "Clean" funds are then used to purchase legitimate goods which can be exported to a country of choice (typically the source country of the narcotics) and sold. In some cases, this can also be accomplished without brokers; criminals can use the proceeds to directly purchase the goods from an unscrupulous or unsuspecting seller, and then export the goods to another country.

BMPE is difficult for law enforcement to detect, since no funds are crossing international borders. However, the value of the commodity that is being traded does cross borders; by subsequently selling it, criminal organizations are able to repatriate illicit earnings. In 2019, for example, US authorities announced charges against a BMPE network that was helping move value from narcotics sales from the United States to Colombia through the export of electronics; the subsequent sales of the electronics were used to then pay drug trafficking groups.[10]

Informal value transfer systems

An additional method that is used is the informal value transfer system (IVTS). IVTS is a way of transferring value between two jurisdictions without the actual movement of funds (e.g. such as by bank transfer or a money transfer service). IVTS may be used for a variety of reasons, such as sending remittances at a reduced cost or for settling accounts across international borders. A payment is made to a local representative who then arranges with a counterpart in another jurisdiction to make a payment of the same amount to a specified individual.

IVTS is not the same as bank payments or formal remittance payments; it is by definition informal. In some cases, IVTS is linked to trade, as in the case of *hawala*. While not all IVTS transactions are necessarily illicit, they present a high risk for TBML due to their informality and lack of supervision. IVTS has also been used in cases of crimes such as terrorism financing.[11]

The prevalence of IVTS today is not clear, however. In a recent report on TBML, the FATF emphasized that "a substantial amount of TBML cash integration involved banks" but they noted that informal value transfer "can be exploit[ed]" as well.[12]

10 For an in depth discussion of the Agarwal BMPE case, see Yansura, Mavrellis, Kumar and Helms, *Financial Crime in Latin America and the Caribbean: Understanding Country Challenges and Designing Effective Technical Responses*, Global Financial Integrity, October 2021, available at https://gfintegrity.org/report/financial-crime-in-latin-america-and-the-caribbean/.

11 Financial Crimes Enforcement Network, *FinCEN Advisory: Informal Value Transfer Systems* (Washington, D.C.: Department of the Treasury, 2003), available at https://www.fincen.gov/sites/default/files/advisory/advis33.pdf.

12 FATF - Egmont Group, *Trade-Based Money Laundering: Trends and Developments* (Paris: FATF, 2020), 18, available at https://www.fatf-gafi.org/media/fatf/content/Trade-Based-Money-Laundering-Trends-and-Developments.pdf.

A CLOSER LOOK AT TRADE MISINVOICING IN LATIN AMERICA

The scale of misinvoicing within the international trade system is not at all negligible. In the case of Latin America, John Zdanowicz found that in 2017, "US$34 billion were moved from the US to the region, and over the same period, US$37 billion were moved from Latin American countries to the United States. The majority of these transactions were not detected."[13] As for cases and typologies affecting the Latin American region, they have been linked to sales of gold, palm oil, and scrap metals, according to a GAFILAT report, which also notes that "in Latin America there is no symmetrical treatment between the control of exports and imports; for exports, controls can be minimal and flexible, which can be taken advantage of in TBML schemes."[14]

A recent report by GFI analyzed value gaps in international trade. In simple terms, value gaps can be understood as the difference between the exports reported by one country and the imports reported by its trading partners.[15] The value gap analysis for 134 developing and 36 advanced economies sheds more light on the scale of trade misinvoicing in the Latin American region.[16]

Mexico is the Latin American country with the largest value gap for the period 2009 - 2018, at US$35.4 billion a year on average in its trade with 36 advanced economies. Globally, Mexico follows only China and Poland, respectively, according to the findings of the study. Moreover, Mexico ranks in seventh place with regards to the value gap with all international trading partners, at US$47 billion a year on average, followed by Brazil, another Latin American country near the top of the list with an average annual value gap of US$46 billion.[17]

13 GAFILAT / CSI CBLA, "Informe de Resultados Taller Regional sobre Lavado de Activos basado en el Comercio", 2019, available at: https://www.gafilat.org/index.php/es/biblioteca-virtual/gafilat/documentos-de-interes-17/tipologias-17/3810-informe-de-resultados-taller-regional-sobre-tbml-cbla-cs-gafilat-2019/file.

14 Ibid.

15 For a more technical discussion, see the methodological annex of Global Financial Integrity, *Trade-Related Illicit Financial Flows in 134 Developing Countries 2009-2018* (Washington, DC: Global Financial Integrity, 2021), 34-40, available at https://gfintegrity.org/report/trade-related-illicit-financial-flows-in-134-developing-countries-2009-2018.

16 Global Financial Integrity, *Trade-Related Illicit Financial Flows in 134 Developing Countries 2009-2018*, (Washington, DC: Global Financial Integrity, 2021), available at https://gfintegrity.org/report/trade-related-illicit-financial-flows-in-134-developing-countries-2009-2018/.

17 Ibid.

Case Analysis of TBML

Methodology Used

To better understand the scope and characteristics of TBML, GFI and its partners conducted a comprehensive mapping of known TBML cases worldwide from 2011 to 2021. First, cases were identified using official, publicly available sources such as government press releases, court documents, publications by the FATF and FATF-style regional bodies (FSRBs), and statements provided by investigators and prosecutors to the news media. While cases from around the world were included, special attention was paid to countries where GFI and its project partners work, namely Colombia, the United States, Kenya and Uganda since one objective of this project is to better understand how TBML impacts these economies.

Cases were selected based on the FATF definition of TBML, which emphasizes that "the aim of TBML – unlike trade-related predicate offenses – is not the movement of goods, but the movement of money, which the trade transactions facilitate."[18] Other types of trade-related illicit financial flows, such as smuggling of illicit products, were not included. Once identified, cases were reviewed thoroughly and classified based on 1) countries involved, 2) types of merchandise utilized, 3) typologies of TBML including misinvoicing and/or informal value transfer systems (IVTS), 4) the value of money laundered, and 5) linkages to other crimes, such as types of predicate offenses from which the funds were generated. Finally, the cases were analyzed to try to understand the scope and characteristics of TBML globally over the past ten years.

While this approach provides important insights, it should be noted that there are several methodological limitations. To begin with, this analysis is based on known cases, and the overall universe of TBML cases that go undetected is almost certainly much larger. Moreover, the fact that certain countries register more cases of TBML does not necessarily mean that they are more prone to this type of financial crime; it may signify that they have greater capacity to detect and prosecute it.

In addition, methodological challenges emerge with regards to predicate offenses, which are treated differently in some jurisdictions. For example, tax evasion is not a predicate offense for money laundering in the United States, but is in many other countries. Tax-related cases were included in the database due to the international scope of the study. At the same time, the large number of drug trafficking TBML cases registered in the Western Hemisphere may speak to policy priorities in the US, which have emphasized tackling drug crimes. They do not necessarily mean that TBML is not used for other sorts of predicate offenses as well. Finally, it should be noted that not all of the parties involved in the cases analyzed here have been convicted in a court of law; individuals and companies have been included here in an effort to learn more about presumed TBML cases, and not because of any presumption of guilt.

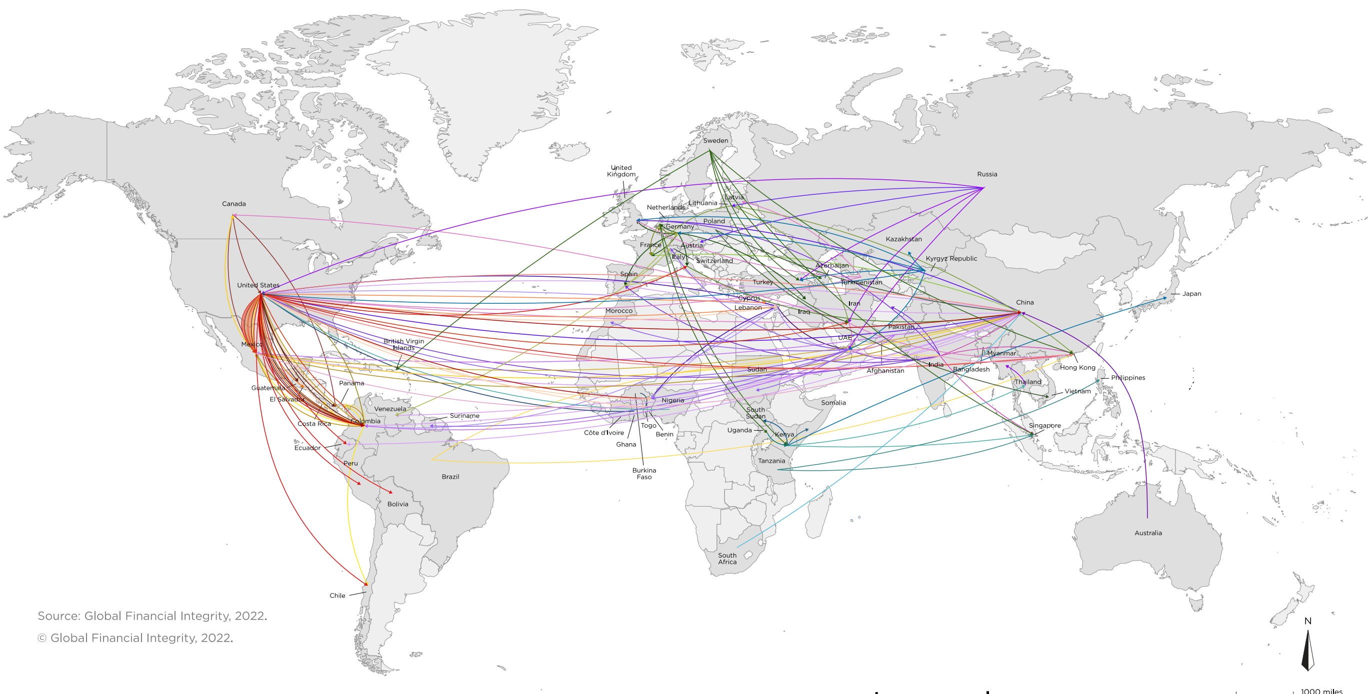
The Scope and Characteristics of TBML

From 2011 - 2021, TBML amounted to over US$60 billion globally according to the mapping conducted for this report.

18 FATF - Egmont Group, *Trade-Based Money Laundering: Trends and Developments* (Paris: FATF, 2020), 11-12, available at https://www.fatf-gafi.org/media/fatf/content/Trade-Based-Money-Laundering-Trends-and-Developments.pdf.

Geographically, TBML occurred in or otherwise affected over 77 jurisdictions around the globe. By prevalence alone, the jurisdictions with the most TBML cases include the United States (16 percent of all countries mentioned in cases) Mexico (10 percent), Colombia (6 percent), China (6 percent) and Hong Kong (3 percent). However, prevalence of cases may also speak to institutional capacity to detect and investigate such cases. On average, cases involved 3 jurisdictions.

Figure 1: Mapping of Known TBML Cases 2011-2021 by Jurisdictions Involved



Source: Global Financial Integrity, 2022.

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Legend

TBML case investigation from primary country (or country leading investigation) to other countries involved

Location of primary country involved (or country leading investigation):

United States & Canada

Latin America & the Caribbean

Europe

Africa

Asia & Oceania

As has been previously discussed, TBML, and money laundering in general, is used to clean the proceeds generated by criminal activities. In terms of predicate offenses, the most common included drug trafficking (43 percent of all predicate offenses mentioned), tax evasion/tax fraud (18 percent), other fraud or scams (7 percent) and corruption (6 percent).

Moreover, TBML methodologies are often used in other trade-based financial crimes, such as trade-based terrorism financing and sanctions evasion. In total, 9 percent of cases identified involved terrorism financing and 3 percent involved sanctions evasion.

Almost any merchandise can be used in TBML schemes. By types of products used, the most common included cars/transportation (24 percent of all types of products mentioned), metals and minerals (17 percent), agricultural products (13 percent), and textiles (11 percent). In total, 68 specific products were identified ranging from garlic and jellyfish to silk flowers and perfume. The single most common specific product was cars.

The data also shed light on which methodologies are being utilized. Misinvoicing was the most common methodology (representing 63 percent of all available methodologies analyzed), followed by IVTS (23 percent), and combined or other methodologies (12 percent). Among misinvoicing cases, methods were very diverse and included falsifying the product, country of origin, value, ownership, and even the existence of a product (phantom shipments).

Finally, the data collected shed light on TBML typologies and trends in Colombia, one of the priority countries for this project. As mentioned, Colombia represented 6 percent of all countries directly involved in such cases, and 17 percent of all cases identified had some degree of connection – including more distant links – to Colombia. Over the ten-year period from 2011-2021, the value of TBML cases that involved Colombia was over US$26 billion. The merchandise involved was diverse, including vehicles, electronics, textiles, toys, gold and jewelry, counterfeit goods and hair accessories. This diversity in commodities used highlights the challenges that authorities face in identifying TBML schemes. The most common predicate offense in TBML cases involving Colombia was narcotics (71 percent of all offenses mentioned), followed by illegal mining (10 percent of offenses).

Moreover, TBML-type methodologies can be used to perpetrate other types of financial crimes. In Colombia, 19 percent of offenses linked to TBML-type methodologies involved terrorism financing.

Vulnerable Sectors

Illicit actors use a wide range of products in carrying out TBML schemes, and any sector prone to gaps in the application of AML measures is vulnerable to exploitation. However, analysis shows that some sectors and merchandise are particularly at risk. As demonstrated by the previous analysis of TBML cases, the most common products used in TBML include cars/transportation, metals and minerals, agricultural products, and textiles. A study by the FATF on the trends and developments of TBML also found the same sectors at high risk of TBML, with the only addition of portable electronics to that list.[19] Similarly in the US, an analysis by Homeland Security Investigations (HSI) found that 70 percent of their TBML-related casework involves precious metals, automobiles, clothes and textiles, and electronics.[20]

Uganda

In Uganda, gold is vulnerable to TBML schemes because it is a cash-intensive industry with limited oversight and the origins of gold are hard to trace. This makes it easy to, for example, co-mingle smuggled gold with legally mined gold. In Uganda, gold has become the country's leading export product since 2018, overtaking coffee. As of 2020, Uganda's annual gold exports amount to US$3.47 billion in value, accounting for 59 percent of Uganda's export earnings.[21] However, domestic production of gold has not grown comparably. At the same time, Uganda's US$1.97 billion imports of gold in 2020 do not make up for the difference with the official export figures.[22] There is no clear data on the mines from which this gold is sourced within or outside Uganda, and Uganda's central bank estimates that only about 10 percent of gold exports are mined domestically.[23] These inconsistencies in trade data raise the TBML risk profile of the Ugandan gold sector.

Kenya

In Kenya, discrepancies in official trade records suggest that certain sectors may be more vulnerable to trade misinvoicing, and, by extension, at higher risk for TBML. A 2018 study by GFI identified five products with large amounts of import under-invoicing, including mineral fuels, electrical machinery, vehicles, cereals, and used clothing. Meanwhile, on the export side, the study pointed to misinvoicing affecting the coffee, tea and spice trade, a category of goods which makes up a large percentage of all exports.[24]

A recent case demonstrates that the tea sector may be vulnerable to smuggling as well. In this case, a criminal syndicate had established a legitimate tea trading company to conceal ivory shipments

19 FATF - Egmont Group, *Trade-Based Money Laundering: Trends and Developments* (Paris: FATF, 2020), available at https://www.fatf-gafi.org/media/fatf/content/Trade-Based-Money-Laundering-Trends-and-Developments.pdf.

20 U.S. Government Accountability Office, *Trade-Based Money Laundering: U.S. Government Has Worked with Partners to Combat the Threat, but Could Strengthen Its Efforts, GAO-20-333* (Washington, DC: Government Accountability Office, 2020), available at https://www.gao.gov/assets/gao-20-333.pdf.

21 "Uganda," The Observatory of Economic Complexity, Accessed September 23, 2022, available at https://oec.world/en/profile/country/uga.

22 Ibid.

23 Sophie Neiman, "Uganda's Illegal Gold Market is Bustling," *World Politics Review,* October 8, 2021, available at https://www.worldpoliticsreview.com/articles/30024/uganda-s-illegal-gold-market-is-bustling.

24 Global Financial Integrity, *Kenya: Potential Revenue Losses Associated with Trade Misinvoicing* (Washington, DC: GFI, 2018), available at https://gfintegrity.org/press-release/global-financial-integrity-releases-new-study-on-trade-misinvoicing-in-kenya/.

between Kenya and East Asia. In 2015, several large shipments of tea bags from the port of Mombasa were found to be filled with 6.8 metric tonnes (7.5 US tons) of ivory upon arrival in Thailand and Singapore.[25]

Colombia

In regards to Colombia, analysis of known TBML cases (see Figure 1) suggests some of the sectors vulnerable to TBML include vehicles, electronics, textiles, toys, gold and jewelry, counterfeit goods and hair accessories. However, this list is not exhaustive since known cases represent only a fraction of total TBML that may be occurring.

Another way to identify vulnerable sectors is by analyzing trade misinvoicing, one of the most prevalent mechanisms used in TBML. In this regard, previous work by GFI has documented trade misinvoicing in Colombia's gold and timber exports.[26]

Moreover, recent analysis by Víctor Saavedra and Miguel Carvajal of Fedesarrollo, a leading Colombian think tank, considers risks of TBML in additional sectors. Specifically, their work measures and characterizes the possible presence of trade misinvoicing in two key export sectors of the Colombian economy: coffee and palm oil, sectors that together represent 11 percent of Colombia's total exports, 9 percent for coffee and 2 percent for palm oil. Considering the commercial relevance of these sectors, they investigated the possible presence of misinvoicing, understood as the deliberate manipulation of the value reported in a commercial transaction by at least one of the parties involved. The manipulation could have the purpose of distorting the taxable base of the transactions or carrying out illicit financial flows, which could be directly related to the financing of illegal groups or TBML.

They found that, in the case of the coffee sector, the evidence does not suggest a systematic trade misinvoicing problem for the coffee exports. However, they identified an increase in prices in the upper side of the distribution since 2014. They argue that this is correlated with an increase in the exports of special varieties of coffee and recommend further studies by the tax authorities of companies concentrated in special varieties of coffee.

On the other hand, for the palm oil export sector they found a value gap which could respond to intentional manipulations of the value of palm oil exports. This value gap is supported by price abnormalities in the customs declarations prepared by the companies, which suggests that tax authorities may need to take a closer look at the companies consistently reporting abnormal values.

Two methodological approaches previously used and supported by GFI were utilized to address these findings. One methodology consists of using UN Comtrade data that compiles aggregate information on exports from different countries and different products to estimate the value gap between the value of exports reported by Colombia and the value of imports from trading partners that imported from Colombia. A proportion of this gap is presumed to correspond to deliberate manipulation of the

25 FATF, *Money Laundering and the Illegal Wildlife Trade* (Paris: FATF, 2020), available at https://www.fatf-gafi.org/media/fatf/documents/Money-laundering-and-illegal-wildlife-trade.pdf.

26 See Channing Mavrellis, *Out of the Woods: Trade Misinvoicing and Exports of Tropical Timber in Colombia* (Washington, DC: GFI, 2021), available at https://gfintegrity.org/report/out-of-the-woods-trade-misinvoicing-and-exports-of-tropical-timber-from-colombia/. See also *The Gold Standard: Addressing Illicit Financial Flows in the Colombian Gold Sector Through Greater Transparency* (Washington, DC: Global Financial Integrity, Alliance for Responsible Mining, and Cedetrabajo, 2021), available at https://gfintegrity.org/report/the-gold-standard-addressing-illicit-financial-flows-in-the-colombian-gold-sector-through-greater-transparency/.

value of transactions and is categorized as fraudulent invoicing. To complement this methodology, we use the disaggregated information reported by the exporting companies from Colombia as part of official customs data to carry out an analysis of price abnormalities, where it can be presumed that systematic deviations correspond to companies engaged in trade misinvoicing.

On applying these methodologies, the Fedesarrollo researchers identified a risk of misinvoicing in 13 companies in the coffee sector (of the sample of 825 companies), whose values deviated with greater frequency from the mean. The majority of these 13 companies corresponded to shipments of specialty coffees, which could explain the frequency in the deviation in their value.

In the results for the palm oil sector, they found that the gap in value corresponds to 11 percent of the total value of exports, which shows the possible existence of a systematic problem of misinvoicing. The countries with the largest gaps coincide with countries that have been identified on other occasions in relation to narcotics trafficking. In addition, 14 of 174 companies were identified for which at least 5 percent of their customs declarations had a value that could be presumed to be fraudulent. For these companies, a special review was made where it is evident that several of them have been placed under investigation by government agencies.

Government Efforts to Address TBML

Combating TBML has proven challenging for governments around the world. According to a GAFILAT report, international trade is the "back door of money laundering, since international strategies have focused on countering the risks to the financial sector, the front door, which has made it more and more difficult to move illicit money through it."[27] It comes as no surprise, therefore, that moving illicit funds through the international trade system has become increasingly popular for criminal groups looking to evade taxes or launder funds.[28]

In Latin America, government efforts to combat TBML typically fall within the framework of AML/CFT policies, a broad framework that is not particularly focused on the risks presented by trade transactions passing through air, sea and land ports or through free trade zones. In Africa, efforts to curb TBML by governments are encompassed in the wider framework of AML/CFT as well as with efforts to comply with the FATF standards and avoid greylisting during the mutual evaluation process. Some African governments have undertaken national risk assessments on money laundering; however, these do not necessarily point to sectors at particular risk of TBML, but rather address money laundering risks more generally.

To analyze how the problem is being addressed in greater depth, we will take the cases of Colombia, Kenya and Uganda. The three countries have considerable value gaps in their international trade transactions and have struggled with organized crime, illicit economies as well as corruption. Moreover, the countries analyzed have strategic locations for legal international trade, opening up channels for illicit trade transactions as well.

Early detection of trade anomalies is an important first step to curbing TBML. In particular, customs authorities play an important role as they are the primary enforcement authorities in international trade. They have access to international trade data and thus have the capacity to detect any irregularities in or misuse of the trade system. Close collaboration between customs departments and financial intelligence units (FIUs) is key, helping to ensure "collective capacity to detect TBML by linking suspicious trade activity with suspicious financial activity."[29]

Cross-border information exchange and collaboration is also crucial to combatting TBML. In one example, customs officials from Kenya and Uganda uncovered a motor vehicle importation scheme that was causing revenue losses to the two governments.[30] This illicit activity was detected through the motor vehicle import clearing operation under the East African Community's Single Customs Territory, which was launched in July 2014 to enhance the flow of information and manage revenue

27 GAFILAT / CSI CBLA, "Informe de Resultados Taller Regional sobre Lavado de Activos basado en el Comercio", 2019, available at: https://www.gafilat.org/index.php/es/biblioteca-virtual/gafilat/documentos-de-interes-17/tipologias-17/3810-informe-de-resultados-taller-regional-sobre-tbml-cbla-cs-gafilat-2019/file.

28 Global Financial Integrity, *Trade-Related Illicit Financial Flows in 134 Developing Countries 2009-2018*, (Washington, DC: Global Financial Integrity, 2021), available at https://gfintegrity.org/report/trade-related-illicit-financial-flows-in-134-developing-countries-2009-2018/.

29 FATF - Egmont Group, *Trade-Based Money Laundering: Trends and Developments* (Paris: FATF, 2020), 54, available at https://www.fatf-gafi.org/media/fatf/content/Trade-Based-Money-Laundering-Trends-and-Developments.pdf.

30 "Uganda, Kenya Bust Car Clearance Racket," *The East African*, June 18, 2016, available at https://www.theeastafrican.co.ke/tea/business/uganda-kenya-bust-car-clearance-racket--1351444 .

payments across the partner states.[31] The scheme involved importing brand new luxury vehicles but describing them in the importation documents as second-hand, thus paying lower import duties. Uganda lost about USH2.3 billion (US$678,688) in import duties because of this scheme.[32]

At a domestic level, countries have also adopted mechanisms to address trade-based financial crimes. East African countries have mostly approached this from the perspective of curbing trade in counterfeit and contraband goods. According to one source, Uganda loses an estimated US$1.4 billion and Tanzania an estimated US$1.5 billion in revenue to counterfeits.[33] At the same time, there have also been positive developments in the legal and institutional framework that ultimately work towards addressing TBML. Below is an overview of measures that have been adopted at the country level to combat illicit trade.

Kenya

1. **Inter-Agency Anti-Illicit Trade Working Group**: The group was launched in 2018 "to facilitate dialogue between government's law enforcement agencies, the private sector, consumer organizations and civil society to forge a joint action and collaboration against counterfeits and other forms of illegal commerce."[34]

2. **National Action Plan to Combat Illicit Trade 2019-2022**: The objective of the Action Plan is to combat illicit trade in "a synergized, coherent and collaborative manner."[35] It recognizes that despite efforts from different government agencies, illicit trade thrives due to its complexity and evasive nature fueled by corruption and regulatory loopholes, and that a multi-agency approach would result in more effectiveness.[36]

3. **Joint Border Committees**: This is a platform where the Kenya Revenue Authority's Customs and Border Control Department, Partner Government Agencies, and the private sector convene with the "objective of trade facilitation and securing the border."[37]

4. **National Baseline Survey on Counterfeit and other Forms of Illicit Trade in Kenya 2021**: This study was conducted by the Anti Counterfeit Authority to highlight the extent of illicit trade in Kenya.[38] Some key recommendations include legal and institutional reform to enhance infor-

31 "Single Customs Territory," East African Community, Accessed September 23, 2022, available at https://www.eac.int/customs/single-customs-territory.

32 "Uganda, Kenya Bust Car Clearance Racket," *The East African*, June 18, 2016, available at https://www.theeastafrican.co.ke/tea/business/uganda-kenya-bust-car-clearance-racket--1351444.

33 "High-Level Regional Anti-Illicit Trade Conference Held in Nairobi," Kenya Association of Manufacturers, Accessed September 23, 2022, available at https://kam.co.ke/high-level-regional-anti-illicit-trade-conference-held-in-nairobi/.

34 "Inter-Agency Anti-Illicit Working Group Launched in Nairobi to Fight Trade in Counterfeits," Anti Counterfeit Authority, April 3, 2018, available at https://www.aca.go.ke/media-center/news-and-events/93-press-release-inter-agency-anti-illicit-working-group-launched-in-nairobi-to-fight-trade-in-counterfeits.

35 State Department of Trade of the Republic of Kenya, *National Action Plan and Implementation Framework to Combat Illicit Trade 2019-2022* (Nairobi: State Department of Trade of the Republic of Kenya, 2019) available at https://aca.go.ke/images/downloads/publications/national-action-plan-to-combat-illicit-trade.pdf.

36 Ibid, pg. 3.

37 Kenya Revenue Authority, *Customs and Border Control Department* (Nairobi: Kenya Revenue Authority, N.D), Accessed September 23, 2022, available at https://www.kra.go.ke/images/publications/Customs%20and%20border%20control%20department%20brochure.pdf.

38 Anti Counterfeit Authority, *National Baseline Survey: Extent of Counterfeit and Other Forms of Illicit Trade in Kenya* (Nairobi: Anti Counterfeit Authority, 2021), available at https://www.aca.go.ke/media-center/news-and-events/247-national-baseline-survey-on-the-extent-of-counterfeit-and-other-forms-of-illicit-trade-in-kenya.

mation sharing among the Multi Agency Team on combating illicit trade; annual assessment of international trade-based level of illicit trade; training and recruitment of contributing government agencies; and the application of the National Observatory data submission platform for real time data submission.[39]

5. **National Observatory on Illicit Trade Kenya**: The Observatory is an online platform to allow government agencies and private sector actors to report illicit trade issues in real time and to inform policy and strategy for combating illicit trade.[40]

Uganda

1. **Prosecution Manual on Illicit Trade**: The Office of the Director of Public Prosecution developed this manual to help prosecutors, investigators, and other law enforcement agencies understand the illicit trade problem and the existing mechanisms for reporting and handling of such cases.[41]

2. **Anti-Counterfeiting Goods Bill**: The bill, which aimed to combat the importation and sale of counterfeit products, was introduced in Parliament in 2015. In 2017, a Parliamentary Committee recommended its withdrawal on grounds that there are existing laws to deal with the same issue. They recommended a review of existing laws and strengthening the capacity of the Uganda Registration Services to address counterfeits.[42]

3. **Air Cargo Control Unit (ACCU)**: The Uganda Revenue Authority (URA) recently launched the unit in 2022 to counter illicit trade at the airport. The ACCU intends to work closely with other government institutions including the Uganda Wildlife Authority, the Aviation Police and the Aviation Security to improve the detection of illicit goods and the arrest of those individuals trafficking in them.[43]

4. **Stronger Penalties for Misinvoicing**: Section 65(6) of the VAT Cap 349, Section 15A (6) of the Excise Duty Act 2014 and Section 50 of the Tax Procedures Code Act (TPCA) 2014 impose penalties for misinvoicing. In addition, the TPCA has been amended to strengthen penalties for false or misleading statements, from 4M to 110M Ugandan shillings, in order to help deter misinvoicing.[44]

5. **Stronger Beneficial Ownership Requirements**: In 2022, the Ugandan parliament passed various pieces of legislation to address gaps in beneficial ownership coverage. The Anti-Money Laundering (Amendment) Act of 2022 empowered authorities to levy administrative penalties for failure to comply with beneficial ownership requirements. The Companies (Amendment)

39 Ibid, pg. 23.

40 "National Observatory on Illicit Trade ," National Observatory on Illicit Trade in Kenya, available at https://www.illicittradeobservatory.go.ke; *National Baseline Survey: Extent of Counterfeit and Other Forms of Illicit Trade in Kenya* (Nairobi: Anti Counterfeit Authority, 2021), V, available at https://www.aca.go.ke/media-center/news-and-events/247-national-baseline-survey-on-the-extent-of-counterfeit-and-other-forms-of-illicit-trade-in-kenya.

41 Office of the Director of Public Prosecutions, *Prosecutors' Manual on Illicit Trade* (Kampala: Office of the Director of Public Prosecutions, 2015), available at https://www.dpp.go.ug/index.php/publications/prosecutors-manual/send/21-prosecutors-manual/21-prosecutors-manual-on-illicit-trade.

42 "Government withdraws the Anti-Counterfeiting Goods Bill," *Parliament Watch*, July 6, 2021, available at https://parliamentwatch.ug/news-amp-updates/government-withdraws-the-anti-counterfeiting-goods-bill/.

43 Irene Kabakama, "URA launches Air Cargo Control office to counter illicit trade at the Airport," The Uganda Revenue Authority, June 6, 2022, available at https://thetaxman.ura.go.ug/ura-launches-air-cargo-control-office-to-counter-illicit-trade-at-the-airport/.

44 Annet Nantongo, "URA Steps Up Fight Against Illicit Financial Flows to Curb Revenue Leakages," The Uganda Revenue Authority, July 15, 2022, available at https://thetaxman.ura.go.ug/ura-steps-up-fight-against-illicit-financial-flows-to-curb-revenue-leakages/.

Act, 2022 and The Partnerships (Amendment) Act of 2022 defined beneficial ownership and required all companies to keep a register of beneficial owners. Moreover, the Cooperative Societies (Amendment) Act of 2022 addressed beneficial ownership as well.[45]

6. **International Information Exchange**: Uganda joined the Global Forum on Transparency and Exchange of Information for Tax purposes in 2012 and the OECD Convention on Mutual Administrative Assistance in Tax matters in 2016. This has expanded the information network of the URA to 144 Jurisdictions worldwide, and consequently, the URA's information exchanges have increased in number.[46]

7. **Electronic Invoicing Systems**: Through the customs department, the utilization of the Electronic Fiscal Receipting and Invoicing Solution (EFRIS) directly linked to the Customs System is aimed at reducing forgery. The invoice generated at sale in the (EFRIS) will match with the sales invoice at exportation. Other measures include "automated exchange of information between international trade intervening parties through trade initiatives such as the Uganda Electronic Single Window, campaigns to sensitize the traders on adverse effects of trade misinvoicing, training of staff to understand the mechanisms of trade misinvoicing and how to curb it, as well as penalties and disciplinary measures against non-compliant traders."[47]

8. **Revenue Points Established**: Revenue points have been set up in countries such as Kenya, UAE and China where Uganda exports its commodities such as coffee to curb trade misinvoicing.[48]

9. **New Inspection Techniques**: The URA has adopted the use of Non-intrusive inspection technology at most entry points into Uganda, helping to address issues of concealment of goods.[49] It has also operationalized the Bonded Warehouse Information Management System (BWIMS).[50] Furthermore, URA has set up a science laboratory that will be used to assess imported goods as a quick determinant of their value before levying tax.[51]

Colombia

1. **Trade Transparency Unit (TTU)**: Colombia has participated in a trade information exchange with the United States, one of its largest trading partners, since 2005 as part of efforts to combat TBML.[52] The TTUs help to address issues of information asymmetry in international trade transactions.

45 The Financial Intelligence Authority of Uganda, *The Six New Bills Passed by Parliament Addressing the FATF Recommendations* (Kampala: The Financial Intelligence Authority, ND), available at https://www.fia.go.ug/sites/default/files/The%20Six%20New%20Bills%20Passed%20by%20Parliament%20addressing%20the%20FATF%20Recommendations..pdf.

46 URA, ATAF, World Bank, and OECD, *Strengthening Tax Transparency to combat Tax Evasion, Illicit financial Flows and Profit Shifting in Uganda* (Paris: OECD, 2021), available at https://www.oecd.org/tax/tax-global/strengthening-tax-transparency-to-combat-tax-evasion-illicit-financial-flows-and-profit-shifting-in-uganda.pdf.

47 Sarah Biryomumaisho, The Impact of Trade Misinvoicing on Uganda's Small Scale Coffee Farmers," October 15, 2020, available at https://andariya.com/post/The-Impact-of-Trade-Misinvoicing-on-Ugandas-Small-Scale-Coffee-Farmers.

48 "URA Sets Up Centres to Curb Misinvoicing," The Monitor, May 22, 2019, available at https://www.monitor.co.ug/uganda/business/finance/ura-sets-up-centres-to-curb-misinvoicing-1827938.

49 Edward Kayiwa, "URA Gets 27 Non-Intrusive Scanners for Border," *New Vision*, October 6, 2021, available at https://www.newvision.co.ug/category/blogs/ura-gets-27-non-intrusive-scanners-for-border-116543.

50 Javira Ssebwami, "URA Announces Measures to Streamline Cargo Management," The Uganda Standard, September 20, 2022, available at https://www.ugstandard.com/ura-announces-measures-to-streamline-cargo-management/.

51 The Uganda Revenue Authority, "How URA Is Utilizing Laboratory Services to Detect Fraud," October 14, 2022, available at https://thetaxman.ura.go.ug/how-ura-is-utilizing-laboratory-services-to-detect-fraud/.

52 U.S. Government Accountability Office, *Trade-Based Money Laundering: U.S. Government Has Worked with Partners to Combat the Threat, but Could Strengthen Its Efforts*, GAO-20-333 (Washington, DC, 2020), 33, available at https://www.gao.gov/assets/gao-20-333.pdf.

2. **Customs Law No. 1762 of 2015**: The law was enacted to modernize Colombian trade regulations and strengthen the fight against contraband, money laundering and tax fraud.[53] Among other things, the law "develop(s) a traceability model for customs operations of sensitive products," allowing for greater supervision and control by the National Directorate of Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales de Colombia or DIAN), the customs authority.[54]

3. **Inter-Agency Commission to Combat Contraband (*Comisión Interinstitucional de Lucha contra el Contrabando*)**: The Commission, which is chaired by DIAN, held its first meeting in 2018. Over a dozen Colombian government agencies participate in the Commission, which aims to dismantle criminal organizations while also strengthening the quality of intelligence regarding illicit activities.[55]

4. **Beneficial Ownership Registry**: Through the creation of a beneficial ownership registry, Colombian authorities will be able to identify the real owners of companies by the end of 2023. This is key to the fight against corruption, money laundering and other financial crimes.[56]

5. **Integrated Electronic Invoicing System**: Electronic invoicing, which has been fully operational in Colombia since 2020, prevents the alteration of values or contents of invoices, since the information must be entered into the DIAN monitoring system and digitally signed. The system makes it possible to more quickly identify possible changes in the value of traded goods as well as to verify the basic information of the traded goods.[57]

CASE STUDY: INTER-AGENCY COORDINATION IN COMBATING TBML

Colombia's Financial Analysis and Information Unit (*Unidad de Información y Análisis Financiero* or UIAF) is the governmental entity responsible for analyzing information collected from different sources to prevent and detect criminal operations related to money laundering and terrorism financing. However, as in many other countries, AML/CFT efforts in Colombia involve effective collaboration among many government stakeholders. This is especially true for TBML efforts. This can be a disadvantage in scenarios where inter-institutional coordination is not fluid or well-defined. In fact, TBML is perhaps uniquely challenging in the sheer number of government agencies beyond the UIAF that have supervision and prevention responsibilities, as Table 1 shows.

53 Ley 1762 de 2015, Función Pública, Accessed September 23, 2022, available at https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=65338.

54 Ibid.

55 "Crean comisión para cerrar paso al contrabando, lavado de activos y evasión," *El Espectador*, December 22, 2018, available at https://www.elespectador.com/economia/crean-comision-para-cerrar-paso-al-contrabando-lavado-de-activos-y-evasion-articulo-830637/.

56 Katherin Alfonso and Julia Yansura, "Colombia's New Regulatory Framework for Beneficial Ownership," Global Financial Integrity, February 2, 2022, available at https://gfintegrity-org.translate.goog/report/colombias-new-regulatory-framework-for-beneficial-ownership-analysis-of-strengths-and-weaknesses/?_x_tr_sl=en&_x_tr_tl=es&_x_tr_hl=es-419&_x_tr_pto=sc.

57 GAFILAT / CSI CBLA, "Informe de Resultados Taller Regional sobre Lavado de Activos basado en el Comercio", 2019. Available at https://www.gafilat.org/index.php/es/biblioteca-virtual/gafilat/documentos-de-interes-17/tipologias-17/3810-informe-de-resultados-taller-regional-sobre-tbml-cbla-cs-gafilat-2019/file.

Table 1: Colombian National Government Agencies with a Role in Combating TBML

Entity	Who does it supervise?	Role in Combating TBML
Financial Superintendence *Superintendencia Financiera*	The financial sector	Supervises financial institutions whose clients are involved in international trade, and/or financial institutions that provide trade finance
Superintendence of the Inclusive Economy *Superintendencia de Economía Solidaria*	Cooperative credit unions and other organizations in the inclusive economy	Supervises cooperative credit unions, among others, whose clients are involved in international trade
Superintendence of Societies *Superintendencia de Sociedades*	Formally registered companies, regardless of the sector	Supervises all companies, including those with import/export activities; supervision prioritizes vulnerable sectors as defined by the National Risk Assessment
Superintendence of Transport *Superintendencia de Transporte*	Transport companies, including land, air and maritime transportation	Supervises and controls possible crimes associated with the transport of goods through international trade
National Tax and Customs Directorate *Dirección de Impuestos y Aduanas Nacionales* or DIAN	Foreign trade entities, customs brokerage companies, port companies, free zone users, transportation companies, international cargo agents, high-volume exporters	Responsible for the investigation and control of ports, including possible cases of money laundering through international trade, such as fraudulent invoicing among other typologies; It also supervises all customs agents
Special Administrative Unit, Central Board of Accountants *Unidad Administrativa Especial, Junta Central de Contadores*	Public accountants and entities providing these services	Monitors the professional activity of accountants and other "gatekeepers" for possible intermediation and fraud in relation to the exchange of information in trade, for money laundering purposes

Source: Own elaboration using information from CONPES 4042, 2021, https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%C3%B3micos/4042.pdf.

Unfortunately, Colombian efforts to combat TBML have faced major obstacles and challenges. This is largely due to AML regulations being primarily focused on the financial sector, which already has substantial controls and reporting mechanisms. In the case of international trade, however, the nature of the illicit activities, the lack of awareness of risk factors, and the number of government agencies involved have made it more difficult to combat TBML.[58]

58 L.E. Suárez, L. E., & J.A. Gutiérrez, "Actores del sistema y política pública antilavado de activos y contra la financiación del terrorismo: coordinación y resultados," en W. A. Martínez, *Síntesis y reflexiones sobre el sistema antilavado de activos y contra la financiación del terrorismo en Colombia* (Bogota.: Universidad del Rosario, 2014), 43-65.

Recommendations

As the following sections have described, TBML remains a major challenge for countries around the world. While there is no one-size-fits-all solution, the following are general best practices that have proven to be beneficial and effective in other jurisdictions. While civil society, journalists, and of course the private sector itself have important roles to play in safeguarding the international trade system, the recommendations presented here are primarily directed at national governments.

Conduct education campaigns and raise awareness: In many countries, awareness of TBML and TBML risk factors is quite incipient. International organizations such as the FATF, FSRBs and the United Nations Office on Drugs and Crime should continue and expand their work with governments to ensure greater awareness. At the same time, governments should take additional steps to provide appropriate, updated and actionable information on TBML risks to stakeholders in their country.

Convene inter-agency task forces: As the case study of Colombia has shown, multiple government agencies need to be involved in order to effectively combat TBML. The experience of Kenya in establishing an Inter-Agency Anti-Illicit Trade Working Group may serve as an interesting model for other countries.

Implement national beneficial ownership registries: Because shell and front companies are frequently used for financial crimes, including TBML, countries should implement beneficial ownership registries that contain accurate, updated and verified information regarding the real owners of corporate structures.

Ensure that beneficial ownership information extends to trade: By extending beneficial ownership requirements to sectors that present TBML risks, such as foreign companies doing business in the country and shipping companies involved in international trade, countries can ensure greater supervision over international trade transactions.

Share transaction-level trade information in real time: One of the best ways to detect trade misinvoicing, one of the major typologies of TBML, is to compare the exports of one country with the imports of its trading partner to detect discrepancies. Unfortunately, governments rarely do this. When they do, as in the case of the TTUs, it is unfortunately not in real time.

Utilize new technologies to assess pricing of trade transactions: As work by GFI has shown, new technologies can be used to screen trade transactions for pricing issues, identifying transactions at higher risk for trade misinvoicing. The use of these new technologies can help to combat trade misinvoicing, prevent TBML, and curtail customs revenue loss.

Ensure that national anti-corruption efforts cover international trade: At an international level, corruption in international trade and in ports has been a challenge for decades. Therefore, national anti-corruption efforts should specifically address this area.

Strengthen supervision over free trade zones: Countries should ensure that customs authorities and law enforcement agencies have appropriate access to and oversight of free trade zones.

Ensure that customs departments have the necessary resources: Customs agencies are on the frontline in the fight against TBML, and it is important to ensure that they have the adequate financial, human, and technological resources to do their job effectively.

Harmonize regional customs frameworks: Member countries of regional communities with existing frameworks on trade should align and strengthen country of origin rules.

Trade-Based Money Laundering: A Global Challenge

A policy memo by Global Financial Integrity, Fedesarrollo, Transparency International Kenya and ACODE

JANUARY 2023

Global Financial Integrity

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