

The logo consists of the text "USA-IT" in a bold, white, sans-serif font. A thick blue horizontal bar is positioned behind the text, extending slightly beyond the letters on both sides.

**USA-IT**

A large American flag is shown waving in the wind. The flag is rendered in a dark blue color scheme, with the stripes and stars appearing as lighter shades of blue. It occupies the upper half of the page, partially overlapping the logo and the main title.

# **USA-IT**

## **RECOMMENDATIONS**

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SANCTIONING CRIMINALS,  
DISMANTLING ILLICIT MARKETS, AND  
DISRUPTING ILLICIT FINANCIAL FLOWS

# INDEX

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Executive Summary	3
About USA-IT	4
List of Organizations Endorsing Policy Recommendations	7
Introduction	8
A National Strategy Against Illegal Trade and Organized Crime	12
E-Commerce	14
Small Parcels	16
Foreign Free-Trade Zones	18
Sanctions and Penalties	20
Final Words	21
Bibliography	22



## EXECUTIVE SUMMARY

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The surge in supply chain issues stemming from the COVID-19 pandemic, along with the explosion of e-commerce and new digital tools, have exacerbated the problem of illegal trade in the United States. This crime is a threat to our national security and impacts millions of law-abiding Americans by robbing taxpayers, small-and-large businesses, and state and local governments of needed revenues, while funding some of the most dangerous criminal enterprises.

In today's hyper connected world—with growing concerns around global security and the surge of new digital tools—broad public-private cooperation is vital to tackle illegal trade.

Therefore, in June 2021, Philip Morris International (PMI) expanded its efforts to combat black-market trade by bringing together an informal coalition of more than 60 national and state brand enforcement experts, law enforcement agencies, and leading business organizations to engage on the ground in states confronted with illegal trade criminality.

This public education initiative—called United to Safeguard America from Illegal Trade (USA-IT)—works to empower local officials, law enforcement, and other leaders with new information and training programs and engage media to raise public awareness of the depth and severity of this crime.

As part of that effort, USA-IT partners have come together to advocate that Congress embrace new policies that are urgently needed to combat the growing threats posed by illegal trade—including counterfeiting, smuggling, organized retail theft, and drug and human trafficking. USA-IT believes these policies can advance solutions that effectively curb the threat of illegal trade. These include:

- Establishing a national framework against illegal trade and organized crime;
- Addressing challenges posed by e-commerce;
- Confronting the abuse of small parcels in contraband trade;
- Disabling foreign Free-Trade Zones (FTZs) from promoting illegal trade; and
- Disincentivizing illicit activities through stronger sanctions and penalties for criminal and corrupt actors

This year, due to the campaign's immediate success, USA-IT expanded the initiative into Connecticut, Massachusetts, New Hampshire, and Tennessee—these four states join Arizona, California, Florida, Illinois, Louisiana, Michigan, Pennsylvania, and Texas, the states where USA-IT began its initiative. We plan to expand to additional states in 2022.

Public actors, the private sector, and civil society alike all have a role to play. Only through cooperative efforts like USA-IT can we effectively ensure a safer, more secure, and more prosperous future.

### USA-IT RECOMMENDATIONS

SANCTIONING CRIMINALS, DISMANTLING ILLICIT MARKETS, AND DISRUPTING ILLICIT FINANCIAL FLOWS

## ABOUT USA-IT

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United to Safeguard America from Illegal Trade (USA-IT) is a public education initiative aimed at combating black-market trade in the United States and is supported by a coalition of national and state brand enforcement experts, law enforcement agencies, and leading business organizations. The campaign is empowering local officials, law enforcement, and other leaders with new information and training programs and raising public awareness of the depth and severity of illegal trade.

# ABOUT USA-IT

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## NATIONAL



PHILIP MORRIS  
INTERNATIONAL



U.S. CHAMBER OF COMMERCE



ICAIE  
INTERNATIONAL COALITION AGAINST ILLEGAL ECONOMIES



BrandShield



GRINDSTONE



NATIONAL ASSOCIATION OF  
Manufacturers



LEVI STRAUSS & CO.

## SAYARI



SANOFI



TOMMY HILFIGER



CENTER ON SHADOW ECONOMICS



MICHIGAN STATE  
UNIVERSITY | Center for Anti-Counterfeiting  
and Product Protection

## USA-IT RECOMMENDATIONS

SANCTIONING CRIMINALS, DISMANTLING ILLICIT MARKETS, AND DISRUPTING ILLICIT FINANCIAL FLOWS



# ABOUT USA-IT

## LOCAL



## USA-IT RECOMMENDATIONS

SANCTIONING CRIMINALS, DISMANTLING ILLICIT MARKETS, AND DISRUPTING ILLICIT FINANCIAL FLOWS

# ENDORSERS OF USA-IT POLICY RECOMMENDATIONS

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The following USA-IT partners have endorsed the policy recommendations included in this document:<sup>1</sup>

- BrandShield
- Center on Shadow Economics
- Crime Stoppers USA
- Florida Petroleum Marketers Association
- GrindStone Strategic
- Illinois Association of Chiefs of Police
- Illinois Licensed Beverage Association
- Illinois Retail Merchants Association
- Illinois Manufacturers' Association
- International Coalition Against Illicit Economies
- Investigative Consultants
- Michigan Distributors and Vendors Association
- Michigan Licensed Beverage Association
- Philip Morris International
- Sanofi
- Silent Observer

# INTRODUCTION

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According to the World Economic Forum, illegal trade in the form of drug smuggling, wildlife trafficking, human exploitation, counterfeiting, cyber-crime, money laundering, and other manifestations drains the global economy by 2.2 trillion USD per year, accounting for nearly 3% of total global economic output.<sup>2</sup>

It has long been known that illegal trade is associated with criminality and terrorism. Illegal drug trafficking and counterfeit networks are frequently involved in other crimes such as wildlife or human trafficking, utilizing the same routes and facilitators. Nefarious networks corrupt and intimidate government authorities to distribute their products with impunity. They launder their criminally generated profits by exploiting global financial systems using trade-based money laundering and informal banking channels. In addition, criminal networks penetrate public and market institutions to further expand their corruptive influence and illicit economies and help to finance violence and instability across communities where they operate.<sup>3</sup>

At the heart of this scourge are criminal organizations and terrorist groups, who profit from illegal trade and undermine democracy by weakening the rule of law and judicial systems, resulting in a vicious cycle of violence and corruption.<sup>4</sup>

Transnational organized crime (TOC) poses a significant threat to the safety of American citizens, undermines communities, and causes significant financial damage to our nation. It has a serious impact on economic growth and development, as parallel underground economies deprive governments of the revenue needed to invest in public services such as health, education, and infrastructure. Moreover, TOC has a direct negative impact on the quality of life of all Americans—it endangers public health and safety, well-being, and livelihoods, and increases vulnerability to exploitation or recruitment.<sup>5</sup>

In today's world of organized crime, the landscape is characterized by a networked environment in which criminal cooperation is fluid, systematic, and driven by a profit-oriented focus. A key feature of criminal networks, confirmed by the COVID-19 pandemic, is their ability to quickly adapt to, and capitalize on, changes in the environment in which they operate.<sup>6</sup> Obstacles become criminal opportunities that these networks seize upon, which has long been their modus operandi.

While communities and economies around the world confront the lethal effects of COVID-19, illegal trade has similarly wreaked havoc on peoples' safety and the security of nations—particularly in the United States.



# INTRODUCTION

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COVID-19 exacerbated illegal trade globally, as criminals exploited the fear and misery of consumers by selling counterfeit medical supplies, personal protective equipment (PPE), cleaning disinfectants, and other goods—including through the use of the dark web, social media, and online marketplaces Americans use every day. Such predatory criminality has also been seen in the distribution of COVID-19 vaccines, where fakes are entering supply chains including through illicit websites.<sup>7</sup>

While some criminal activities have or will have returned to their pre-pandemic state, others will fundamentally be altered by the COVID-19 pandemic.

## **Counterfeits, Piracy, and Smuggling Are Risk-Free Cash for TOC**

Within the overall illicit trade issue, counterfeiting and piracy are widespread in all countries, and represent a \$464 billion industry that continues to grow at an alarming rate.<sup>8</sup> Illegal trade in common consumer goods, business-to-business products, IT goods, and luxury goods are all examples of these illegal activities. Fake products are no longer limited to being sold on our main streets or in informal markets: while many consumers do not realize it, counterfeit and pirated goods are rampant across the digital world, especially on the most popular e-commerce platforms and online marketplaces such as eBay and Amazon.<sup>9</sup> This illegal practice is also facilitated by the misuse of free-trade zones (FTZs), the abuse of legitimate trade mechanisms, and the flourishing of economies with weak or unstable governance.<sup>10</sup>

Commercial counterfeiting is driven by suppliers who seek to maximize their profits by gaining significant competitive advantages over legitimate traders. Illegal and counterfeit products can be found in a wide variety of industries, including, but not limited to, the following:

- Pharmaceuticals and medical devices
- Footwear and apparel
- Personal electronic products
- Tobacco and alcohol
- Auto parts
- Military components and microchips
- Construction materials

# INTRODUCTION

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- Luxury goods and jewelry
- Perfumes and cosmetics
- Toys
- Household and personal-care products
- Movies, television, music, live performances, computer software, and video games.

Fake products follow complex trading routes but are often sold or trans-shipped through foreign/free-trade zones and their equivalents around the world. These zones, which technically exist outside of the customs territory of their host country, support robust international trade but also provide an easy venue for criminals to exploit. These bad actors often take advantage of weak governance in the economies who host FTZs to conduct organized criminal activity. These criminals abuse FTZs to conceal the original point of departure, to establish distribution centers for counterfeited products, and to illegally repackage or relabel items with a protected trademark.

Infiltration of counterfeit goods into the global economy creates an enormous drain on the economy—crowding out billions of dollars in legitimate economic activity and facilitating the growth of an “underground economy.”<sup>11</sup> As such, the activity threatens economic growth, undermines the viability and sustainability of industries, feeds corruption, and generates major illicit financial flows. Furthermore, it poses dangers to the health, safety, and privacy of consumers. Not only do counterfeit pharmaceuticals and medicines jeopardize the livelihood of people, but so do counterfeit parts in aircraft and vehicles, which can cause serious injuries or death.

Counterfeiting and piracy are directly linked to transnational criminal organized groups. According to the UNODC, groups such as the mafia and Camorra in Europe, gangs and cartels in the Americas, ISIS and Al-Qaida in the Middle East, cybercriminals in Nigeria, and the Yakuza and Chinese triads in Asia have diversified into illicit trafficking of counterfeit products, while continuing to engage in drug and human trafficking, money laundering, extortion, and other criminal activities.

Illegal trade provides criminals and terrorists with risk-free money with which to fund their illegal practices, challenging not only effective governance, but also national and international security.<sup>12</sup>



# INTRODUCTION

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# POLICY RECOMMENDATIONS

## USA-IT RECOMMENDATIONS

SANCTIONING CRIMINALS, DISMANTLING ILLICIT MARKETS, AND DISRUPTING ILLICIT FINANCIAL FLOWS





# A NATIONAL FRAMEWORK AGAINST ILLEGAL TRADE AND ORGANIZED CRIME

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Today, more than 20 federal agencies and numerous additional state and local government agencies have jurisdiction over some aspect of counterfeiting. No single federal government agency is primarily focused on, or primarily responsible for, addressing illegal trade. Unfortunately, these agencies do not fully coordinate their activities or effectively share intelligence on cross-border criminalized activities, resulting in law enforcement vulnerabilities. Criminals exploit these inefficient uses of resources and institutional gaps to smuggle or traffic illicit goods and contraband into our country.

In addition, our government agencies do not always effectively coordinate with industry. Sharing information between government enforcement agencies and private sector entities is critical in fighting illegal trade and illicit markets, but the challenges for the private sector remain, as the ability and willingness of government entities to share intelligence is limited.

Moreover, many manufacturers, particularly small and medium-sized firms, have not taken advantage of opportunities to train or partner with government agencies in order to address illegal trade more effectively.

1. Congress should explicitly designate the Intellectual Property Rights Center (IPRC) at the Department of Homeland Security (DHS) as having primary responsibility for U.S. efforts to counter illegal trade, including strategic planning, policy formulation, and enforcement, and serve as a central point of contact for the private sector and other actors. Congress should also expand funding for the IPRC to conduct these responsibilities.
2. Congress should enact legislation instructing the IPRC to establish, under its supervision, a national partnership against illegal trade (NPAIT) comprised of representatives from key cabinet agencies—and include independent agencies, private sector representatives, trade and business associations—to develop, implement, and consistently review a national plan of action against illegal trade that includes priority areas for action as well as measurable benchmarks for success. This plan should include but not be limited to:

# A NATIONAL FRAMEWORK AGAINST ILLEGAL TRADE AND ORGANIZED CRIME

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- a. Initiating a robust mechanism for sharing intelligence between the private and public sectors;
  - b. Expanding capacity-building opportunities for federal, state, and local law enforcement agencies, as well as the general public;
  - c. Establishing public-private partnerships for financial assistance in operations against illegal trade and counterfeits; and
  - d. Improving public awareness regarding how these crimes affect public health and safety, economic recovery and development, and the security and stability of governments and markets.
- 3. Congress should also require the NPAIT, via the IPRC, to report annually to Congress on the implementation of the national plan of action against illegal trade, as well as recommendations for additional agency and Congressional action to strengthen the effectiveness of these efforts.
- 4. Under the direction and supervision of the IPRC, U.S. government agencies should work to identify and reduce barriers that prevent sharing between government and industry of information related to efforts to counter illegal trade across sectors. U.S. government agencies should eliminate structural and practical barriers that limit information sharing between government and industry.
- 5. The administration and Congress should work to strengthen cross-border cooperation at international, national, regional, state, and local levels, to establish formal and informal partnerships with governments, innovators, security experts, non-governmental organizations (NGOs), academics, business leaders, and other stakeholders to foster trust and collective action to counter illegal trade and related illicit economies.



## ADDRESS THE CHALLENGES POSED BY E-COMMERCE

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The rapid growth of e-commerce has revolutionized the way goods are bought and sold, allowing counterfeit and pirated goods to flood our borders and infiltrate our communities and homes. Illegal goods trafficked to American consumers through e-commerce platforms and online third-party markets threaten public health and security, as well as national security. This illegal activity has a negative impact on American innovation and erodes the competitiveness of U.S. manufacturers and workers.<sup>13</sup>

Laws must improve the definition of counterfeits and fill legal gaps that prevent counterfeiters from being effectively prosecuted. To determine whether a product is counterfeit for the purpose of determining liability, more factors should be considered than whether a mark is “substantially indistinguishable” from a registered trademark in the U.S.

Counterfeit goods are no longer confined to street corners and flea markets, as they once were. Despite public and private efforts, the availability of counterfeit and pirated goods online continues to increase. The projected growth in e-commerce is fueling concerns that the scale of the problem will only increase, especially in a business-as-usual scenario. E-commerce platforms have not been held to the same standards as brick-and-mortar retailers in protecting the public against fake, counterfeit, and dangerous products.<sup>14</sup> Consequently, effective and meaningful measures to thwart misuse of e-commerce are of national importance. These include the following.



# ADDRESS THE CHALLENGES POSED BY E-COMMERCE

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1. Congress should enact legislation to:
  - a. Require e-commerce platforms to improve upfront screening of potential sellers, including verifying legal entity and products prior to admitting commerce;
  - b. Require e-commerce platforms to share information that is relevant to consumers in order for them to understand the risk of purchasing counterfeits, as well as require brand owners to take effective enforcement measures against counterfeiters;
  - c. Require e-commerce platforms to remove counterfeit sellers and products from their platforms as soon as they are detected; and
  - d. Require e-commerce platforms to notify online shoppers about actual or potential purchases of counterfeit goods; if they do not take these precautions, platforms should be held liable for any infringements that occur as a result of vendor activities on their platforms.
2. Congress should clarify the legal doctrine of contributory liability for trademark infringement. Congress should pass legislation that clearly defines the doctrine and its parameters, as well as setting judicial review standards that encourage courts to develop critical fact-specific case law.
3. Congress and relevant federal agencies should work with manufacturers, retailers, e-commerce platforms, and others to explore ways to strengthen enforcement tools against overseas vendors who sell illegal and counterfeit products via e-commerce platforms—with a focus on the current inability to effectively enforce against entities from China that do not have assets in the United States.



## CONFRONT THE ABUSE OF SMALL PARCELS IN TRADE OF CONTRABAND

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Due to the introduction of large-scale cross-border e-commerce, the way trade and underlying transactions are conducted around the world in the new digitalized global value chains has shifted dramatically. There has been an increase in the number of small shipments in international trade, which has been accompanied by their use as vessels for illicit goods, including drugs, chemicals, weapons, and counterfeits.<sup>15</sup>

The sheer amount presents an enormous challenge to customs and law enforcement agencies. The ability to target and interject illegal trade on a granular scale without disrupting the legitimate flow of products is limited, as is the ability to carry out effective risk assessment analyses and product inspections. Criminal networks involved in the sale of illicit goods increasingly exploit the institutional gaps and vulnerabilities that exist in postal and courier operations.<sup>16</sup>

The role of the consumer as the sole importer is a new challenge in governance that requires much more attention. The “democratization of trade” has brought many benefits to the global economy, but it has also brought health and security challenges that governments must address.

Whether from the massive importation of lethal fentanyl and synthetic opioids or the sale of illegal wildlife and the rise in counterfeits, it is clear that the U.S. government must continue to do more to meet the growing challenges of e-commerce and the abuse of small parcels in trade in contraband, while also facilitating the legitimate flow of goods.

# CONFRONT THE ABUSE OF SMALL PARCELS IN TRADE OF CONTRABAND

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From a broader perspective, public policy and regulatory reforms are urgently needed. These must focus on securing the trade chain from criminal networks, protecting sources of revenue, and improving trade facilitation to guarantee the continued economic prosperity and long-term viability of cross-border e-commerce. To address these challenges, the U.S. government should activate the following tactics.

1. Engage courier and postal intermediaries in efforts to identify and interdict illicit products;
2. Improve the quality of small shipment data made available to, and risk assessment techniques for, customs authorities;
3. Increase the ability to access, integrate, and evaluate data sets from a variety of sources;
4. Assist e-commerce platform operators in their efforts to detect online transactions involving illicit products; and
5. Strengthen efforts to take enforcement actions against parties involved in the online trade of illicit products.



## DISRUPT FOREIGN FREE-TRADE ZONES (FTZS) AS ENABLERS TO ILLEGAL TRADE

FTZs can have a catalytic effect on economies, including attracting foreign direct investment and helping to expand economic growth. But FTZs can also be exploited by bad actors to facilitate illicit activities that produce broader market reputational harm and endanger the physical security of many communities.<sup>17</sup>

FTZs can be beneficial to businesses and economies, attracting foreign investment (particularly in high-tech industries), create jobs (particularly for higher-skilled workers), and enhance export performance. However, the same characteristics that make FTZs attractive to legitimate businesses also drive criminals to abuse poorly controlled zones. In 2010, the Financial Action Task Force (FATF) found that some FTZs had inadequate safeguards against terrorist financing and money laundering.<sup>18</sup>

Illicit businesses can often use poorly controlled FTZs to launder dirty money, trade illicit goods and narcotics, or run counterfeiting operations, allowing them to ship to low-cost territories where a large number of supportive industries are available to provide critical services such as relabeling and repackaging.<sup>19</sup>

To address these issues, countries must collaborate to develop a common international framework or set of standards that can address these concerns and ensure that FTZs can operate in the ways they were intended, while promoting greater transparency and compliance with these standards. The OECD's Task Force on Countering Illicit Trade (TF-CIT) has finalized a set of guidelines. In addition to encouraging participation in an OECD national assessment in counterfeit trade in the U.S. economy, we recommend the U.S. government work to encourage other jurisdictions to enact these important guidelines, to enhance transparency in their FTZs.

# DISRUPT FOREIGN FREE-TRADE ZONES (FTZS) AS ENABLERS TO ILLEGAL TRADE

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1. **Customs access:** 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 for investigations of violations of applicable law.
2. **Access to information:** 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.
3. **Information exchange:** Encourage international cooperation in the exchange of law enforcement information (financial and administrative) 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.
4. **Record keeping:** 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.
5. **Payments:** 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 document details of large cash transactions and report to the customs authority.
6. **Awareness:** Promote awareness among the business community including all relevant stakeholders, from shipping lines to logistic companies, shipping agents, customs brokers, and freight forwarders to understand the major risks related to FTZ.



## SANCTION AND PENALIZE CRIMINAL AND CORRUPT ACTORS BY DISINCENTIVIZING ILLICIT BEHAVIORS

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There are a number of distinct incentives for criminal gangs to engage in criminal activities and to diversify across illicit markets. First and foremost, their involvement in illegal trade is a high-reward, low-risk business enterprise. For criminal entrepreneurs, illegal trade offers a lucrative return on investment, which can be greater than those returns gained on any other illegal activity, including the sale of illicit drugs.

Furthermore, once these attractive returns are risk adjusted for the criminal networks involved in these activities, the risk/reward relationship is heavily weighted in favor of continued involvement in illegal trade activities. That assessment takes into consideration that these crimes have significantly lower prison sentences and fines compared to illicit drugs trafficking or the fact that police and prosecutors are more likely to focus on higher profile crimes, such as terrorism, the arms trade, and human trafficking than illegal trade crimes.<sup>20</sup>

Severe penalties and sanctions can have a deterrent effect for today's illicit actors and criminal networks. Follow-the-money approaches can also help to seize and freeze the criminally derived assets of criminal organizations, corrupt enablers, and their complicit financial facilitators. Accordingly, the U.S. government should apply the following strategies and tactics.

1. Raise the risk-reward ratio of illegal trade by:
  - a. Working with Congress to pass and enact legislation providing law enforcement with new authority to counter illegal trade and to effectively prosecute the fight against illegal trade and freeze proceeds of such crimes.
  - b. Extending law enforcement operations into illegal trade beyond U.S. borders.
2. Strengthen international cooperation with other committed governments and the business community; leverage mutual legal assistance agreements to enhance investigations and prosecutions; promote anti-money laundering measures and information sharing to disrupt the ability of corrupt officials and criminal organizations to finance illegal trade and further expand illicit economies.



## FINAL WORDS

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Government agencies have been doing all they can to intercept these products and criminals. But comprehensive solutions against illegal trade require action from the public and private sectors alike.

USA-IT is proud to join together with such a diverse group of stakeholders from various industries and the public sector to expose the hidden costs and consequences of illegal trade. The integrated campaign and policy recommendations sought to inform policymakers, opinion leaders, and the broader public about the emerging threat of illegal trade and its severe impacts. It also aimed to spotlight the resources available by federal and state agencies, the private-sector, nonprofits, and other organizations dedicated to fighting illegal trade, to learn more and report suspected crimes.

To date, the campaign has reached more than 300 million Americans. Furthermore, it has also garnered strong support by third parties, who recognized the importance of cooperation across industry sectors and between public and private actors to resolve societal issues.

We are excited to continue USA-IT's work in 2022, and appreciate the continued, overwhelming support of our partners for this tremendous and collective effort.

By working together and bringing this pervasive problem into lawmakers' focus, we can more effectively combat this tremendous threat to Americans' security and prosperity.

# BIBLIOGRAPHY

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