

Effective Legal Enforcement Strategies against Counterfeiting

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POLICY DIALOGUE ON ANTICOUNTERFEITING
Curaçao – Jamaica
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SCOPE AND SIZE OF THE PROBLEM:

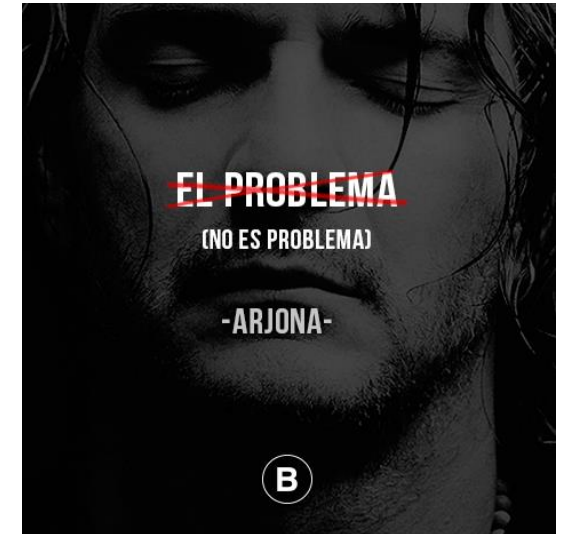


- **Latin America population: over 652 million (est. 2018)**
- **Considered the 4th largest area in potential consumers**
- **Over 75% of population buy pirated /counterfeit items**
- **Counterfeiting and piracy valued in USD\$12.5 billion yearly**
- **Increasing participation of organized crime and terrorism in counterfeiting (usually used as means of “funding”)**

- From INTA Presentation Combating Counterfeiting: The role of Customs Authorities in the Americas. Panama 2017

Different approaches for different situation

- Illicit Commerce is (not) an “only” problema
 - BEYOND COUNTERFEITING
 - It depends on:
 - the type of product
 - Illicit conduct:
 - Counterfeiting
 - Smuggling (including tax evasión)
 - Sales without license
 - Signal theft / piracy
 - All of the above produce Money Laundering

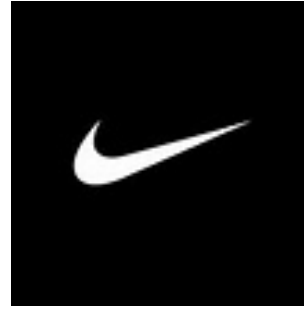


Different flavors (strategies)

- Antipiracy rules
 - Criminal procedure – District Attorney
 - Customs process / recordar
 - Ex officio authority
- Illicit Commerce regime for specific products
 - Pharmaceuticals
 - Tobacco
 - Alcohol (beer, rum - All Alcohol plus fermentation process is included)
- Money Laundering Law



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Dominican Republic

- Customs retention authority
 - Customs has enforced even when there is NO recordal of TM in Customs
 - Retentions have declined in 2018
 - Several TM products / Owner:
 - It could be included in just one certificate for all brands and kinds that are appropriate
- Look forward to see REAL Link the IPR Recordal System with Integrated Customs Management System (SIGA)

- Training





Customs & IPR (back to work)

- Trademarks registration in Customs
- Working efficiently since 2006
- 15-18 months with no activities
- Now back to work
 - 50,000 counterfeit pieces destroyed



DGA destruye mercancías por \$5.6 MM

Artículo

Leomaira Suriel
Santo Domingo

La dirección General de Aduanas (AGA) destruyó ayer artículos falsificados de diferentes marcas con un valor estimado de RD\$5.6 millones. La destrucción de mercancías entre las que se incluyen carteras, relojes, correas, monederos, llaveros y ropas interiores, de marcas Louis Vuitton, Chanel y Lacoste, traídas al país por diferentes empresas importadoras, fueron confiscadas bajo las medidas que protegen el comercio legal de los titulares de marcas.

La retención de estas mercancías falsificadas cumplen con lo que establece el tratado de libre comercio R-Cafta y el acuerdo sobre los aspectos de los Derechos de Propiedad Intelectual Relacionados con el Comercio (ADPIC) y las leyes 20-00 sobre propiedad industrial y la 65-00 sobre derecho de autor. Las 45,986 piezas falsificadas que se intentaron introducir al país, por diferentes puntos fronterizos, son parte de la lucha en contra del contrabando que afecta el negocio formal.

Según expresó Gregorio Lara, asesor del director de AGA, Fernando Fernández, la falsificación es uno de los delitos más trascendentes a nivel mundial.



Persona trabaja, con los artículos falsificados destruidos.



¿WHY an IPR Recordal System?

On the technical side:

It makes more efficient inspection work

Help to identify potential counterfeits

In the legal aspect:

Time Limit - It facilitates Customs fulfillment of the established notification process.

¿What is the IPR Recordal @ Dirección General de Aduanas in Dominican Republic?

It is a tool that enables the DGA to maintain an updated database with information on the Intellectual Property Right Holders in the Dominican Republic and its technical details on their product to detect counterfeit.

Benefits of the Recordal System in Customs

- It facilitates the filing of legal actions on IPR violations
- IP Holders are in better position to defend their rights
- With the information provided Customs Officials are enabled to detect counterfeit at border, before go into retail commerce.
- It helps to be efficient with notifications of the infringements.

- Customs are the main entrance of counterfeit.
- IP Holders counts on Border Protection to help in the enforcement of IP rights.
- When Customs authorities do not know who has the legal authority to proceed in Trademark / copyright cases, the merchandise has to be released.
- If technical information is not detailed at the recordal system, it is more difficult for DGA to protect the brands.

Results in practice of the Recordal Tool

- Since its implementation this system has shown great efficiency, since it has contributed to the detection of the importation of counterfeit goods in the different customs administrations, because it provides front-line Customs officers information necessary to distinguish the differences between the original counterfeit products.
- During 2016, approximately 85% of the retentions made by IPR officials of the DGA were supported by the information recorded in the database of the Recordal System.

Moving Forward:

- Link the IPR Recordal System with Integrated Customs Management System (SIGA)

The SIGA process will give the alerts of Brands that are recorded in the system.

For Example : Purses, Shoes, Cellulars accesories, etc.

- To continue with training from Brand holders

It is not enough with the recordal system, it is necessary that IPR owners train Customs Officials to detect counterfeit and how to better use the graphic examples submitted in the system. No one is better to help identify counterfeit, than the Brand owner.

DESTRUCCIONES



DESTRUCCIONES



CAPACITACIÓN PARA OFICIALES



Pharmaceuticals counterfeit

- Procuraduría Crímenes y Delitos Contra la Salud
- (General Prosecutor against Health criminal offenses)
- Magistrado Rafael Brito
- Judgements even with 10 years of prison time (2018)

Criminal Sanctions

2 to 10 Years Prison / 5-10 Minimun wages

- Manufacture
- Importation
- Distribution
- Storage
- Selling
 - Counterfeit
 - Adulterated
 - Expired
 - Re-labeled
 - Smuggled
 - Imported without valid sanitary registration

PHARMACEUTICALS

Illicit Trade Law

- It does not stop in counterfeiting
 - It goes beyond IP
 - Illicit Whites
 - Importation or distribution of products with the own brand (or no brand) that does not interfere with a third party mark ... but with no license / smuggling ...
- More enforcement authority to General Prosecutor & D.A.
- Interinstitutional coordination (Government & Private sector)
- New “crimes”

New “crimes”

- Develop regulated products without permission
- to develop/commercialize regulated products that do not have permission
- alteration of the product alteration documents to make see permissions
- to hide or to disguise regulated products to circumvent controls
- All types of commercial operation regulated products without paying the corresponding taxes or without corresponding tax stamps
- mix derivatives of oil with others with other products, to circumvent controls or taxes
- make false statements affecting tax burdens
- making misleading statements about origin or production methods to obtain tax advantages

Tobacco Illicit Commerce



CONTRABANDO

Cigarrillos originales, desviados ilegalmente de su mercado de destino previsto



FALSIFICACIÓN

Copias de marcas originales, producidas sin autorización del propietario de la marca o del fabricante del producto genuino



ILLICIT WHITES

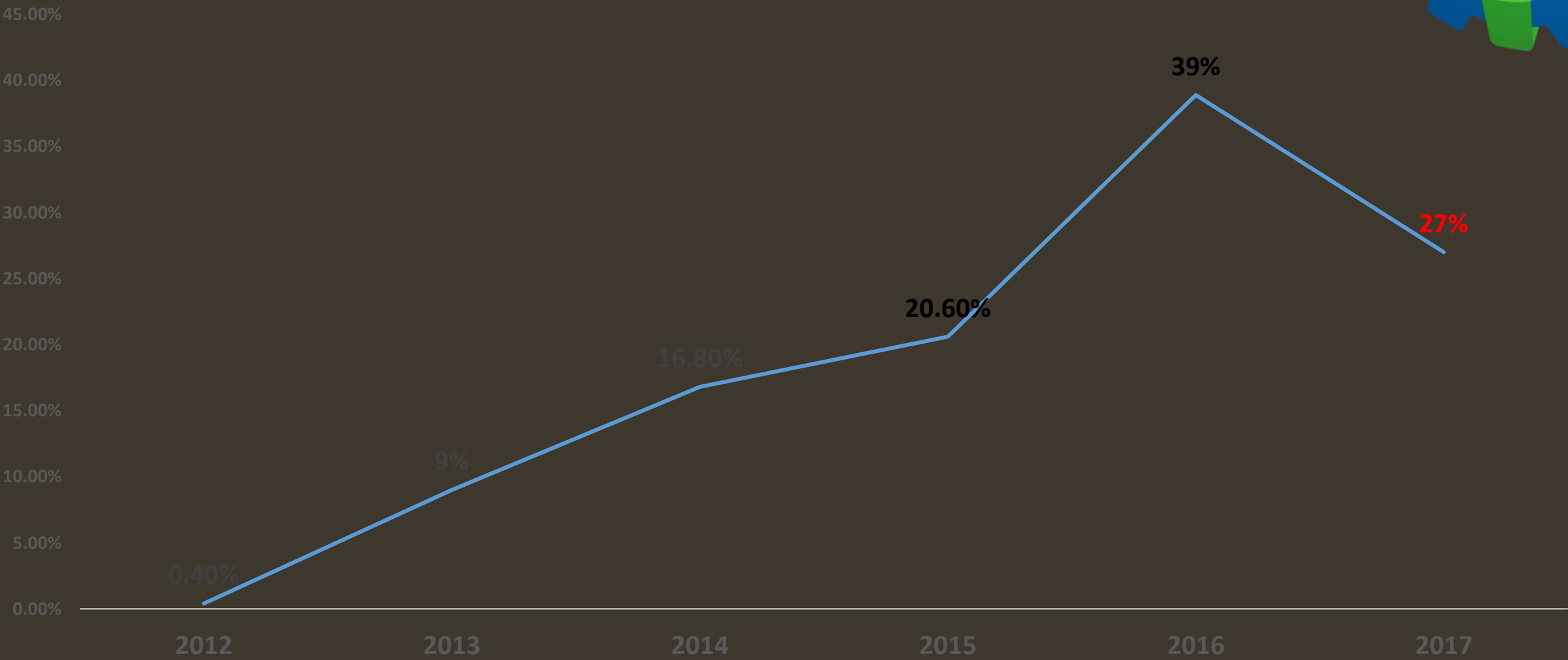
Cigarrillos fabricados principalmente con el propósito de ser contrabandeados y vendidos en otro país donde no tienen distribución legal

Evolución de la incidencia de cigarrillos ilegales



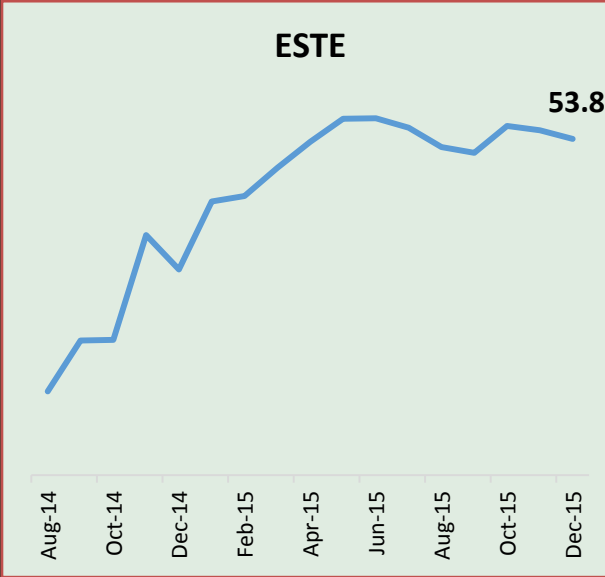
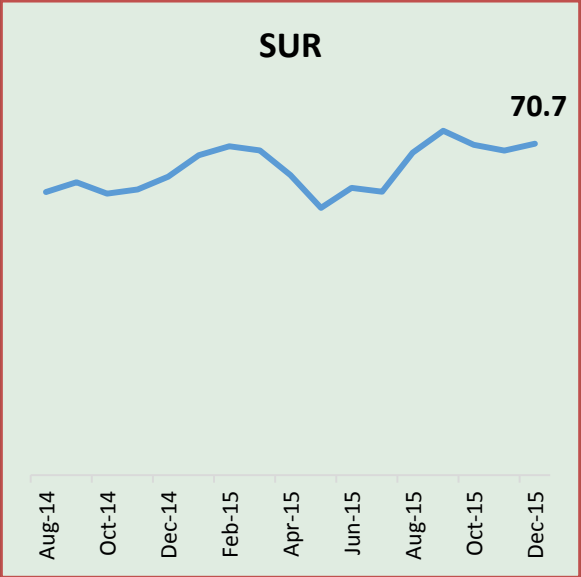
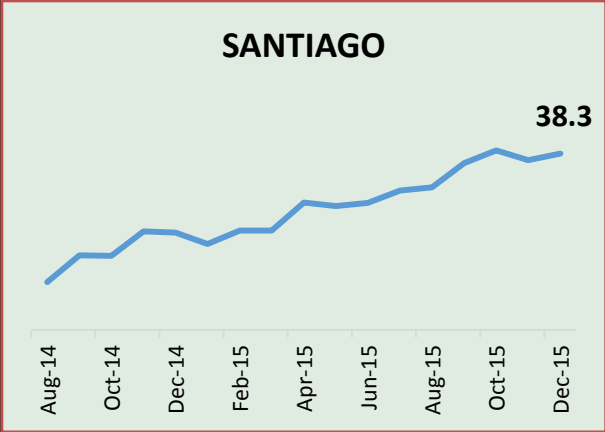
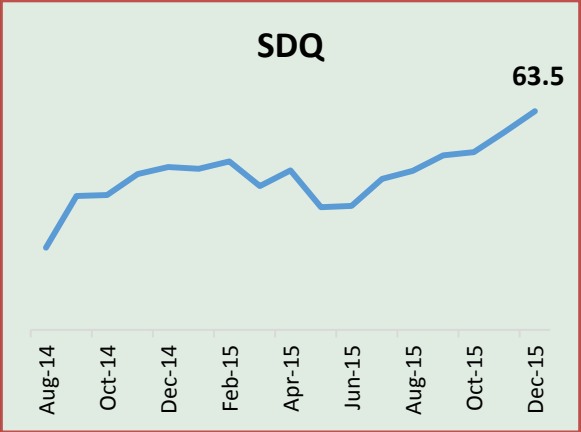
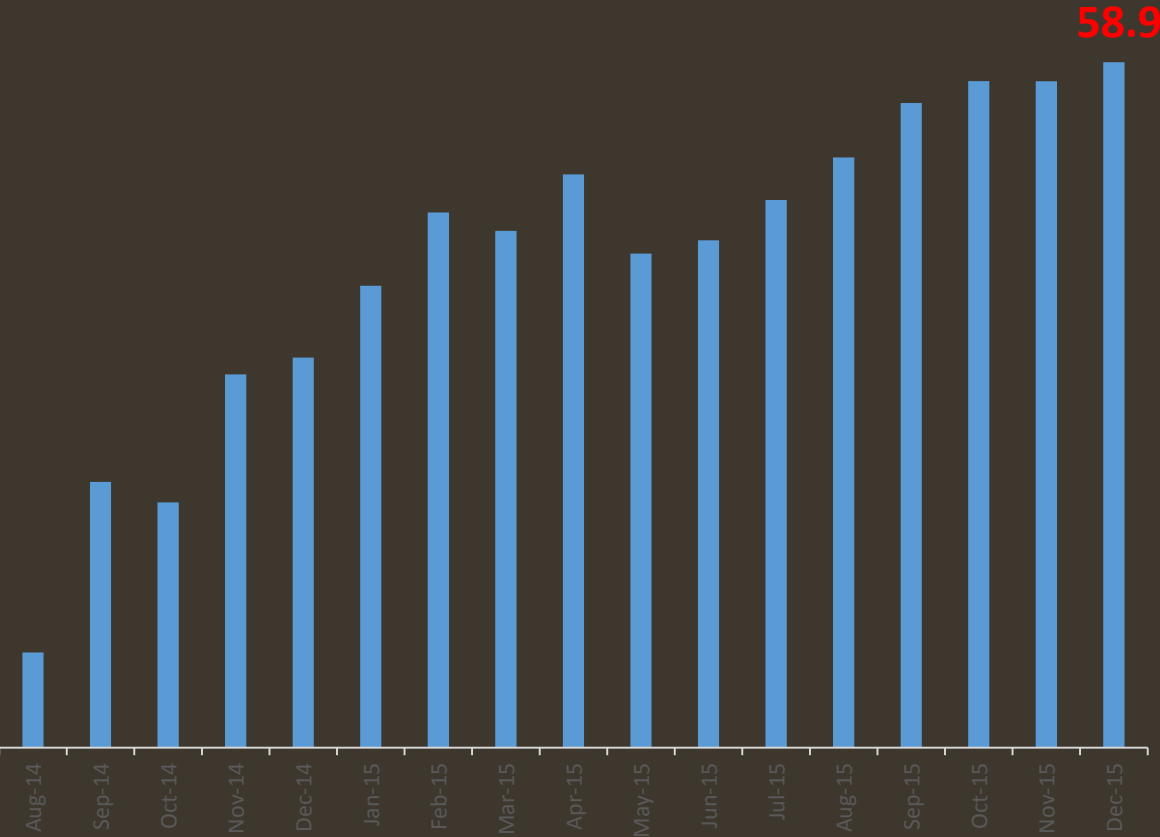
Evolución de la Incidencia del Comercio Ilegal

Fuente: ASOCIGAR



Evolución de la incidencia de cigarrillos ilegales: Disponibilidad

Disponibilidad de Cigarrillos Ilegales
% a nivel nacional



Acciones realizadas por DGA, PGR y CESFRONT



Incautaciones

1 Contenedores



2 Puntos de venta



Destrucciones



Cigarrillos ilegales

123 Millones de cigarrillos destruidos



Acciones de control durante el 2018



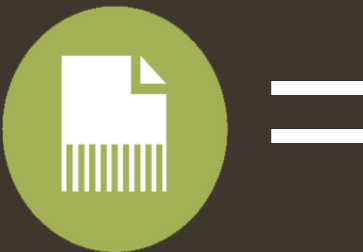
+30 Millones
uds confiscadas

39%
(Dic.
2016)



+35 Decomisos

27%
(Dic
2017)



+80 Millones
uds destruidas

Resultados generales (2016 – 2018 YTD)



Operativos a nivel nacional

Soporte de:



+140 Millones de unidades incautadas

+1,000 operativos a nivel nacional

35 contenedores y 24 paletas incautadas

25 personas arrestadas



Tobacco PROBLEM in the Dominican Republic

- Almost 50% of sales market has availability of the illicit White products.
 - More than 25,000 little grocery stores
- Trademarks: “CAPITAL” y “GOLD CITY”
- Product with no tax payment
- Cigarettes manufactured in China

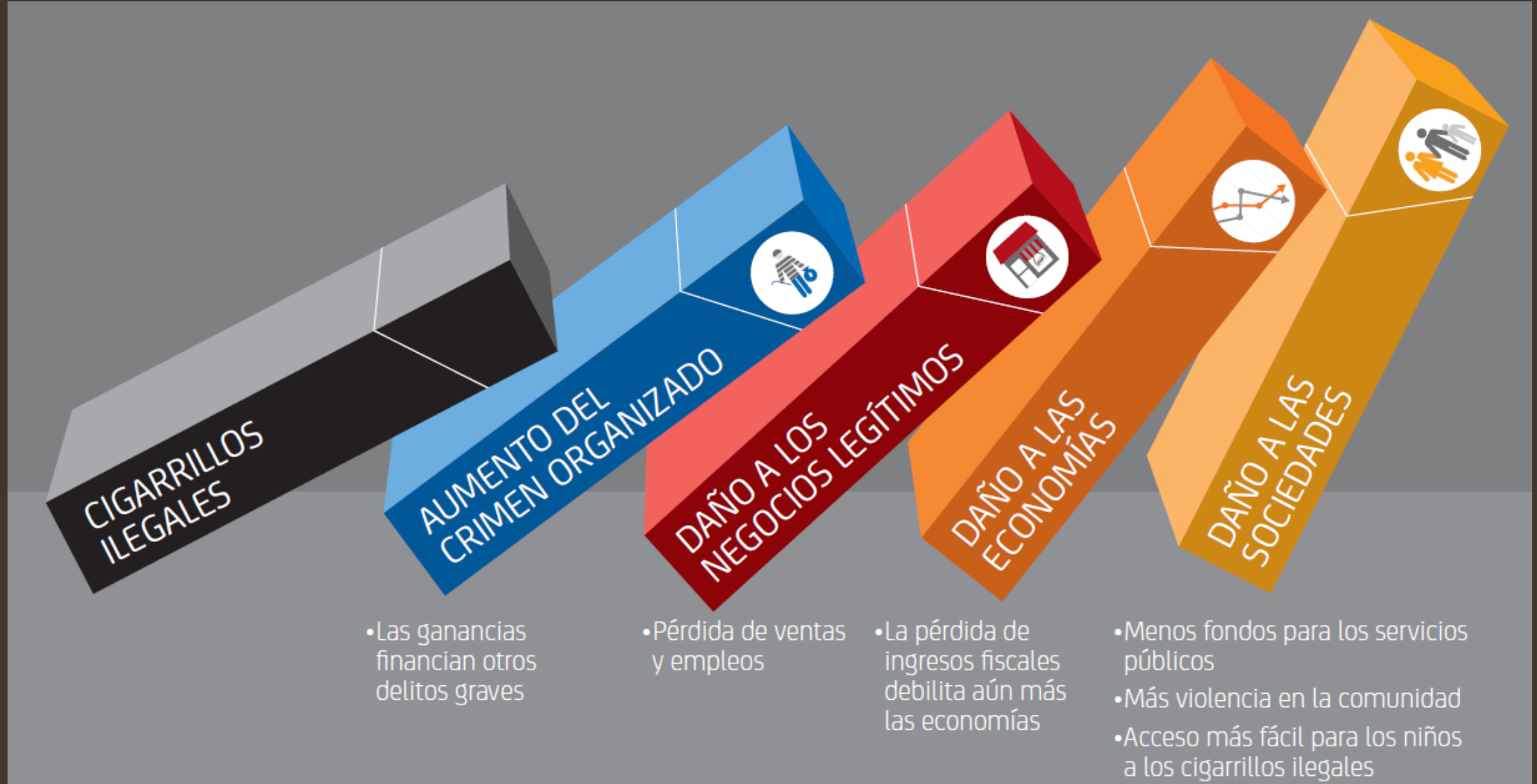
Legal actions



More legal actions



El impacto creciente del comercio ilícito de cigarrillos



Last but not least: MONEY LAUNDERING

- Money Laundering law (155-17)
 - It contains all the recommendations of the Financial Action Task Force on Money Laundering (FATF) of February 2012 .
- Crimes produce money laundry assets.
 - Besides usual crimes (drug trafficking, terrorism, etc.) in the list of this type of offences is included:
 - Counterfeiting and piracy of products;
 - Smuggling; (including in relation to customs and excise duties and taxes);
 - Tax crimes (related to direct taxes and indirect taxes);
 - Intellectual Property violations
 - Counterfeit and adulteration of pharmaceuticals

Why is it convenient ????

- Excellent tool against counterfeits in the Dominican Republic
 - prison time for money laundry goes up to 20 years of prison time
 - IPR violations only goes up to 3 years
 - there are also major resources for investigations
 - D.A. does not use “investigators” for IP violations
- possibility for authorities to freeze or seize and confiscate properties, bank accounts
 - For IP the seizure is only for products / machinery / documents (D.A. is not used to this)

It is always a combination

- Legislation
- Enforcement Authorities
- Coordination
- More important Education, education, education

- Muchas gracias
- Looking forward to answering your questions.....

