

Smuggling in Guatemala: Recent Numbers and Perspective in the Future

Guatemala is strategically positioned in Central America, with access to the coasts of the Atlantic and Pacific, and it also has land borders with Mexico, El Salvador and Honduras; a little more than two hours from airports in the United States. The most frequent crime in seaports is customs fraud, while the common practice in coasts and borders, which have been called “porous”, is open smuggling and illegal trafficking of goods in adjacent areas, which occurs unhindered in the “blind paths”.

These crimes create unfair competition to those who legally import goods, they affect the national security of the State, increase the tax gap and generate violence and impunity.

The indexes of smuggled goods entering Guatemala have alarmingly increased in the last years. According to studies presented in recent days, 2019 has been a record year on this regard.

The Guatemalan Chamber of Food Products and Beverages, through the Observatory against Smuggling, recently informed that there had been a record entrance of smuggling in food products in 2019¹.

There are five products that have specially registered a record increase of smuggling:

- a. Edible oils
- b. Groceries
- c. Candies and snacks
- d. Corn
- e. Eggs

The numbers indicate that the smuggling of edible oil represents 28% of what is commercialized in our country; number that has surpassed the 8.5% registered in 2012 and the 9% registered in 2015. Groceries, candies and snacks show identical numbers to those of edible oil.

The smuggling of corn represents 25% of the total that is commercialized in the country from 2012 to date.

The smuggling of eggs increased 18% in 2018, representing 20% at the national level.

Soft drinks, pork, beef, milk, and cheese have considerably increased in 2019.

According to the Observatory against Smuggling, the studies made since 2012 already indicated an upward trend in the entrance of smuggled food products; however, it was after 2016 when an avalanche of all types of food products and beverages started.

This also leaves a significant gap in tax collection. The Tax Administration Superintendence has confiscated 97

¹ Observatory against Smuggling. (2019). 2019 Record Year for the Smuggling of Food Products in Guatemala [PDF].

million Quetzales in products that have been unlawfully entered into in the country.

The current Director of the Tax Administration Superintendence explained² that the Tax Administration did not receive 7 million 749 thousand Quetzales in taxes for this confiscated merchandise.

There are no specific data for counterfeiting in Guatemala, but even the counterfeiting indexes also show a worldwide increase. Counterfeiting Confidential published in its December of 2019 Newsletter³, that this practice has grown 40% from 2018 to 2019, based on studies made by Word Trademark Review, where even warnings were made to holders of online trademark registrations identifying these 5 trends that will significantly affect the scenario of online trademark protection, starting in 2020 and thereafter:

1. The expansion and dispersion of the typical channels that counterfeiters have exploited.
2. The use of gray and white markets for IP violations.
3. How block chains and other technological advances will dominate the priorities of trademarks.
4. The continuous change from investigative procedures to online tactics.
5. How the international relations will affect even more the way in which the trademarks control their intellectual property.

The smuggling and counterfeiting problems may be dealt with from these two angles:

1. The proactive angle: Registration of trademarks, patents and distinctive signs before the Intellectual Property Registry and constant supervision to ascertain that the rights are in force and are not being infringed upon by third parties.
2. The reactive angle: Investigation, analysis and strategic litigation to enforce the intellectual property rights, alongside the corresponding authorities.

We have been successful in both angles at Carrillo & Asociados, working jointly with clients who have been the victims of these crimes, to proactively and/or reactively protect against the threats to their rights, promoting a working methodology focused on delivering value to our clients.

Written by:

Rodrigo Callejas (rodrigo.callejas@carrillolaw.com)

Alfaro López (alfaro.lopez@carrillolaw.com)

Mauricio Ordoñez (mauricio.ordonez@carrillolaw.com)

² Soy502. (November 11, 2019). Retrieved from <https://www.soy502.com/articulo/sat-revela-cifras-contrabando-guatemala-durante-2019-930>

³ Counterfeiting Confidential (2019). Report highlights trends that will shape brand protection in 2020. [PDF].