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Counterfeit Pesticides in Ukraine: Status Quo and Initia- tives to Address the Problem

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Being among the top-ten largest criminal businesses in the world, trade and application of counterfeit pesticides is a global - threatening problem, which imposes serious risks for farmers, consumers of treated goods and environment and also cause financial losses to agricultural business and, unfortunately, Ukraine is among the countries with the largest share of counterfeits at the market.

Status quo

On the one hand, pesticides help to increase agricultural productivity and meet constantly growing global demand for food. On the other hand, they pose serious risks for farmers' health, environment and end-users of agricultural products if applied in violation of safety standards. That is why new crop protection products are often rigorously tested before they are allowed to enter the market. Responsible producers of agrochemicals invest considerable financial resources to develop and test products, which meet the environmental and health safety standards. Global demand for pesticides and other crop protection products (CPP) is expected to grow following food demand. Potential to gain high profits at CPP market by avoiding costs encountered by legal business stimulated various kinds of international crimes related to production and trade of counterfeit products as well as contraband activities.

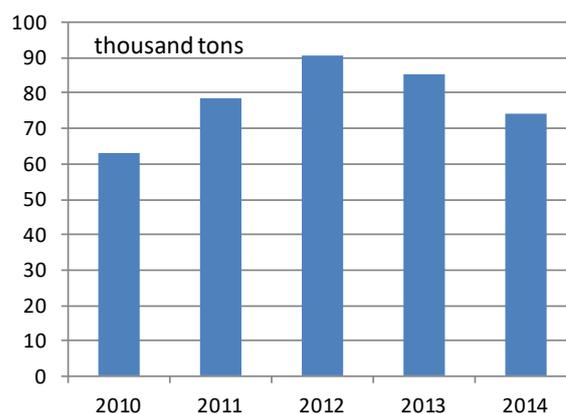
In fact, the counterfeit pesticides trade is in the top ten of most profitable organized crime businesses¹. According to Europol², illicit pesticides trade generates approximately 4.4 billion EUR profits globally each year. The share of illegal pesticides of the total world market is estimated by Europol to be as high as 10 % worth 44 billion EUR. Even in the EU, which generally has much stronger law enforcement than in Ukraine, the counterfeit pesticides trade is still a serious problem. In the North-East Europe, where criminal networks for illicit pesticides trade are exceptionally well developed, the market share of illegal pesticides could end up to 25 %.

¹ <http://www.osce.org/secretariat/192516?download=true>

² https://croplife.org/wp-content/uploads/pdf_files/Europol-AC-Policy-Brief.pdf

According to the Ministry of Agrarian Policy and Food³ of Ukraine, domestic production of pesticides does not exceed 6000⁴ t, while 80-90 thousand tons of pesticides are imported annually (see Figure 1.). In 2014, crop protection measures were applied at 14 million ha (including 12.7 million ha of pesticides) of agricultural land, which is by 3.9 % higher than in 2013⁵.

Figure 1. Total pesticides imports by Ukraine



Source: <http://comtrade.un.org>

In Ukraine, both original and generic products are represented at the market. The share of counterfeit products is considered to be at least 20 % (up to 70 % of small-packages at retail market). FAO estimates that turnover of falsified crop protection products constitute 20 %-25 % of the market or 200 million USD⁶.

It is important to note the scale of the problem is really threatening as counterfeit pesticides entail multiple risks for natural environment and human health. Unlike legal products, which are properly tested to ensure maximum safety for farmers and environment, counterfeit products usually have unknown chemical composition and could seriously compromise health of farmers and consumers of treated agriproducts as well as damage of agri-environmental ecosystems.

Moreover, economic losses for the government in terms of the revenue foregone due to lost taxes and customs duties from the sale of genuine prod-

³ <http://minagro.gov.ua/node/16015>

⁴ More specific production data is not available as some data on production of insecticides and fungicides is considered to be confidential and concealed in the national statistics.

⁵ <http://www.ukrstat.gov.ua/>

⁶ <http://minagro.gov.ua/node/18754>

ucts are also estimated to be very high. For example, economic damages to governments of the EU member countries vary from 15 to 22 million USD annually⁷. In addition, poor-quality pesticides could seriously damage harvests and contaminate soil, which will affect yields over several years in a row. Agrochemical producers also entail financial and reputational losses as labels of popular brands of well-known companies are often used in packaging of falsified pesticides.

Legislative framework

Legislative basis of Ukraine on the pesticide use is comprised of two basic legislative acts, namely Law of Ukraine № 86/95-BP "On Pesticides and Agrochemicals"⁸ as of 02.03.1995 and Law of Ukraine № 180-XIV "On protection of plants"⁹ as of 14.10.1998 as well as by-laws and orders of relevant executive bodies¹⁰.

The former law establishes general terms related to application of pesticides and other agrochemicals, requirements to production, state testing and registration of pesticides. Business activities related to production as well as wholesale and/or retail trade in pesticides is subject to mandatory licensing. The law also provides requirements for the safe handling of pesticides including transportation and storage. The Law № 180-XIV sets key principles of the state policy in the area of crop protection and establishes functions of responsible government bodies.

Only those pesticides are allowed for application, which are recorded in the State register of pesticides and agrochemicals¹¹ approved by the Ministry and Natural Resources of Ukraine. As of 2015, about 4.000 types of pesticides are authorized while 90 are considered to be very hazardous and are banned by the Ministry of Health¹². Violation of legislative norms on pesticides and agrochemi-

cals use entails civil, disciplinary, administrative or criminal responsibility.

Moreover, Ukraine has joined the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, which became the part of national legislation since 2002¹³.

Despite quite well developed legislative body related to the use of pesticides, there are considerable discrepancies¹⁴ of the national legislation with International Code of Conduct on the Distribution and Use of Pesticides¹⁵ and provisions of the Directive 2009/128/EC on sustainable use of pesticides¹⁶ and the EU Regulation 284/2013, concerning the placing of plant protection products on the market¹⁷. Unfortunately, the Directive 2009/128/EC was not included under the Association Agreement with the EU for unknown reasons.

According to the OSCE¹⁸, key legislative weaknesses enabling trade of counterfeit pesticides in the EECCA countries include a very easy temporary (preliminary) registration, which can even be used for commercial batches; higher duty rates for ready-made products compared to ingredients and also deficiencies in the pesticide control system. Importantly, corruption is considered to be one of the main reasons, which make illegal business possible in production and trade of counterfeit pesticides.

Initiatives to address the problem

Recent attempts to address the problem of counterfeit pesticides were mostly carried out by technical assistance projects as well as agrochemical producers, who want to reduce their losses. In 2005, European Union has launched a programme to combat use of falsified crop protection measures, which covered information activities in the nine regions of Ukraine. The European Busi-

⁷ <http://edis.ifas.ufl.edu/pdf/files/pi/pi21000.pdf>

⁸ <http://zakon4.rada.gov.ua/laws/show/86/95-%D0%B2%D1%80>

⁹ <http://zakon2.rada.gov.ua/laws/show/180-14/page>

¹⁰ For example, Order of the Ministry of Health Protection № 1 "On transportation, storage and application of pesticides" as of 03.08.1998.

¹¹ <http://www.menr.gov.ua/control/control5>

¹² <http://minagro.gov.ua/themes/garland/pdf/8.1.%20Basic%20material%20UKR.pdf>

¹³ http://zakon5.rada.gov.ua/laws/show/995_a35

¹⁴ <http://minagro.gov.ua/themes/garland/pdf/8.1.%20Basic%20material%20UKR.pdf>

¹⁵ <http://www.fao.org/docrep/018/a0220e/a0220e00.pdf>

¹⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:309:0071:0086:en:PDF>

¹⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:093:0085:0152:EN:PDF>

¹⁸ <http://www.osce.org/secretariat/192516?download=true>

ness Association has been also running an information campaign about risks of counterfeit and illegal plant protection products since 2009.

Though efforts of business associations to tackle the problem are important and noticeable, the problem is so large and complex that simple information campaigns are clearly not sufficient. Well-designed counteraction measures are needed, which should include necessary legislative amendments, cooperation of all relevant government bodies and, most importantly, effective state control system.

OSCE has developed a comprehensive counteraction methodology¹⁹ jointly with the Environment and Security Initiative (ENVSEC), which could help although not eliminate completely but at least to reduce the scale of the problem considerably. Proposed approach covers a set of measures for three stages, namely, prevention, preparedness and response to already committed, crime. In particular, the following example measures are recommended:

- transparent and independent system of pesticides registration;
- application of the system of customs risk analysis;
- disposal of obsolete and waste pesticides, its packaging, which can be used for production of counterfeit products;
- control raids on and seizure of counterfeit products;
- establishment of a “quarantine” warehouses for arrested pesticides for temporary storage and further disposal after final court decisions;
- strengthening cooperation of national customs authorities with their counterparts from the countries producing pesticides;
- massive awareness campaigns for farmers and general public about the threats of counterfeit pesticides.

In October, 2015, a joint project has been initiated by the Ministry of Agrarian Policy and Food of Ukraine, FAO and relevant businesses to counteract sale of falsified and counterfeit agrochemicals on the market²⁰. First of all the project aims to amend current legislation to fix loopholes in

control and registration of new brands. Secondly, capacity building activities for customs authorities will be undertaken involving cooperation with the State Veterinary and Phytosanitary Agency

In conclusion, the counterfeit pesticides trade entails risks for public health, natural environment and economic losses for the government in terms of revenue forgone and losses for producers of original brands. Information campaigns of business associations are not sufficient to address such complex problem. However, recent initiatives combining efforts of government bodies, businesses and international organisations should assist Ukraine in achieving considerable progress towards combating counterfeit pesticides business.

Considering European, particularly, German experience in this area, will be one of the main measures to combat trade and application of counterfeit pesticides. The establishment of a proper state control system in Ukraine and the elimination of corruption is a crucial prerequisite for effective functioning of the state control and enforcement system.

¹⁹<http://www.osce.org/secretariat/192516?download=true>

²⁰ <http://minagro.gov.ua/node/18754>