

To catch a counterfeiter



Counterfeiting is as old a practice as human trading. Fostered by investments from criminal gangs in countries where there is little enforcement and minimal penalties, illegal pesticides are finding fertile markets in Europe, says Rocky Rowe

Counterfeiting and piracy have been practised since man started to trade and continues to prosper in almost every business sector. Counterfeits are generally sophisticated copies of the original product, usually designed to deceive the buyer and thus look like the original. However, the quality of the counterfeit and its contents may leave a lot to be desired.

Copies, fakes and knock-offs make no real effort to deceive the buyer and most who buy them will know they are illegal. Ambivalence to counterfeiting and illegal trade is becoming common across all avenues of society where those who buy a pirated CD or counterfeit handbag see no real harm and would quite likely repeat the purchase. Once the background on the origin of the article has been brought to their attention, namely organised crime, sweat shops and illegal labour, their conscience however awakens.

Over the past 50 years, there has been an increasing growth of counterfeiting across all business sectors, from pharmaceuticals, CDs and soft wear, to luxury goods, and car components, but also in mundane commodities such as electrical parts and building materials. In recent years, pesticides and plant protection products have been subject to counterfeiting, with the best estimates indicating that between 5% and 7% of pesticide products used are counterfeit or illegal copies, with usage as high as 25% to 30% in some places.

A recent report by the Organisation for Economic Cooperation and Development (OECD) indicates that there could have been \$US200 billion worth of counterfeit and pirated goods in 2005.¹ However, if wider implications of the damage caused by such counterfeit products are taken into account – factory closures, jobs lost and patients made ill, plus lost government

revenues – the estimate reaches close to US\$500 billion.

Counterfeits: widespread violations

Like other commercial sectors, counterfeit and pirated pesticides violate intellectual property rights (IPR). However, in addition, counterfeit pesticides pose a serious and significant risk to farmers, livestock, the environment and consumers.

The counterfeiter is primarily driven by greed and profit so there is no guarantee that a counterfeit product contains what is described on the label. Many counterfeit pesticides often provide some degree of biological control, as they contain illegal copies of the proprietary active substances. However, they invariably contain significant levels of dangerous impurities and manufacturing/process materials that pose significant risks to those who use



Some of the 500 tonnes of seized pesticides held at Uzin, Ukraine.

them. Farmers are exposed to them when mixing, loading and applying the products; bystanders and the neighbouring environment are exposed should material drift onto them; and consumers are exposed to them when consuming fruits and vegetables with illegal residues.

The environment is at significant risk not only from the potentially toxic impurities but also, in the case of crop damage or complete crop failure, through adverse reaction to the applied product. The disposal of the crop through ploughing could also cause follow-on problems for subsequent crops as well as ground water and biodiversity issues.

The risks to consumers in terms of impurities entering the food chain as residues, should be taken seriously. In late 2006, several Spanish pepper growers purchased a consignment of isofenphos methyl, a particularly toxic analogue of isofenphos that had never been registered and used in Europe². This product was used to treat a significant proportion of peppers grown

in the Almeria region of Spain, an intensive vegetable growing area supplying crops to consumers across Europe. Isofenphos was initially detected by the German authorities in their regular residue monitoring and they immediately filed a rapid food alert to the EU Commission. This alerted all other member states to be on the look out for residues of isofenphos in peppers and over the next months a further 12 rapid alerts were filed by several other member states as they all found isofenphos residues.

The European Food Safety Authority was quick to assure consumers that the residue levels were not such to cause a risk, although it is interesting to understand how they came to this conclusion so quickly without the wealth of data submitted on legitimate pesticides for food safety assessment. As might be predicted, Spain's pepper market all but collapsed, with supermarket buyers switching to alternative sources of fresh peppers to maintain consumer confidence. Those peppers treated were either destroyed, or found their way into processed

pepper products. The fresh pepper market has only recovered through the intervention of the Andalusian government with support for integrated control measures as an alternative to pesticides.

The importers of isofenphos were arrested and heavily fined; however the use of counterfeit and illegal trade still proliferates across the Andalusian region, particularly in and around Almeria, where in December 2007, Seprona – the environmental police – made another seizure of over 2,200 litres of mixed pesticides and arrested eleven people associated with them.

The new Europe

Since the implementation of Directive 91/414/EEC (centring on the placing of plant protection products on the market) in 1993, the number of member states in the EU community has expanded. At the same time, the number of plant protection products and in particular active substances has decreased. While establishing the highest protection levels for human health and the environment, the over-burdensome EU regulatory process for authorising new pesticides has slowly diminished the number of existing products that farmers have at their disposal for pest and disease control, and made it more difficult for companies to bring new products to the market in a timely manner. This has added to the pressure on farmers who have to compete in a global market place when producing almost any food crop today.

The loss of many key active substances also places limitations on sound agricultural practices such as integrated pest management and resistance management. It is no wonder that when faced with little or no suitable alternatives, some farmers decide to use other approaches and purchase counterfeit and illegal products.

Table 1, (see page 18) represents the current status of the review programme of existing active substances in the EU. All existing active substances were prioritised into lists 1 to 4 and deadlines were set for completion of their review. Many have not been renewed owing to the increase in regulatory data required or based on a cost-benefit analysis they were found to have become unsustainable in a competitive market. The table also shows that the number of new actives, and hence products receiving authorisation, is small in comparison to those lost, thus limiting options open to farmers.



Typical examples of fakes from Spain, with no use and safety precautions on the labels, thus showing that no effort has been made to conceal the fact they are illegal.



A field showing the use of Legitimate sulphonylurea (left) and counterfeit material (right) on maize.

With its 27 member states and almost 500 million citizens, the EU is the largest free trade zone in the world. With new EU boundaries stretching to countries such as Ukraine, and an ever faster global economic integration, it is becoming increasingly easy for illegal traders

to import and move counterfeit and illegal products throughout the EU. Since the 1996 BAA agrochemical case C-100/96 on parallel trade and common origin and the more recent 2003 Kohlpharma case C-112/02 judgment, the parallel trade process has been abused by

illegal traders with minimal risk of being caught and even if they are caught, minimal penalties are being applied.

An authorisation for parallel trade between two countries in the EU is easily granted and while in theory a sample of the product to be traded in parallel needs to be submitted, it is easily switched to an alternative and substantially cheaper illegal source. The degree of enforcement in most member states is minimal and the ability to re-package a product provides an open door through which the illegal parallel trader passes with impunity.

The most recent judgement of 21 February 2008 on Case C-201/06³ Commission of the European Communities vs. French Republic, re-establishes the requirement for common origin and as such will place a greater onus on member states to ensure that this is adhered to. However, time will tell how this most recent judgement is implemented.

China's role

Many, if not the majority of, counterfeit products come from China, where there has been a substantial growth in the number of Chinese manufacturers of pesticides over the past decade. Active substances are readily supplied and exported with no export controls to countries around the world where they are formulated and labelled for onward distribution. Likewise, sophisticated copies of proprietary products are manufactured and shipped with fraudulent documentation to countries around the world, with growing emphasis on Europe.

The figures for Europe on overall imports and counterfeit goods in general show a frightening increase whereby in 2006 EU customs intercepted more than 128 million counterfeited or pirated goods compared to 75 million in 2005. In terms of overall quantities seized, China remains the main source for counterfeit goods, with 79% of all articles seized coming from there.⁴

In terms of pesticide manufacturing, China is the big growth area in terms of capacity, recording an average volume growth of 12.5% year-on-year from 2000 to 2006 and a respective 19.46% growth in sales. Output is expected to be – up at over 20% for 2007.⁵ There are over 2,000 companies formulating pesticides and over 400 involved in manufacturing, with Juangsu province being the major manufacturing centre and the Shanghai

Table: 1 Reduction of active substances in the EU following review under Directive 91/414/EEC.

List	No. of ais	Approved for Annex 1 inclusion	Withdrawn or not approved for Annex 1	Pending a decision	Deadline for final decision
1	90	59	31	0	
2	148	33	115	0	
3	389	5	252	132	2008
4	325	0	191	134	2008
New	127	75	7	45	
Total	1079	155	596	321	



Fake packaging found in Italy. The original packaging on the left shows a 2mm registration mark (©), while that on the right, which is fake, has a 1mm registration mark.

and Guangdong provinces the centers for export. Insecticides are the leading pesticides being produced in China closely followed by herbicides and, to a lesser extent, fungicides.

In terms of regional Chinese exports, Asia is by far the largest with over US\$1 billion imported from China, followed by Latin America and Europe. The US is the largest single country for Chinese exports.

While China grows its legitimate chemical business, there are some who are seizing the lack of export controls and minimal import inspections to proliferate the export and subsequent import of counterfeit and illegal pesticides across Europe.

In late 2006, a consignment of over 500 tonnes of pesticide products were seized in the port of Odessa in the Ukraine. This is the single biggest seizure of pesticides in Europe and represents a market value in excess of €3 Million. While the seizure has been seen as an excellent achievement in a country that best estimates suggest has some 20% counterfeit and illegal pesticides in the overall

market, it now poses a significant problem for the Ukrainian government regarding disposal. The European Crop Protection Association (ECPA), together with the European Business Association in Kiev, are actively engaged with the Ukrainian government to find a suitable solution to this issue and to ensure that none of the consignment finds its way back into the market place through either illegal or official sources.

Increased regulation on what pesticides can be used is no deterrent to counterfeiters and is now seen as a potential driver towards illegal trade as European farmers are placed at a growing disadvantage in a competitive world market.

Membership of the EU has grown, leading to a larger free trade zone, new external borders for the EU, as well as new non-EU trading partners. These developments create many opportunities but also threats in terms of potential proliferation of counterfeiting, piracy and corruption. New trade defence instruments might therefore be needed, and necessary controls need to be put in place to ensure free trade is not abused.

The ECPA believes that governments should put counterfeiting and piracy higher on the political agenda and that existing legislation and regulation should be used more effectively to increase appropriate enforcement measures.

References

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