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# Current state and some issues of countering illegal trafficking in goods in Ukraine

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## Abstract

The aim of the article is to investigate the current state of illegal merchandise trafficking in Ukraine, as well as the basic conditions that promote the spread of counterfeiting in this country together with the methods to counteract this phenomenon. The research methodology was chosen based on the purpose and objectives of the study, consequently, a set of methods and approaches to scientific knowledge were combined, of a general theoretical and special scientific nature. Everything indicates that Ukraine is one of the world leaders in the illicit production and distribution of software, intellectual property, etc., and this problem has not been a priority for the authorities for a long time. It is concluded that the basic conditions that promote the spread of counterfeiting in Ukraine are determined on the basis of the analysis of the activities of the police and supervisory authorities in the fight against illegal trafficking of goods. The most efficient methods are proposed to counteract the illegal traffic of goods, within the framework of the underground economy in Ukraine.

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**Keywords:** illegal traffic of goods; counterfeit products; legal regulation; anti-counterfeiting methods; Ukraine.

## *Estado actual y algunos problemas de la lucha contra el tráfico ilegal de mercancías en Ucrania*

### **Resumen**

El objetivo del artículo es investigar el estado actual del tráfico ilegal de mercancías en Ucrania, así como las condiciones básicas que promueven la propagación de la falsificación en este país junto a los métodos para contrarrestar este fenómeno. La metodología de investigación se eligió en función del propósito y objetivos del estudio, en consecuencia, se combinaron un conjunto de metódicas y enfoques del conocimiento científico, de carácter teórico general como científico especial. Todo indica que Ucrania es uno de los líderes mundiales en la producción y distribución ilícitas de programas informáticos, propiedad intelectual, etc., y este problema no ha sido una prioridad para las autoridades durante mucho tiempo. Se concluye que las condiciones básicas que promueven la propagación de la falsificación en Ucrania se determinan sobre la base del análisis de las actividades de las autoridades policiales y supervisoras en la lucha contra el tráfico ilegal de mercancías. Se proponen los métodos más eficientes para contrarrestar el tráfico ilegal de mercancías, en el marco de la *economía sumergida* en Ucrania.

**Palabras clave:** tráfico ilegal de mercancías; falsificación de productos; regulación legal; métodos de lucha contra la falsificación; Ucrania.

### **Introduction**

There is a clear tendency to introduce European norms of civil society at the present stage of development of our State, especially with regard to the progressive dynamics of the country's development, reforming of State institutions, ensuring the implementation of public policy in general and its individual institutions in particular. The State policy in the customs sphere, which is one of the most important components of the country's economic policy and is aimed at maximally filling the State budget, is no exception. Reforming the activities of the customs authorities of our country and adapting their work to the requirements of the European

Union are identified as one of the most important tasks of the Sustainable Development Strategy “Ukraine 2020” (Order of the President of Ukraine, 2015).

The issue of preventing and combating violations of customs rules (one of the manifestations of which is also illegal trafficking in goods), which are commonly identified with the phenomenon of a negative nature, is particularly relevant in the process of reforming the activities of customs authorities. The existence of such violations damages the State, undermining its economic stability. That is why the State attaches great importance to this problem. Today, such a phenomenon as illegal trafficking in goods has become widespread and is considered not only within a particular country or region, but at the global level, due to its inherent in almost all countries and regions of the world. To ensure an effective mechanism for preventing and counteracting this negative phenomenon, each State is making every effort to develop and implement a number of programs, tasks, improving its legislation in terms of combating this problem.

The shift in public and economic life in Ukraine affected many directions of social life, including the norms and standards of production and sales of goods. A large number of private business entities have joined the process of production and selling goods that previously had no experience, material or technical capacities for producing, storing and selling goods to consumers. Previous State standards and requirements for technology and conditions of production were mostly replaced with technical specifications of individual producers. This fact caused the issue of declining product quality.

Step by step, the production of goods in Ukraine has become more civilized and even achieved the quality level of European producers in some areas. Recently, modern technologies of production of goods have been implemented in Ukraine. This direction, though, leaves lots of unsolved issues of both organizational and technical nature. The State has lost control over private entities' performance.

## 1. Methodology

In accordance with the purpose and objectives of the study, the system of methods and approaches of scientific knowledge, both general theoretical and special-scientific ones, is used in the work. The application of these methods is guided by a systematic approach, which primarily provides an opportunity to explore problematic aspects in the unity of their social content and legal form and allows for scientific research on the nature of illicit trafficking in goods and services in Ukraine.

Besides, the following research methods are used in the course of the research:

- historical method is applied in the analysis of the development of criminological thought on the problem of crimes in the area of illicit trafficking in goods and services in Ukraine.
- structural and systemic method is helpful when considering the quantitative and qualitative characteristics of illicit trafficking in goods and services in Ukraine.
- analytical method is used in determining the current features and trends of illicit trafficking in goods and services in Ukraine in its dynamics.
- with the help of statistical method, the statistical data on quantitative and qualitative characteristics of illicit trafficking in goods in Ukraine are collected and processed.
- the methods of classification and grouping allow to identify the most effective methods of combating illegal trafficking in goods in Ukraine.
- the method of content analysis is applied in the review of domestic and foreign scientific literature on the issue under consideration.

## **2. Literature review**

As the problem of illegal trafficking in goods is of worldwide nature, many foreign scholars dedicated their works to some particular aspects of this issue. For example, Gautam (2014) examines, which goods could be the subject of illegal circulation, the functions of the authorities empowered to counteract this problem, the main directions of co-operating between them and the major policies associated with illegal markets.

Misiunas and Rimkus (2007) investigated the preconditions and consequences of illegal goods traffic. They studied both theoretical and practical aspects of the problem, scale, structure and features of illegal goods traffic as well as the main schemes of illegal good's traffic and tax hiding.

Quentin Rossy and David Décary-Héту (2018) studied the use of Internet traces either on their own or in combination with physical traces to counteract online illicit markets, where offenders interact and leave traces. They classified online illicit markets and proposed the methods, with the help of which buyers can evaluate the trustworthiness of sellers. The scholars also identified internet traces to apprehend online illicit markets as well as the ways maximize the research potential of Internet traces.

Some aspects of the problem under consideration are also highlighted in the works of domestic scientists. For example, Lysenko and Kurilov

(2013,2015a,2015b) dedicated their researches to the number of issues: a comprehensive analysis of the content of typical methods of preparation, commission and concealment of crimes related to illegal trafficking in goods in Ukraine was conducted (Lysenko and Kurilov, 2013); the methods of counteracting illegal trafficking in goods in Ukraine were determined (Lysenko and Kurilov, 2015a); the analysis of the current situation in Ukraine with the spread of counterfeit was carried out, the conditions conducive to the spread of illegal trafficking in goods were identified as well as the methods of criminal activity were described (Lysenko and Kurilov, 2015b).

(Zahorodnii, and Belogubova (2019); provided an overview of some manifestations of transnational organized crime in Ukraine, and, in particular, focused on illicit trafficking in firearms and narcotic substances, as well as crimes committed in the sphere of traffic and operation of vehicles

### **3. Results and Discussion**

#### **3.1. The legal regulation of circulation of goods**

The work of the recent years with regard to the protection of the rights of consumers and control in the area of combating illegal trafficking in goods in Ukraine is worth noticing as well. Over the last few years, efforts have been focused on creating needed conditions for functioning in local governments the structural subdivisions in matters related to consumer protection. Series of law and other legal acts were enacted and adapted to the European Union's legislation requirements regarding consumer protection and ensuring of goods production security. Ukraine gradually meets the requirements of international legal documents that are implemented into the national legal system.

In this direction, the experience of EU countries has to be taken into consideration, because they created a system both out of and in court proceedings related to the examination of consumers' complaints on the level of regulatory and legal enforceability, technical regulation over the guarantee of production safety and service, and control over performance concerning production quality. Special attention was paid to providing actual consumer protection against dangerous, harmful goods, products, and low-quality service. Firstly, selling of such goods was provided by granting consumers sufficient and reliable information about these goods and their composition in accordance to which a consumer may make a meaningful and objective decision of his choice and further consumption.

At the same time, the analysis of the practice of supervisory and law enforcement authorities regarding law violations on the Ukrainian

consumer market indicates non-compliance with existing norms and standards while producing and selling goods in almost 90% of the total number of examined business. Statistics and practice show that the consumer market in Ukraine continues to be saturated with counterfeit, surrogates, poor-quality and dangerous goods; in most cases, this relates to food products and alcoholic beverages. The state does not ensure the proper implementation of consumer rights to obtain necessary, accessible, reliable and timely information about works and services, and goods (Lysenko and Kurilov, 2015b).

Unfortunately, there are some incidents of counterfeiting and falsification in the course of the circulation of goods in Ukraine. To a certain extent, in addition to the legal production of goods and products in Ukraine, as in other countries, there is a strong market for counterfeiting of goods and products. Significant increase in the volume of illegal trafficking in goods in Ukraine is due to the receipt of significant profits, the possibility of conducting business activities outside the existing accounting, the possibility of tax evasion, exemption from the need to comply with established requirements for production and storage technology, etc.

The growth of illegal goods trafficking is not inherent only in Ukraine. Falsification and counterfeiting of goods, particularly known brands, is a worldwide problem. Thus, according to experts of the International Chamber of Commerce, counterfeit products make up about 10% of the world's total trade volume. According to the Organization for Economic Cooperation and Development, the global counterfeits market is almost \$200 billion a year. At the same time, taking into account the volume of sales of counterfeit goods and products that are produced only for the domestic market and domestic consumption – we can say that the world volume of illegal circulation of goods is several hundred billion dollars more <sup>(OECD, 2007)</sup>. This situation is striking in size, moreover counterfeit goods are consumed by citizens and their consumption, in some cases, is extremely dangerous to the health of many people.

### **3.2. Current state of illegal trafficking in goods in Ukraine**

One of the prominent places in this “anti-rating” is for Ukraine, which has a large number of well-known producers, as well as many industrial and food products that are manufactured outside official production and accounting. Ukraine is one of the world leaders in the illicit production and distribution of computer software, intellectual property, etc. The practice of law enforcement agencies shows that large quantities of tobacco products of well-known brands are illegally exported to the EU countries from the territory of Ukraine (Lysenko and Kurilov, 2015a).

Until recently, the issue of counteracting counterfeiting of goods, in addition to detecting and investigating crimes related to the illegal trafficking in goods, was not a priority for authorities. The lack of State control over the quality of goods creates the conditions for counterfeiting of food products, medicines, petroleum products, and other goods.

The analysis of the activities of law enforcement and supervisory authorities in combating illegal trafficking in goods in Ukraine allows us to define the basic conditions that promote the spread of counterfeit and falsification:

1. the lack of appropriate regulatory and legal support for the activities of the supervisory and law enforcement authorities.
2. the lack of proper State control over the production, circulation, and sale of goods, providing the appropriate law enforcement function in counteracting illegal circulation of goods.
3. the absence of effective, regulated State standards on the procedures for the organization and implementation of production, circulation, and marketing of goods throughout the territory of Ukraine.
4. the lack of effective State control over the circulation of raw materials (e.g. alcohol, tobacco, etc.), special equipment, which creates conditions for spreading of illicit fabrication, forgery, and falsification of goods.
5. the lack of effective control over the production of original packaging and packaging materials, which makes it possible to use these items during counterfeiting and falsification of goods.
6. the absence of State control over the transportation of raw materials, semi-finished products or finished products from places of production of counterfeit goods to places of their storage or sale.
7. the absence of appropriate state control over the process of activity of trade organizations through which the sale of counterfeit goods is carried out.
8. the lack of proper training and staffing of the process of monitoring the detection of illicit trafficking in goods in Ukraine, detection, and investigation of such facts.
9. the high level of corruption of the supervisory and law enforcement authorities of Ukraine (customs, tax service, police, etc.), direct participation and assistance and backing for the illicit circulation of goods by the supervisory and law enforcement authorities.
10. the lack of proper technical support (appropriate technical equipment, laboratories, tests, etc.) for the detection of counterfeit, fraudulent goods.



11. the lack of a single information center (corresponding automated information retrieval systems) that would be used to accumulate information on established facts of counterfeiting across the territory of Ukraine. This information could be used in the course of further counteraction to illegal activities and made it possible to familiarize such information with citizens-consumers of goods and products.
12. the lack of proper interaction and exchange of information on the facts of a mass selling of counterfeit, established in certain territories, mass poisoning of people because of the use of counterfeit products.
13. the lack of clear regulatory requirements for producers of goods, regarding the need to ensure the protection of goods from forgery, the creation of original packaging, special packaging, etc., which would make it impossible to reuse packaging for counterfeiting.
14. the absence of a certain nationwide program of the national health, the provision of data through the mass media concerning the spread of the facts of falsification of goods and their indications.
15. the absence of an appropriate State program on automated control over the circulation of goods in Ukraine, the appropriate marking of products that would allow to establish the movement of the relevant products and to detect the facts of counterfeits and uncontrolled circulation of original products.
16. the lack of a special State program for controlling the production and circulation of goods in Ukraine, creating equal conditions for business entities in business.
17. the existence of certain national traditions regarding the sale of original products and goods in the trading networks.
18. the lack of appropriate liability (criminal, administrative, financial) for committing falsification of goods.
19. the lack of a legal procedure of a deprivation of the right to engage in economic activity in case of use of the possibilities of an officially registered economic entity for falsification of goods.
20. the presence of low-income groups of the population who consume low-grade types of products, goods.
21. the reluctance of real producers of goods and products to report the spread of counterfeit, since this may reduce the consumers' interest in such products because of fear of buying counterfeit products.
22. the low level of State protection of intellectual property rights and distribution of non-licensed software on the territory of Ukraine, unauthorized copies of musical and other products, etc.

23. the absence of generalized statistical data and relevant research in relation to causing harm to the public health of the illicit circulation of goods and the related pecuniary damage to public interests (non-payment of taxes, medical expenses, sick leave, etc.).
24. the lack of public condemnation and intolerance to persons involved in the manufacture and sale of counterfeit products.

### **3.3. Methods of countering illegal trafficking of goods in Ukraine**

Currently, countering illegal trafficking of counterfeit goods is an extremely topical issue. It requires an integrated approach and participation in this process not only of the state, its supervisory and law enforcement authorities, but also of non-governmental organizations, and the general population. It is worth noting that in Ukraine there is a certain practice of police authorities and tax police units in counteracting the illicit trafficking of goods since such units conduct operational searches to detect, document, and investigate illicit trafficking of goods. However, such units do not have any special laboratories in sufficient quantity, warehouses, or opportunities for the storage and processing of counterfeit products. It is imperative to adopt a special State program that would determine the procedure for law enforcement authorities to counteract the illicit trafficking of goods, their interaction with each other, and the relevant budget items for financing such activities (Lysenko and Kurilov, 2013).

In this direction, the activities of controlling and law enforcement bodies should be improved at the present stage in order to effectively identify the facts of illicit circulation of goods and counteract their spread. The State should realize that the problem of counteracting the illicit trafficking of goods is not only the loss of taxes to the state budget, but it is also the creation and provision of equal business conditions for all entities involved in this process, as well as the trust of business entities in the State policy in this area. But at the same time the most important thing in this direction is ensuring the safety of the Ukrainian population, ensuring the health of the nation, and securing them against harmful, dangerous products. At the same time, all measures of state bodies in this direction must be accompanied by appropriate regulatory and legal support, in addition to the development of special state programs.

A corresponding government program is to be developed and adopted on the peculiarities of State control over the quality of production and the sale of goods to consumers, countering counterfeiting and falsification of food products, medicine, petroleum products, intellectual property and

other goods, as well as series of measures of health support of the Ukrainian population. The above mentioned government program should include the definition of specific law enforcement and supervisory authorities, that are responsible for the organization of counteraction to an illicit trafficking of goods and a list of measures to organize effective counteraction. This program should be with no time limit and focused on the creation of global control over the activities of economic entities in respect to compliance with the requirements of the manufacturing of goods and products, minimizing counterfeiting of goods and their sale in trading networks.

On the basis of such government program, other programs should be developed, such as: programs for specific authorities (i.e. supervisory, law enforcement) on the organization of specific control, search operations and other special measures for the detection, documentation of illegal activities. Implementation of the program for counteracting illegal trafficking in goods and supporting the health of the nation should have appropriate state funding and should be specified in the state budget for each year by a separate line item. The funding of such activities should include measures for the appropriate technical equipment of supervisory and law enforcement authorities, as well as technical equipment for conducting expert studies in special laboratories for the study of the quality of goods and products received for sale, etc.

A sufficient number of appropriate State laboratories should be set up to monitor the quality of goods equipped with modern technical means that would allow to control the quality of products, to conduct an instant investigation of certain types of products, and to ensure the objectivity of the conducted research. The generalized information of these labs on product quality research is subject to generalization and with the help of a specially created automated information retrieval system should be used to counteract illegal circulation of goods on the basis of certain established indicators throughout the territory of Ukraine by appropriate laboratories, employees of supervisory and law enforcement authorities. The establishment of facts of the sale of low-quality products based on the results of expert investigations may be used in other regions of Ukraine for the possible formation of similar counterfeit products.

The State support and adequate State financing are required to be restored to carry out independent quality appraisals of goods sold within the territory of Ukraine, in order to establish the facts of the circulation of low-quality and dangerous products, that threaten the health of not only individual citizens, but also the nation as a whole. Involvement in the process of controlling the quality of products of non-governmental organizations and their personnel to conduct research on product quality will provide an alternative to State laboratories. Practice shows that consumer defense organizations are widespread in the territory of Ukraine and are constantly

taking measures to prevent the circulation of substandard products.

An important direction in improving the counteraction of trafficking of low-quality, counterfeit, and falsified products is the appropriate regulatory and legal support for the process of manufacturing goods and products in Ukraine. At the State level modern State standards should be developed and approved, which should be decisive in the process of manufacturing goods, products and which should minimize the facts of goods production only on the basis of the producers' technical specifications. This will allow to clearly identify individual indicators of the technological production process and minimizing the use of harmful to health components and raw materials during the production process. The presence of these State standards will allow controlling the production at the appropriate level and equally throughout the territory of Ukraine. The existence of unified State standards for manufacturing products will minimize the "amateur performance" of the manufacturers and will create conditions for increasing the quality of products.

The development of modern technologies requires the development of appropriate software to control marking and circulation of goods at the national level throughout Ukraine, which would allow to distinguish counterfeit products during the circulation of goods. The adoption of the appropriate national product labeling requires a series of measures and the provision of trade networks with the appropriate technical equipment, which would allow to identify the manufacturer with the help of special markings. Development of such product marking will allow to control the movement of goods at an appropriate level and automatically establish the facts of arrival of counterfeit products into the trading network. In this case the special labeling of products and goods that are most often falsified should be a top priority. This applies to food, drinking water, medicine, and perfumes. For example, special paints for marking fuel and lubricants can be used to distinguish one brand of petrol from another, using special tests to install non-certified impurities, petrol falsifications, etc.

The use of media opportunities (television, print media, Internet, etc.) to effectively counteract illegal trafficking in goods is important. It helps to bring to the consumers' attention data on established facts of counterfeiting of goods, information on preventing the use of such product that can cause damage to health. It is necessary to bring through the media information about the indicators of counterfeit products.

It should be noted that the counteraction to counterfeiting of goods must also involve official manufacturers of products. That is, the current legislation should impose obligations on such manufacturers on the mandatory adoption of measures on special marking or packaging that would further eliminate the facts of counterfeiting and the reuse of packaging. International practice knows cases of special labeling of goods

or the use of special equipment, which allows to distinguish the original product from counterfeit. The presence of special markings, for example, on certain types of vodka makes it possible to completely distinguish genuine products from counterfeits.

The implementation of the above-mentioned measures will, to a certain extent, allow to have an impact on such a powerful segment of the shadow economy as illegal trafficking in goods and gradually minimize its impact on the consumer goods market in Ukraine.

## **Conclusions**

Despite the measures that had been taken to counteract the illegal trafficking of goods in Ukraine, this direction remains extremely difficult. The cases of forgery and falsification of a certain group of goods (food, alcoholic beverages, fuel) are widespread. Obtaining uncontrolled profits and improper regulation of production of goods are the main reasons for the illicit trafficking of goods in Ukraine.

The practice of law enforcement agencies shows that large quantities of tobacco products of well-known brands are illegally exported to the EU countries from the territory of Ukraine. Among the reasons of illegal trafficking of goods are:

- the lack of appropriate regulatory and legal support for the activities of the supervisory and law enforcement authorities.
- the lack of proper state control over the production, circulation, and sale of goods; the absence of effective, regulated state standards on procedures for the organization and implementation of production, circulation and marketing of goods throughout the territory of Ukraine.
- the lack of proper technical support for the detection of counterfeit, fraudulent goods, etc.

In this regard, State bodies and local authorities should implement a set of measures to eliminate the factors that are contributing to the spread of counterfeiting, such as: increasing the level of responsibility of manufacturers that produce low-quality and counterfeit goods, as well as retail networks that sell such products.

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