

**ABPI RESPONSE TO  
THE PUBLIC CONSULTATION IN PREPARATION OF A LEGAL PROPOSAL TO  
COMBAT COUNTERFEIT MEDICINES FOR HUMAN USE  
KEY IDEAS FOR BETTER PROTECTION OF PATIENTS AGAINST THE RISK OF  
COUNTERFEIT MEDICINES**

*We have provided our proposed answers below, using the numbering in the Consultation.*

## **I. Introduction**

The Association of the British Pharmaceutical Industry (ABPI) is the trade association for more than 75 companies in the UK producing prescription medicines.

Its member companies research, develop, manufacture and supply more than 80 per cent of the medicines prescribed through the National Health Service (NHS).

The ABPI also represents companies engaged in the research and/or development of medicines for human use. In addition, its general affiliate membership is for all other organisations with an interest in the pharmaceutical industry.

The ABPI are please to contribute to the Public Consultation on the above topic.

## **II. General comments**

The ABPI supports the Commission's approach and the set of measures proposed to address the problems related to counterfeit medicines in Europe.

These proposed measures should be considered as package, the aim of which is to ensure that only the safest products reach the patient. To do this measure must be taken to strengthen the integrity of the supply chain and ensure as far as is possible that the supply chain is not used as a conduit for counterfeits.

### **1. Product and Patient Safety**

Technology alone cannot guarantee products are genuine at the point of dispensing. However a combination of technology and supply chain integrity can be a massive disincentive to counterfeiters.

The current legislation allows players in the supply chain to repackage medicines and this is an important element in allowing counterfeit medicines to evade detection. The ABPI recommends:

#### **§ Use of tamper-evident packaging on all products**

The ABPI advocates the proposed measure in section 4.1.3 requiring the use of tamper-evident packaging. This should be extended to all medicinal products.

## **Creating unique product identification at dispensed pack level**

This can be achieved by introducing a standard coding system throughout the EU as proposed in section 4.1.5. The coding system would allow verification at the point of dispensing as well as a track and trace capability thus extending the opportunity to improve patient safety.

The aim of legislative reform should be to ensure the integrity of original package throughout the entire supply chain.

## **2. Strengthening the integrity of the supply chain**

### **§ Ban on packaging as proposed by section 4.1.3**

Re-packaging of medicinal products encourages counterfeiters to abuse the supply chain in 2 ways. First by repackaging they can mask the identity of the product and insert fake product into the repackaged carton. Second the disposed of packaging becomes useful to the counterfeiters as it is original packaging and livery and can therefore be traded.

### **§ Reduce the number of actors in the supply chain**

The ABPI believes that there are far too many licences to trade in medicinal products and this number should be dramatically reduced. Licences should only be granted to bona fide traders such as wholesalers.

## **3. Complementary measures**

There is no specific crime of counterfeiting of medicines and prosecutions are aimed at actions under the Medicines Act (1968) within the UK or within copyright infringements. There are other Acts of Parliament that can be used and this includes:

- **Medicines Act (1968)**
- **Drug Traffickers Offences Act 1994**
  - Gives police the power to seize the assets and income of anyone who is found guilty of drugs trafficking, even if that income isn't related to the trafficking of drugs.
  - It also makes it illegal to manufacture or sell equipment for the preparation or use of controlled drugs.
- **Customs and Excise Management Act 1979**
  - In conjunction with the Misuse of Drugs Act:
    - Makes it illegal to import or export controlled drugs without authorisation.
    - A successful conviction leads to the same penalties as under the Misuse of Drugs Act, although the fines can be more substantial, based on the value of the drugs seized.

Actions under the Medicines Act (1968) attract a penalty with a maximum of 2 years and an unlimited fine. The penalties for infringing copyright are often much lower than other similar crimes and considerably lower than penalties for supplying class Narcotics. This

is one reason why criminals are attracted to counterfeiting because if they are caught, they are unlikely to receive such severe sentences.

#### § Criminal sanctions

The penalties for counterfeit drugs must exceed those for street drugs to provide a disincentive for the medicine traffickers to switch from cocaine to dealing counterfeit prescription drugs.

The ABPI urges progress be made with the proposed directive on criminal sanctions for the enforcement of IP rights (DG Justice Freedom and Security).

#### § The internet

Whilst sales of medicines over the internet are not always fake, there is good evidence that up to 50% of medicines supplied in this way are counterfeit and this poses a huge risk to patient safety. The ABPI proposes consideration of legislation to control internet pharmacies. This could be done through a system of licensing and validation.

### III. ABPI specific input to proposed key ideas by section

#### Section 4.1: Tightening requirements for manufacture, placing on the market of medicinal products and inspections

##### 4.1.1. *Subject all actors of the distribution chain to pharmaceutical legislation*

###### **Key ideas for changes to EC legislation submitted for public consultation**

- a) Clarify that the obligations for wholesalers apply to all parties in the distribution chain, except for those directly distributing or administering to the patient. Brokers, traders and agents would be considered as wholesalers, with the respective obligations stemming from the pharmaceutical legislation
- b) Make regular audits of GMP/GDP compliance mandatory by qualified auditors
  - of (contract) manufacturers by manufacturers;
  - between suppliers (wholesalers, manufacturers) at least in cases of suspicion of non-compliance with GMP and/or GDP.

The ABPI supports the proposed key ideas listed under section 4.1.1.

Originally the pharmaceutical supply chain was very simple and secure because product was shipped from manufacturer to wholesaler to dispenser and then to patient. This process was both simple and direct leaving no opportunity for counterfeits to enter the supply chain. This model is still considered to be the ideal.

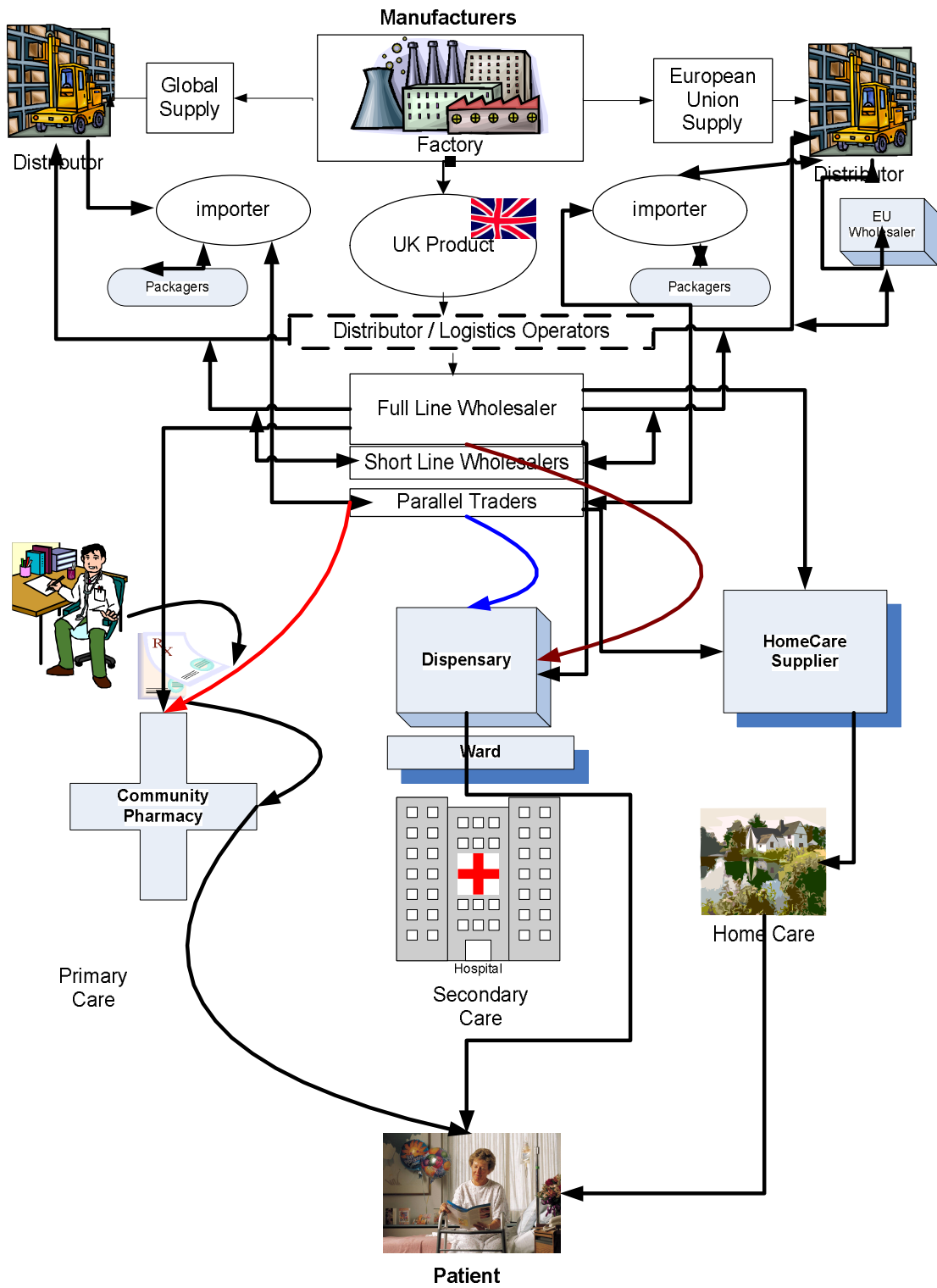
In today's complex environment distribution has become much more fragmented largely because EU law enshrines the free movement of goods across the borders of member states.

Increased pressures on profits and prices within the distribution system over the last decade has increased willingness for parties in the supply chain to make price its prime consideration and seek out the lowest deals. This has compromised the relationship between quality, safety and security of supply.

This situation has created the opportunity for new players to enter the market which has been created by their ability to gain wholesalers' dealers' licenses relatively easily. Inevitably the large number of applications and new license holder has placed significant burdens on the regulators.

The multitude of participants in the supply chain has increased the number of stages and points of access that a products moves through. This means that it is harder to control product movement or track product within the supply chain.

**See below:**



#### 4.1.2. Tightening rules on inspections

##### **Key ideas for changes to EC legislation submitted for public consultation**

- § Strengthen provisions on inspections and supervisions, in particular regarding inspections in third countries. For example, make application of the Community procedures on inspections and supervision (“Compilation of Community Procedures on Inspections and Exchange of Information”) mandatory.
- § Include specific harmonized provisions for inspections by competent authorities of parties in the distribution chain (e.g. wholesalers, brokers, traders, agents, business-to-business platforms).

The ABPI supports the proposed key ideas listed under section 4.1.2.

- § The supply chain control is only effective if the process is controlled supra-nationally, so an international focus is the most suitable mechanism.
- § Ensure wholesalers and downstream suppliers comply with the same regulations and obligations as manufacturers, The ABPI advocates the European Medicines Evaluation Agency (EMA) should take a coordinating and accountable lead in implementing such a mutually recognized system of inspection.
- § Advanced notice of inspections should not be announced because this enables the targets to “hide” any evidence of illegal activities.

*4.1.3. Improving product integrity through a unique seal from the manufacturer to the retailer or wholesaler, using a risk-based approach, supported by a ban on repackaging*

**Key ideas for changes to EC legislation submitted for public consultation**

Require the outer packaging of medicinal products to be sealed. This would reveal any subsequent opening of the packs.

Such a requirement could be applied to certain categories of products chosen on a risk-based approach, i.e. by taking into account the public health impact of the appearance of a counterfeit product and the profit strategies of counterfeiters.

The right to opening the outer packaging would be restricted to the market authorisation holder and end-user (hospital, health care professional, or patient).

The ABPI supports the proposed key ideas listed under section 4.1.3.

The industry currently uses a variety of methods to tackle counterfeit products. These include:

- Detection via inspection (and use of anti-counterfeiting technologies)
- Supply chain management
- Covert and visible forensic packaging technologies
- Tracking technologies
- Enforcement

Rationale:

Ethical manufacturers have made invested heavily in anti-counterfeiting technologies to enhance the security of their products and ensure that the highest quality products reach the patient.

An ounce of prevention is worth a ton of cure so the saying goes. The aim of all anti counterfeit measures is aimed at preventing counterfeits in the first place. Counterfeit medicines are produced in many countries with Russia, India and China being among the major suppliers. These counterfeits enter the supply chain by many and various routes.

The simplest method of protection is to identify these products at the borders. Customs and Excise have the powers to detain suspicious cargoes at the point of entry. However they are not experts in pharmaceutical packaging and they work with manufacturers to identify whether the medicine is genuine. Customs and excise run a registration scheme for intellectual property and many manufacturers have registered their products. This enables the Customs officers to carry out port side investigations into suspicious cargoes.

Some counterfeits will elude detection and not all counterfeits enter the UK from abroad. These products may well enter the supply chain and a few will reach the patient.

Industry provides bar coding on their packaging to help wholesalers and pharmacists identify product within their automated systems. However, industry has been looking to strengthen the coding to allow authentication at the points of dispensing. In addition they

are investigating the use of Radio Frequency Identification tags. These use radio signals to confirm the identity of the package.

New technology, Laser Surface Authentication <sup>TM</sup>, allows manufacturers to take a fingerprint of their package or blister strip and provide a unique identifier for every package they produce. This fingerprint could allow pharmacists to validate the pack as original at the point of dispensing to patients. As an added bonus the database can carry other critical data such as strength of tablet, batch number and expiry date enabling tracking of the product throughout the supply chain. This data will also help to reduce medication errors.

### **Other packaging technologies in use include**

- § Tamper evident security seals that self destruct and leave a visible trace when someone first opens the pack.
- § Packaging techniques with perforated flaps, which must be ripped in order to open the box. This allows the option to close up the box once it has already been opened while still making any initial tampering evident.
- § Special glue for the flaps, which must also be ripped open but which does not allow the box to be closed again.

ABPI are concerned that by accepting repackaging practices for pharmaceutical products, current legislation allows the original pack to be replaced with a new box which does not contain the original pack's anti-counterfeiting. This renders the investment in these features by the manufacturer useless. We would like to see the integrity of the packaging guaranteed to the point of consumption by the patient or by their agent, care person or qualified medical practitioner.

The ABPI do not support a risk based approach to this issue and that legislation should cover any medicinal product.



4.1.4. Centrally accessible record to facilitate traceability of batches throughout the distribution chain

**Key ideas for changes to EC legislation submitted for public consultation**

Require the possibility of tracing ownership and transactions of a specific batch. This should be achieved by making a specific record (pedigree) obligatory.

The record should be accessible by all actors in the distribution chain.

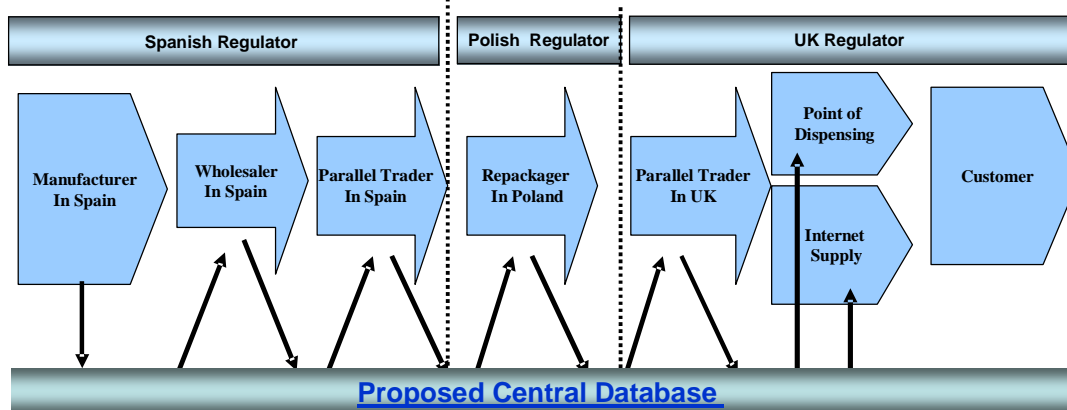
4.1.5. Mass serialization for pack tracing and authenticity checks on a case-by-case basis

**Key ideas for changes to EC legislation submitted for public consultation**

Require the possibility to trace each pack and perform authenticity checks. This could be attained by a mass serialisation feature on the outer packaging. Technical details would be further defined in implementing legislation and/or by standardisation organisations.

Create a pan-EU central record of batch numbers of product moved within the E U

This will ensure that product batches entering and leaving a country will be recorded with regulatory authorities thus enabling full track and trace, product recall, and supply chain security



Enables full visibility by the regulator of all batches of products within its jurisdiction. The database allows each participant within the supply chain to authenticate:

- a) the genuine source of medicines
- b) the proper licensing of the person it buys from and sells to and
- c) assists with track and traceability, product recall and supply chain security

Figure 1

**Figure 2 - Pharmaceutical Safety Chain**

The safety chain concept provides product in the supply chain with a pedigree in much the same way as was used in the food industry to prevent BSE passing into the food chain. Here the concept was credited with preventing and eradicating BSE.

Medicines often travel across international borders because of the location of manufacturing plants and parallel trading. Using unique identifiers products can be verified by all parties who touch the product against a database. In this way a products pedigree can be validated.

*4.1.6. Increasing transparency concerning authorised wholesalers through a Community database*

**Key ideas for changes to EC legislation submitted for public consultation**

- Require GDP certificates to be issued after each inspection of a wholesaler.
- Establish a Community database of wholesalers (including distributing manufacturers<sup>25</sup>) documenting GDP compliance. This could be achieved via extension of the EudraGMP database.

The ABPI agree that there should be a certification system established following the lines of ISO certification. Sufficient consideration should be given to managing Data Protection issues with the sharing of such records.

## Section 4.2. Tightening requirements for the import/export/transit (transshipment) of medicinal products

### Key ideas for changes to EC legislation submitted for public consultation

Directive 2001/83/EC would be clarified to the effect that imported medicinal products intended for export (i.e. not necessarily subject to marketing authorisation) are subject to the rules for imports of medicinal products. The following provisions would apply:

- § The obligatory importation authorisation under the conditions set out under Article 41 Directive 2001/83/EC, e.g. relating to premises and the qualified person;
- § the relevant obligations for the importation authorisation holders set out under Articles 46 and 48 Directive 2001/83/EC, e.g. relating to staff and access for inspection;
- § the obligations stemming from Article 51(1)(b) and (2) Directive 2001/83/EC, relating to qualitative and quantitative analysis of the imported medicinal product; and
- § the relevant obligations stemming from Directive 2003/94/EC on good manufacturing practice.

The corresponding rules on inspections would apply.

### ABPI Position:

The ABPI fully support that goods in transit and for export should be subject to the rules for imports of medical products.

ABPI is concerned about a further problem which is not properly addressed by the existing legislation.

This is the problem of transshipment of counterfeit goods which originate outside the European Union and which are destined for outside the European Union, but which pass through one of the major transport hubs located within the European Union.

In many cases the administrative and judicial processes within the European Union are better suited to detecting and prosecuting the counterfeit than those in either the country of origin or the country of destination.

ABPI urges the Commission to consider legislation (possibly an amendment to Council Regulation EC No. 1383/2003 (the Customs Regulation)) permitting the Customs authorities to detain counterfeit goods in transit from and to locations outside the EU, and permitting the relevant authorities to take action against them while avoiding the problem of extra-territorial enforcement of intellectual property rights exemplified by the decision of the European Court of Justice in *Class International BV v Colgate-Palmolive Company and Others*, Case C-405/03, 18 October 2005.

### 4.3. Tightening requirements for manufacture, placing on the market of active substances and inspections

#### 4.3.1. Requirement of a mandatory notification procedure for manufacturers/importers of active substances

##### **Key ideas for changes to EC legislation submitted for public consultation**

Submit the manufacturing/import of active ingredients to a mandatory notification procedure.

Render information on notified parties available in a Community database. This could be achieved via extension of the EudraGMP database.

##### ABPI Position

The key consideration is whether the API has been manufactured according to the registered manufacturing process with the registered impurity profile.

Accountabilities and roles and responsibilities for any API notification procedure need to be clearly defined for the different “actors” in the supply chain. Minimum qualifications and experience for “qualified auditors” for API should be specified.

In order to focus resources effectively, a risk-based approach is necessary and cooperation with and acceptance of inspection reports from other agencies should be sought to minimise duplication of existing regulatory requirements, which are already part of product authorisation submissions.

#### 4.3.2. Enhancing audit and enforceability of GMP

##### **Key ideas for changes to EC legislation submitted for public consultation**

- Make regular audits of active substance suppliers on GMP compliance by manufacturers and importers of medicinal products mandatory. Auditors should be sufficiently qualified.
- Require, where scientifically feasible, control of active substances via sufficiently discriminating analytical techniques, such as fingerprint technologies, Near Infrared Spectroscopy (NIR), as a mandatory method for identification by the manufacturer of the medicinal product. Such a testing is meant to identify deviations of the manufacturing process and manufacturing site for each batch.
- Turn principles of good manufacturing practice for active substances placed on the Community market into a legal act of Community law (e.g. a Commission Directive) in order to enhance enforceability.

##### ABPI Position:

- Will more GMP audits contribute to enhancing product safety?
- GMP standards already give pharmaceutical manufacturers the duty of ensuring the quality of supplies by establishing adequate supplier management and controls. The key question is whether the manufacturing process has followed the

registered manufacturing process – a question of regulatory compliance more than a GMP question.

- Minimum qualifications and experience for “qualified auditors” for API should be specified.
- Every delivery of an API should undergo a testing of unknown impurities using fingerprint technologies. However the cost implications of introducing Near Infrared Spectroscopy (NIR) tests for all APIs needs further review. It must be noted however that imposing this type of testing could risk promoting reliance on receipt testing which is no substitute for good supplier management based on a risk assessment, technical agreements, change control, knowledge of products, process performance, etc.
- There is variability as to which Member States do routine API inspections and those who don’t. Cooperation with and acceptance of inspection reports from other agencies should be sought to minimize duplication.

#### *4.3.3. Enhancing GMP inspections*

##### **Key ideas for changes to EC legislation submitted for public consultation**

The competent authority may carry out announced or unannounced inspections of active substance manufacturers in order to verify compliance with the principles of good manufacturing practice for active substances placed on the Community market.

The competent authority shall carry out these inspections if there is suspected non-compliance with GMP.

The competent authority shall carry out repeated inspections in the exporting country if the third country applies standards of good manufacturing practice not at least equivalent to those laid down by the Community or if mechanisms for supervision and inspections are not at least equivalent to those applied in the Community. To this end, a Member State, the Commission or the Agency shall require a manufacturer established in a third country to undergo an inspection.

#### ABPI Position:

ABPI supports the proposed key ideas listed under section 4.3.3