E A E P C

European Association of Euro-Pharmaceutical Companies

EAEPC RESPONSE TO DG ENTERPRISE CONSULTATION ON COUNTERFEITS

9 May 2008

The EAEPC welcomes the opportunity provided by DG Enterprise to contribute to the public consultation in preparation of a legal proposal to combat counterfeit medicines for human use. Our association has been consistently working with the Commission, the European Parliament, Member States, the Council of Europe and other stakeholders to ensure the safety of the supply chain in Europe and to constructively engage in relevant policy and regulatory debates.

We strongly support the Commission's efforts to closely analyse the issue of counterfeits in the context of this consultation. Counterfeits pose a serious threat to public health as well as to the success and reputation of the European pharmaceutical sector. A joint response to this threat by industry and regulators is key to keeping Europe's pharmaceutical supply chain safe and to ensure that patients can rely on safe medicines dispensed at the pharmacies.

Our contribution focuses on delivering relevant evidence and policy recommendations to contribute to the debate on safe medicines for Europe's patients.

We cannot support regulation which restricts the competition that parallel imports bring to patent protected medicines in Europe. Similarly, we cannot endorse solutions which misdirect the public's attention away from the real threat of illegal medicines from the internet and the illegitimate supply chain.

This submission also highlights the efforts undertaken by the parallel distribution industry to protect the supply chain from substandard or counterfeit products.

About the EAEPC

The European Association of Euro-Pharmaceutical Companies (EAEPC) was founded in 1998 as the professional and representative voice of pharmaceutical parallel distribution in Europe. Through national associations and individual company membership, it encompasses over 70 firms from 18 countries in the European Economic Area (EEA). Since 2007, Richard Freudenberg has been President of the EAEPC; he is also Secretary General of the BAEPD, the UK association of parallel distributors.

All products handled by EAEPC members have national or EU regulatory approval and are exclusively sourced from within the EEA area using authorised trade channels. These products are identical to those commercialised by the originator manufacturers, and are subject to the same rigorous safety standards.

The EAEPC's primary aims are:

- to safeguard the free movement of medicines, as laid down in the Treaty of Rome, and to counteract any attempts to restrict the freedom of choice for the consumer of medicinal products through trading patterns in breach of EU law
- to promote and co-operate in the development of parallel distribution as a means of providing innovative medicines to all Europeans at affordable prices
- to ensure that the social policies of the EU and its member states accept and actively benefit from professional and regulated parallel trade
- to ensure the continued safety and integrity of the pharmaceutical supply chain in the interest of patient safety

Parallel distribution has evolved considerably over the last 35 years, with operators (importers and exporters alike) working closely with regulatory authorities. The legal and regulatory environment for parallel distribution has solidified over this period, and is now clear, with obligations set through case law and regulatory practice, based on the relevant national and EU pharmaceutical legislation. EAEPC members are regulated either as licensed wholesalers (operating under GDP rules) or pharmaceutical manufacturers, or often both. Parallel importers who are also repackers are regulated as manufacturers and are subject to exactly the same legal and GMP standards as originator manufacturers. When moving products across the EU's internal borders, importers/distributors have mandatory information and notification obligations towards regulatory authorities as well as originator companies, hence providing transparency and traceability.

Role, place, economic stature of parallel distribution in Europe

The volume of parallel distribution of medicines in Europe has been stable at €3.5 bn (at manufacturers prices) for several years, although market dynamics between countries and trade flows are changing. In terms of PI market value, Germany in 2007 (with approx. €1.8 bn sales) overtook the UK, which had historically been the leading PI market (now at approx €1.3 bn). Significantly, the portfolio of medicines that importers stock is now much broader, with a range of between 100 and 1,500 licenses on average, depending on the size of the business and the maturity of the market. The costs for obtaining such licenses from regulatory authorities represent a significant investment.

The parallel distribution industry in Europe employs between 10-15,000 individuals, many of them highly skilled, in jobs directly and indirectly linked to the sector in Europe. Many of these jobs are located in geographically disfavoured regions. Some of the distributors are also biggest employers in their regions, such as in the Saarland. The jobs which the parallel distribution sector brings to Europe are jobs which cannot be relocated outside of Europe, whereas manufacturers are often outsourcing their jobs.

EAEPC members represent a significant component of the European supply chain. EAEPC members represent 99 % of the parallel distribution market in Germany and Scandinavia, 60 % of the business by value (and 85% of the number of repacked boxes) in the UK, and nearly 100 % of the Irish PI market. In Poland, a rapidly expanding PI market, all registered parallel distributors are members of the national association, and 70% of the market value are represented by members of the EAEPC.

Parallel distribution is also an economic necessity for many wholesalers who choose to make their product available for export. Due to the increasingly narrow distribution margins for wholesalers and pharmacies, exporting products through parallel distribution helps to make domestic wholesale distribution sustainable. The employment impact for exporting wholesalers is difficult to measure, as

many domestic jobs would be lost if exporting (i.e. intra EU trade) were no longer an option, while other wholesalers would likely have to close.

Parallel distribution is often not the only pharmaceutical activity carried out by EAEPC members. For example, Waymade is active in investing in smaller molecules that are divested by original manufacturers; this extra activity ensures that the molecules concerned remain accessible to patients. Kohlpharma has in its group several diversification projects: home care; patient-oriented blistering achieving improved compliance by elderly patients in the regular taking of medicines. Orifarm and Axicorp are examples of groups that are developing generics franchises, as are many other members. RES in Portugal has invested heavily in a national distribution project in Angola. Many wholesalers who started as pure parallel exporters have invested into fully fledged national distribution and provide modern services to local pharmacies and patients. EurimPharm has a full production capacity and creates Intrauterine devices (CE marked) for contraception, as well making as aspiration needles for invitro-fertilisation. All these medical devices are traded worldwide and recognised/supported by the WHO.

The counterfeit threat

As an integral part of the European pharmaceutical sector, the parallel distribution industry is highly concerned about the risk counterfeit medicines pose to public health.

The EAEPC welcomes the growing attention policy-makers are paying to this important issue. At the EU level, the present consultation undertaken by DG Enterprise constitutes a valuable initiative. While we welcome the unprecedented interest on the part of politicians and policy officials to tackle the issue of counterfeit medicines, the EAEPC advocates a rational and evidence-based approach in order to avoid unnecessarily confusing or indeed alarming the general public and inflicting unjustified reputational damage on manufacturers, distributors, pharmacies or other players in the pharmaceutical sector.

The fact is that the number of cases of counterfeit medicines in Europe remains very low. [1] While the risk of serious damage is worrying, it is important that we remind ourselves and indeed the public that the European pharmaceutical supply chain remains highly robust.

Counterfeit medicines are much more prevalent in other parts of the world. To the extent that Europe enjoys ever growing trade relations with more risk-prone countries - including with many booming markets such as Russia, India and China - its exposure to risk also increases. In addition, the production of APIs and finished pharmaceutical products takes place on an increasingly global scale, making it a greater challenge for manufacturers and regulators to ensure quality control. However, the European model of parallel trade does not permit importation of goods from these sources, and it would be inaccurate to suggest, as some do, that this potential threat affects parallel trade more acutely than any other sector.

In a recent study, the German Bundeskriminalamt (BKA) reported 36 counterfeit cases since 1996 had been detected in the pharmaceutical supply chain, none of them connected to parallel importation. Instead of dramatising the risk to the legal supply chain, which continues to be strengthened, the BKA attributes almost the whole risk of counterfeits to the internet.

[1] EU Medicines Enforcement Officers survey, presented by DG Enterprise on 29 November 2006. According to the survey, since 2005, 27 cases were detected in the EU legitimate supply chain, and some 170 in the illegitimate supply chain

In Poland, main pharmaceutical inspector Zofia Ulz, at a conference on "Medicines Tra ding Security" in Warsaw on 10 April, stated that "legitimate channels of drugs distribution in Poland, including parallel imports, are secure, and no cases of counterfeit drugs entering legitimate trading have been found. This success is the result of reg ulatory inspections, which the distributors are required to perform, as well as their obligation to employ qualified staff [...] Parallel imports are an activity regulated by law, legitimate and subject to full control."

As distributors of finished medicine s exclusively within the European Economic Area, EAEPC members are watching these developments with growing concern and look to regulators, customs authorities, as well as globally active manufacturers and distributors to ensure that medicines/APIs enterin g the EEA fulfill the necessary quality and safety requirements.

Within Europe, EAEPC members fully assume their responsibility as long -standing participants in the European pharmaceutical supply chain to:

- ensure reliable and safe sources of supply wit hin the EEA
- fully comply to all national and European regulatory and legal requirements
- take appropriate response measures upon detection/suspicion of counterfeit products
- actively engage in a continuous dialogue with stakeholders and regulators on how to make sure that the European supply chain remains safe.

The EAEPC is therefore submitting a consultation response to the various questions and points made by the Commission, using our expertise to provide analysis of several of the Commission's ideas, as w ell as to present the EAEPC recommendations.

The importance of an evidence based approach to legislation

In conducting this consultation, the EAEPC urges the Commission to focus its efforts on an evidence based approach to legislation.

The EAEPC fully supports the Commission in combating counterfeits, both in the legal supply chain and through work to halt illegal activities, such as many of the unlicensed internet pharmacies. EU citizens will benefit from legislation to help ensure that counterfeits do not reach patients, and we agree that the risk is increasing.

However, a risk analysis should make it clear that the real risk of counterfeits for Europe currently lies with the illegal supply chain, which is mainly attributable to unregulated interne t trade and illegal trade via niche markets, such as alleged herbal products or body builder outlets.

The legal supply chain is a clean and contained environment. The German BKA, the criminal investigation office, in a recent report on counterfeits says that the risk is less than 1% through the established pharmaceutical supply chain. [2]

Regrettably, the Commission's current approach only focuses on the already well -regulated legal supply chain. This attempt is neither evidence nor risk based, and ignores the larger threat to public health. The

[2] Deutsche Apotheker Zeitung, 1 May 2008

current approach also risks, intentionally or not, harming the free movement of medicines within Europe.

Therefore, any Commission suggestions in light of the current consultation should take note of the exemplary safety record of parallel distribution. Suggestions such as a general ban on repacking are not supported by an evidence based policy making approach, nor will they have any impact on patient safety.

Importance of the principle of proportionality in risk based policies

All members of the supply chain work to minimise risk and ensure outmost patient safety. Yet manufacturers issue a staggering number of recalls every year due to production defects.

According to industry sources, some 140 million packs of parallel distributed medicines are dispensed in Europe every year. To date, there has only ever been one isolated incident of a counterfeit product distributed to pharmacies linked to parallel distribution; this in more than 35 years of parallel distribution in the EU. In this UK incident, according to industry sources tasked with the recalls, an estimated 30 to 40 thousand packs reached patients. The parallel distributors worked with the MHRA to ensure a full recall. No official data has yet been released. Of course, even one pack is one too many, but this must also be seen in light of recalls by original manufacturers due to counterfeits. For example, in Germany over the last 10 years, there have been 36 recalls by manufacturers due to counterfeit infiltration. None of these were linked to parallel distribution.

Control and management of risks in the pharmaceutical sector, including distribution of medicines, is the most important task of manufacturers, distributors, regulators and all other stakeholders involved, and there are appropriate, risk-based tools available to take action in case of a spill-over. Recalls are the most frequent action in these situations. Yet when Vioxx was withdrawn from the worldwide market – the most drastic measure – no one suggested shutting down the manufacturer, despite significant public health risks and allegations against the manufacturer.

Another example of a serious safety issue concerns Seroxat, a GSK product where, according to regulators GSK had failed to inform them and the public of safety issues for under-18s taking this medicine. Clinical trial evidence showed that Seroxat caused suicidal tendencies in juveniles, but this was not disclosed to the regulator until 2003. GSK avoided prosecution for this failure only due to legal technicalities.

This submission will therefore apply these standards to the Commission's approach, making recommendations for improvements to the European supply chain.

"Parallel distribution is safe"

National regulators and Member State governments continue to support parallel distribution as a safe and vital component of their pharmaceutical supply chain. They acknowledge the benefits and competition offered by parallel distribution to run their health services, as well as providing savings to patients.

Parallel distribution safety record

There has never been evidence of systematic problems with parallel distribution. Numerous statements from regulators or Governments testify to this. References can be found in our previous submission to DG Enterprise on "safe medicines in parallel trade", March 2007 [3]. Furthermore, there has only ever been one case of counterfeits being found in the supply chain through parallel distribution. With an estimated 140 million packs a year, and a 35 year track record, this safety record is exemplary, and showcases the high safety standards employed by the parallel distribution sector. Empirical and anecdotal evidence shows that there is more risk from other parts of the European supply chain.

UK counterfeit case

The one and only case of a counterfeit product reaching pharmacies via parallel import in the last 35 years occurred in the UK in spring 2007. While there were formally 4 recalls of three different life saving products, experts close to the case have confirmed that the source of all 3 products was identical. The products had the same original materials, trade routes, and infiltration of the EU legal supply chain. They originated with the same counterfeiter, and can be taken as one incident. There were no other cases prior to the incident, nor have there been since, and learnings have been drawn.

False accusations by manufacturers

Pharmaceutical manufacturers have been attacking the parallel distribution industry for many years, essentially because the industry introduces competition in an otherwise insulated market. However, numerous independent studies have shown that parallel distribution does not harm pharmaceutical manufacturer competitiveness, nor does it harm funding for research and innovation. In fact, parallel distribution is often used by manufacturers to meet quotas, or to help them fill local supply shortages. However, on purely commercial grounds manufacturers continue to use unfounded accusations to attack parallel distribution. Indeed, some of their accusations have been close to libelous and blatantly false.

Accusations have ranged from claims, now disproved, that parallel distribution harms innovation, to claims that parallel trade is a conduit for counterfeiters and is therefore unsafe. These allegations are not based on fact, but based on attempts to undermine legitimate commercial competitors. The latest allegations now focus on repackaging as a source of concern. These accusations fit into the recent switch of tonality on the part of manufacturers who are – probably paying lip service to competition law – refraining from blatantly demanding a ban of parallel trade and instead are referring to more "technical" language with the request to ban repackaging. We will demonstrate later in this paper that repackaging

[3] For evidence, see Annex 3 of EAEPC submission (30 March 2007) to DG ENTR Consultation "Safe Medicines in Parallel Trade". See also Annex V of EAEPC submission (30 April 2007) to DG ENTR Consultation "Combating Counterfeit Medicines".

is an activity not limited to parallel distribution, and that manufacturers themselves rely on the practice of repackaging.

Most EAEPC members are aware that the regulatory authorities who supervise the medicines trade and distribution sector are understaffed. For example, the MHRA recently signalled that, due to its limited resources, it will switch to a more risk-based inspection mode. This may however lead to a situation where non-transparent suppliers can lie low for too long. The EAEPC therefore suggests increasing the hurdle for issuing and maintaining authorisations for wholesale dealer licences, including the fees for such authorisations. This would limit the number of non-transparent actors who could benefit from fewer inspections, and would place higher regulatory burdens on all wholesalers.

The *extra layer of safety PI adds to the supply chain*

EAEPC members continue to detect defective products, and remove them from the supply chain. References can be found in our previous submissions to the DG Enterprise project "safe medicines in parallel trade", April 2007. The process of repackaging offers a controlled, safe, industrial technique guided by SOPs for removing the medicine, inspecting it, and then repacking it into a box for local distribution. The process never harms the original product, but offers visual inspection and thereby adds this extra layer of safety to the supply chain.

Strict regulation

Parallel distribution involves the transfer of genuine, original, branded products, authorised in accordance with Community legislation, marketed in one member state of the EEA (source country) to another EEA member state (destination country) by "exporting" wholesalers and "importing" parallel distributors. The parallel distributed product is placed on the market in competition with a therapeutically identical product already marketed there at a higher price by or under licence from the owner of the brand's intellectual property (the directly-distributed product).

Such a transfer cannot take place without several specific authorisations and licences. Parallel trade is regulated at three levels:

- at the level of the exporting wholesaler (hereinafter the 'exporter') to be authorised to trade
- at the level of the parallel distributor (hereinafter the 'importer') with respect to two aspects:
    - § individual products (marketing authorisation/EMEA parallel distribution notice, see below)
    - § activities of repackaging and re-labelling

As an example, the MHRA guidance document for 2007 sets out strict regulation and requirements for parallel distributors, as well as on topics such as relabeling and repackaging, the integrity of the supply chain, continued supply, and inspections.

It is also worth noting that we welcome more comprehensive and tighter controls by authorities, as well as improvements in communication, both at national and pan-European levels. EU Member States currently decide on matters, such as recalls, individually, and the process is not harmonised; this can be illustrated by the recent Heparin case. Strengthening inspection capabilities would help regulatory agencies and detract counterfeiters from targeting the supply chain.

Batch traceability and recalls

In a majority member states, wholesalers under current rule s are only obliged to have batch records of incoming products.

In contrast, parallel distributors have mandatory batch track records, both incoming and outgoing. In the case of importers, these are separated by sourcing markets. The rules on recalls that apply to parallel distributors are the same as those apply to original manufacturers.

It is often forgotten that medicines may lead to adverse reactions and can be dangerous. Hence measures such as recalls to respond to such risks. Recalls are most often caused by problems directly from the original manufacturer. The number of recalls per country per annum is significant. Manufacturers can make manufacturing as well as packaging errors. As parallel importers cannot touch the actual product, only packaging errors could occur, although these are minimised by GMP.

The most common procedure to deal with manufacturing or packaging errors is the recall of the entire batches concerned: for example, there were 118 recalls in Poland in 2007. Only one of these invo lved a parallel distributed product, and in that case the recall decision was later cancelled by the authorities. The timetable of the process, showcasing the smooth function of the parallel distribution chain, is highlighted below.

Counterfeiters most often try to use existing batch numbers for any attempts to infiltrate the supply chain. Experience shows that original manufacturers will carry out recalls, even of counterfeit products, in cooperation with the authorities. Recalls follow standard procedu res.

Timetable of recall in Poland

The following actions are from the Polish market, highlighting how Delfarma, the parallel importer cooperated with the regulator in a recall.

December 4, 2007
Main pharmaceutical inspector (MPI) receives decision from Gedeon Richter Ltd. To withdraw two series of Postinor-Duo tablets due to inaccuracies found on printed material.

December 5, 2007
MPI issues a decision to withdraw the product from trading

December 6, 2007
Delfarma, a Polish EAEPC member and importer, notifies wholesale warehouses of the withdrawal of the medicinal product, and launching the withdrawal from sales order.
At the same time, Delfarma appealed the MPI's decision as the leaflets used were fully compliant, and recipients had undertaken safegua rding actions and sent reports to Delfarma

December 7, 2007
Delfarma prepares report on actions taken. Product moved from inventories to quarantine

January 24, 2008
MIP repealed its decision of a halt on trading for Postinor. Delfarma notifies recipients

Subject to regular inspections

Parallel distributors are committed to ensuring the highest quality supplies. Not only do ethics demand this, but their reputation in a highly competitive industry depends on it. To this purpose, the EAEPC released detailed and rigorous guidelines whose acceptance is a condition of membership for all parallel distributors affiliated to the EAEPC. The Good Parallel Distribution Guidelines (GPD Guidelines) [4] adopted by the EAEPC do not replace the detailed and multi-layered regulatory framework governing parallel distribution in Europe, i.e. European and national laws and regulations, as well as Standard Operating Procedures (SOP) of each company. Instead, the EAEPC Guidelines underpin its enforcement by emphasising the commitment by each EAEPC member to abide by the highest quality and safety standards. Compliance with the Guidelines is ensured on the basis of authorisations and inspection certificates by the national authorities; non-compliance would lead to expulsion from the association.

Previously, the EAEPC has suggested that all actors that "import" medicines from one Member State to another should be subject to the same stringent conditions as parallel importers, i.e. to possess a product related market authorisation and to have notified the trademark holder of the intention to import, thereby creating transparency of trade flows. This additional step raises the bar and creates a level playing field between those who move product across internal EU borders.

[4] See Annex

EAEPC actions

New EAEPC safety measures

The detection of counterfeit medicines that reached UK pharmacies via parallel distribution in May 2007 has been a turning point for our industry. Although the authorities meanwhile seem to have come to the preliminary conclusion that this series of cases constituted a deliberate and targeted attack at the system of parallel distribution, the incident leaves room for more preventative action on the part of EAEPC members. The General Assembly of members in December 2007 gave t he green light to set up an early warning platform, using the services of a neutral outside consultant to exchange information on potentially suspect products between EAEPC members. This consultant will exchange information, received in a confidential form from EAEPC members, with the regulatory authorities and will circulate any relevant information to EAEPC members. Each member firm has nominated a single contact point for this warning platform.

Members have also agreed to design a system of audits for t heir suppliers, based on commonly agreed, GMP proof standards, and taking existing benchmarks for auditing wholesalers as a point of departure. Work on this project is in progress with the aim of rolling out a working system in 2009.

EAEPC attempts to work with industry

Over the years, the EAEPC has repeatedly offered to work with industry on finding ways to improve the safety of the supply chain. These efforts at cooperation have repeatedly been rebuffed, and, in several cases, the EAEPC has been barred from working with other actors on cooperative safety initiatives because manufacturers have threatened to boycott the initiatives rather than working with parallel distributors. We believe that this is a short -sighted and disappointing approach, and one w hich harms public safety, as well as the credibility of manufacturers on safety issues. We should all have the same interest: ensuring the highest possible safety standards in the interests of all EU citizens.

Dialogue with regulators

The EAEPC takes the ongoing dialogue about the risk of counterfeit medicines very seriously and makes a point of covering as many opportunities as possible to exchange views with stakeholders as well as to discuss and educate about the contributions made by the parallel dist ribution industry to supply chain safety.

The EAEPC has been a regular and reliable partner of the European institutions for many years, liaising regularly with DG Enterprise, DG Health, DG Competition, DG Information Society, Commissioner's Cabinet's, as well as with Members of the European Parliament, national health regulators, national experts, and Member State governments.

The EAEPC has previously submitted numerous consultation responses to DG Enterprise, including on Safety in Parallel Trade, on C ounterfeiting, and on Combating Counterfeits. The EAEPC has also taken part – when it was invited to do so – in the Pharmaceutical Forum Pricing Working Group.

The EAEPC hopes to continue its close working relationship with the Commission, and in particu lar DG Enterprise, in helping regulators to improve supply chain safety across Europe.

EAEPC policy recommendations

Repackaging

A. Repackaging is a fundamental part of parallel trade/ free movement of goods

Re-packaging (or re-packing) refers to the physical changes to packaging and the patient information leaflet undertaken by licensed parallel importers of medicines so that products can be placed on the destination (import) market in compliance with all relevant European and/or national laws and regulations applying in that country.

The re-packing process includes one of the following two steps related to the outer packaging:

- Re-labeling involves modifying existing outer (secondary) packaging by applying stickers and/or printing additional information to meet the regulatory and legal requirements for labeling in the destination country. (Labels containing the minimum regulatory information will also need to be applied to the primary packaging, e.g. blister. [5])
- Re-boxing involves the discarding and controlled destruction of the original outer packaging and replacing it with new packaging from the parallel importer

B. Repackaging is not exclusive to parallel distribution

Repacking happens in a variety of circumstances in the pharmaceutical distribution. Most of these repacking operations are carried out under the responsibility of originator companies. Here are a number of typical examples:

- Originators increasingly use contract manufacturers who do repacking. This offers economy of scale in the manufacturing of products and disconnects manufacturing from the more cycling distribution on certain smaller markets.
- Medicines used in clinical trials must be repackaged separately. For this, innovative companies routinely turn to 3rd party repacking facilities, which are GMP proof.
- Repacking in hospitals/pharmacies to accommodate patient individual needs.
- Overstock situations on certain markets; manufacturers from time to time suffer over and under stock in different market and will use repacking – by 3rd party re-packagers – to equalise such imbalances. It should be noted that the relationship between manufacturer and the 3rd party "re-packer" including all the responsibilities resulting from GMP are as a routine settled in a so called technical agreement. Such a technical agreement also characterises the relationship of the parties if a parallel importer does not carry out repacking in his own plant and instead uses a GMP approved 3rd party facility.

C. Extra safety layer

In addition to re-labeling or re-boxing, re-packaging also requires other steps, such as performing visual inspection of the product, control and recording of batch numbers and exchanging (and/or adding information onto) the patient information leaflet (PIL). These procedures are supervised by an EU Qualified Person, who is responsible for final batch release.

[5] This requirement only applies in some countries (e.g. UK, Germany), while labeling primary packaging is not permitted in other countries (e.g. Poland).

Therefore, re-packaging – as stipulated by European and national regulations – requires the parallel importer to open the original box – i.e. the secondary packaging - irrespective of whether it involves re-labeling or re-boxing.

In terms of safety, re-packaging:

- Provides patients with the necessary information and instructions in their native language i.e. the language of the destination market
- Adds a layer of safety in the supply chain due to visual checks under GMP
- Minimises patient compliance problems by eliminating – whenever possible under legal and regulatory provisions – unnecessary packaging as well as confusing foreign-language packaging and patient information leaflets (a risk which would be real if "overboxing" were suggested).

D. Technical reality of PI repacking

Here is a summary of the various requirements necessitating re-packaging and the reasons behind them:

i. Good Manufacturing Practices (GMP) requires that parallel importers perform visual inspection to control the identity of the product (by opening outer packaging, but without opening primary packaging). As licensed manufacturers, parallel importers are fully qualified under their SOPs to remove the outer packaging and inspect the product.

The visual inspection is crucial for two reasons:

- Visual inspections allow parallel importers to check the product for which they assume responsibility and liability once they introduce it on the destination market. As the market authorisation holder for a given product, parallel importers have the right to inspect the product for which they are fully liable.
- Visual inspections allow parallel importers to detect defective products, remove them from the supply chain and thus prevent them from reaching the patient. The detection of defective products is not uncommon. [6] In all cases, such defects have been related to errors made by the manufacturer when producing or packaging [7] the original product.

Visual inspections can also facilitate the detection of counterfeit products. While the occurrence of counterfeit medicines in the legitimate supply chain in Europe remains extremely rare, parallel importers have a greater chance of detecting them than regular wholesalers, who operate under GDP and are thus not required to visually inspect the products they handle. As an example, in May 2007, the QP of one of the UK parallel importers concerned was instrumental in detecting counterfeit Zyprexa that had already entered the legitimate European pharmaceutical supply chain.

By detecting defective or – in extreme cases – counterfeit products during visual inspection, parallel importers add a layer of safety to the European medicine supply chain.

[6] For evidence, see Annex 3 of EAEPC submission (30 March 2007) to DG ENTR Consultation "Safe Medicines in Parallel Trade". See also Annex V of EAEPC submission (30 April 2007) to DG ENTR Consultation "Combating Counterfeit Medicines".

[7] Manufacturers often outsource packaging of medicines to authorised subcontractors. These operations are carried out under GMP, as in the case of re-packaging by parallel importers.

ii. National and European regulations require parallel importers to ensure that important information related to the product and its use is made available to patients in the language of the destination market. To fulfill this important requirement, parallel importers need to:

- Exchange the PIL inside the pack. In fact, PILs in the authorized version are legally a part of the finished medicine; as the instructions for identical medicines may differ between markets, a foreign language PIL will almost never be right, and situations where the PIL could remain unchanged for linguistic reasons are extremely rare.
- Apply stickers on the face of blisters that have information or instructions printed on them. (This requirement applies in a number member states, e.g. the UK, and Scandinavian countries. [8])
- Apply child safety features when required for the market of destination.

iii. For non-EMEA (nationally authorised) products, in some Member States parallel importers are required to change the PIL number or the date on the PIL. This requires parallel importers to re-package these products irrespective of whether or not re-packaging is necessary for language purposes (see point ii.).

iv. Parallel importers are required to print the name of the importer and/or the name of the re-packager onto the PIL. This requires parallel importers to re-package irrespective of whether or not re-packaging is necessary for language purposes (see ii.) and irrespective of whether products are authorised through EMEA or nationally. In fact, trademark law requires the name of the "re-packager" to be both on the outside of the pack and on the PIL.

v. In those specific cases where the product authorised for importation bears a different name from the equivalent product in the destination market, parallel importers are in addition to exchanging the PIL also required to change the name on the outer and the inner packaging (blister). This is necessary to ensure that product packaging and PIL are consistent with respect to the product name of the destination market.

vi. EMEA requires reboxing in case of necessary pack-size adaptation. A few Member States do not allow re-labeling but require re-boxing.[9] Regulatory authorities in these countries believe that re-boxing is superior to re-labeling when it comes to patient acceptance and compliance. The EAEPC shares this view.

vii. In some cases, parallel distributors have to re-box in order to get effective access to the market (see ECJ judgments, C-427/93, C-429/93 and C-426/93), in order to be able to offer the specific pack size authorised on the market of the destination country. With different pack sizes often acting as barriers to the free movement of medicines inside the EU, re-packaging becomes a necessity for gaining market access. In some cases, re-boxing is the only possibility to gain access the market (see Insuman judgment C-433-00, 2002, 11326 by the German EUGH Court).

E. Repackaging is not an entry point for counterfeit medicines

Repackaging restrictions will not impact counterfeiters. Counterfeit medicines usually enter the market as ready-made finished goods. This has been the case in the Lipitor cases of 2005 and 2006, where fake

[8] See footnote 1. Any sticker/foil applied to the face of the blister may not obstruct patients' access to the actual medicine (tablet).
[9] Poland, Finland.

copies of UK livery were used. Again, in 2007, the fake Zyprexa, Casodex and Plavix arrived in the EU supply chain in finished packaging, this time in French livery. Counterfeiters also f ake safety devices, such as holograms or seals, when such devices are fixed on the packs by the manufacturers. Experience shows that most of these safety devices are unfortunately not full proof against being counterfeited; in the best case, they merely ra ise the barrier against counterfeiting.

Finished medicines as a rule will have to enter the supply chain through an authorised wholesaler. The idea that counterfeit products would be offered to a repacker in the form of bulk ware, e.g. as single blisters, is unrealistic. On the commercial market bulk -ware is simply too cheap to be attractive to counterfeiters. Already for such economic reasons it is quite unlikely that a counterfeiter would target a repacker as an entry point for their dangerous goods. In the recent UK case of 2007, the fake goods were put in free circulation in the EU by criminals who were in possession of wholesale dealer licenses.

The points above show conclusively that a re -packaging ban will not affect counterfeiters, and can only ever be seen as a direct attack on parallel distribution. Furthermore, parallel distributors are subject to substantial legal obligations and standards as they hold marketing authorizations equal to those of originator manufacturers. These allow them to cond uct their business in a safe and transparent manner.

Counterfeiters have little economic motivation to enter their products into the supply chain through parallel distribution channels. Several factors contribute to this:

- The size of batches in parallel distribution are small, therefore a sudden increase in quantities would be seen as highly suspicious
- Products are sold at lower prices, even though the process of preparing them for sale is more costly
- Packages of imported products are more difficult to c ounterfeit.

F. The impact of a ban on repackaging on parallel trade

For parallel distribution across Europe, repackaging is indispensable. There is no parallel distributed medicine that is neither relabelled nor reboxed, i.e. repackaged. Thus, a ban on repa ckaging is in effect equivalent to the banning of parallel distribution and challenge to the principle of the free movement of goods, in this case medicines, across the EU. Such a ban could also impact manufacturers, who also repackage some of their medici nes, and could negatively affect smaller markets that are supplied via pre-wholesaling.

Parallel distributors carry out repacking because the authorities demand it. The product must be adapted to comply with the importing market conditions, in the intere st of patient safety (language, local names, Braille, trademark, etc.) and the (foreign language) PIL must be exchanged to comply with the one approved by the authority of the importing market for the same product. Repackaging is necessary to gain market a ccess for the product, and thus enables parallel trade to operate through the internal market. It is a measure which protects the rights of patients in all Member States.

Repacking is done under strict GMP rules, and the same principles, processes, SOPs, official site inspections, documentation and traceability of batches and controls apply to all repacking operations. Parallel distributors engaged in re -packaging operations are regulated with the above regulations in the same manner as original manufactur ers.

From a risk assessment point of view, it is difficult to see that the risks should vary according to who repackages for whom, and that risks should be higher at repacking sites for parallel distributors than at for other operator. There have never been instances, or even allegations, that repackaging has caused product damage.

The EAEPC would therefore hope that the Commission is extremely precise in assessing the risk and profile of all kinds of legitimate repackaging, and to collect evidence from all sources, paying special attention to not letting itself be swayed by material being offered, particularly by interested commercial competitors of parallel distributors.

Finally, it is worth noting that a ban on re-packaging would have absolutely no effect on counterfeiters, or the spread of counterfeit goods in Europe. Counterfeiters do not engage in repackaging. As far as we are aware they create their own original copies of packaging, without following any guidelines, but under the guise of fooling regulators, customs officials, wholesalers, pharmacists and patients. Any legislation banning repackaging would have absolutely no effect on their illegal operations, nor would it impact on their attempts to infiltrate the legitimate supply chain.

G. Switch to mandatory reboxing

The German government, in its 2006/7 report on pharmaceutical supply chain safety, included a proposal that parallel imported medicines should be generally re-boxed instead of re-labelled. Against the background of the discussion on enhanced patient safety, the German government says that switching to mandatory re-boxing and at the same time prohibiting re-labeling of original packages would in principle result in added safety of medicines. However, manufacturers oppose reboxing on trademark grounds. These aspects must be carefully weighed versus patient safety. A solution should be found at a European level, according to a German government .[10]

The EAEPC has argued for such a switch in its submission to DG Enterprise on "safe medicines in parallel trade", April 2007. As the German Government indicates, this is a matter to be taken up at the EU level, and the EAEPC was surprised that DG ENTR did no deal with this issue in the consultation paper.

Only mandatory reboxing enables PI to apply safety features (under GMP rules, and specific SOPs for this processing step); otherwise, under current trademark rules which govern this specific aspect rather than public health regulation, the original seal must be re-affixed.

Manufacturers of outer medicine packaging should be obliged to ensure that they supply only to authorised pharmaceutical manufacturers (in possession of a manufacturing authorisation). In addition, we would suggest that all manufacturers of medicines packaging become part of a secure and audited system of package material manufacturers and pharmaceutical manufacturers, including parallel distributors, and are subject to a fully documented trail of the flow of goods. This should include the controlled destruction of obsolete packaging materials. This practice has been in place for parallel importers under GMP for many years, and is firmly supported to ensure that counterfeiters do not gain access to original packaging.

Other alternatives to repackaging are in theory possible . The pros and cons of each option could be discussed under patient safety and practical logistics considerations. The bottom line, however, is that

[10] Bundesrat Drucksache 88/07, 1 February 2007, page 8.

such alternatives cannot be limited to parallel imported products alone. We are of the firm belief that the current repackaging rules, as designed by regulators, are capable to ensure patient safety. Any other options would be inferior.

Seals & Marketing Authorisations

The assumption that an obligatory product seal would make medicine packages safer against counterfeiters is unrealistic as also seals can be faked by counterfeiters, and are not a strong deterrent. They are not currently a requirement for manufacturers as their merit has yet to be proven. Any such requirement should be based on public health issues.

Further, to believe that the requirement of seals could be applied to certain "categories of products chose on risk-based approach" implies that the body who assesses the risk could practically forecast which categories of products might be more or less vulnerable to counterfeiting. This is unrealistic and naive. The best case is that regulators may establish "warning lists" based on past cases and early signals from a variety of sources – which implies that a solid cooperation and communication be established between all actors in the supply chain.

The Commission implies that the right to open the outer pack be limited to only marketing authorization holders. The EAEPC believes that its members are covered by this requirement as they are holders of marketing authorizations. These are direct derivations of the original marketing authorizations, and are complemented by authorizations to place the products on the market. [11]

For more details on the marketing authorisation we refer to the Annex.

The supply chain

"Traceability of batches throughout the distribution chain (pedigree)" and "mass-serialisation for pack tracking and authenticity checks" are two important elements of supply chain safety. In order to address the "fragmentation of information on batch tracking along the supply chain, a unique and centrally accessible record of past ownerships and transactions (pedigree) should be established. Such a record should be accessible by all actors in the distribution chain".

a) Mass serialisation

DG Enterprise alleges that licensed parallel importers, who are authorised as manufacturers and wholesalers alike, and who hold a marketing authorisation for each of the products they handle, are incapable of affixing identification signs on individual packs. The contrary is true: they are well able, and several EAEPC members do imprint their own barcode or even 2D barcode. The technical capability is there.

In their capacity as manufacturers, parallel importers, who also repackage, would well fit into the current EFPIA proposal for a mass serialisation of individual packs: they could produce a new barcode that includes their own manufacturer number plus a new individual pack number, while linking the

[11] See EU Directive 2001/83. Centrally authorised products are not differentiated from nationally approved products. An EMEA distribution notice is seen as a marketing authorization.

identity of the incoming pack with that of the outgoing pac k through their IT system, already in place for mandatory batch tracking records.

While we support such an authentication system in principle, we cannot assess the technical feasibility of a database of such huge dimensions. But we questions that legit imate data protection issues are adequately addressed in such a project, which for the time being has been driven by manufacturers. Further, we have not seen any information relating to the possible costs and financing of such a system, an issue shared by consumer groups. And we wish to warn the DG Enterprise that data from such a database could easily be misused for commercial purposes by manufacturers in attempts to control the downstream distribution chain – to the detriment of competition and consumer w elfare. This is a view which DG Information Society representatives told the EAEPC they share.

Each level of the supply chain should only be allowed access to its own data, not to those of its downstream partners.

Mass serialisation allows for the develo pment of comprehensive, real -time databases which contain information about the movements of each and every product throughout the supply chain. While this can be a benefit – e.g. in terms of supply chain logistics, recalls, etc. – regulators will have to ensure that individuals or organisations are not in a position to abuse this information for other purposes.

In Europe's pharmaceutical market, manufacturers' access to information about the movement of "their" products throughout the supply chain would provide a basis for discriminating between national and cross-border distribution, with a view to impeding parallel trade. Manufacturers could use this information to stop supplying wholesalers which export part of their products to other EU markets (where the manufacturer markets its product at a higher price than in the exporting market).

In order to safeguard competition and the free movement of goods in the Single Market, the EU therefore needs to regulate access to information for members of the suppl y chain. In the pharmaceutical area, in particular, authorities must ensure that supply chain safety arguments are not used as a pretext for engaging in discriminatory supply restrictions, dual pricing and other anticompetitive practices.

b) Know your suppli er

Under the free movement of goods provision and the drive to increase transparency within the distribution chain, it would be useful to establish a EU wide database of authorised wholesalers and authorised manufacturers. Such a database should not be pub licly available and must be password protected. Only legitimate supply chain partners (and maybe also pharmacies) would be able to access such a database.

Within the "Know-Your-Supplier" doctrine such a database would significantly improve compliance and reduce risk of trading with not authorized (fake) suppliers. In this way, the difficulty of validating a new supplier because of language problems and product differences should be overcome.

However, relying only on legitimately issued wholesaler licenses will not be sufficient; to establish a sound commercial relationship and before engaging in transactions, a proper due -diligence of a new supplier will be required.

Notwithstanding this, we would also suggest that national authorities apply more stringent criteria when issuing wholesaling licenses or that they apply a sort of due diligence check vis-à-vis persons/companies that apply for a pharmaceutical wholesaling license. From our discussion with national authorities, we believe there is room for exchanging best practices in this regard.

The EAEPC expresses support for two ideas presented by the DG Enterprise ideas paper. The concept of a GDP certificate to be given after each wholesaler inspection would improve sourcing safety. A central database of all certified wholesalers would also assist with these efforts, and both of these ideas are compatible with previous EAEPC recommendations for increasing supply chain safely, such as our idea of a central database.

The one concern that the EAEPC has with any track and trace system is that it is administered by an impartial body, as past industry initiatives at track and trace have often been used for anti-competitive and punitive behaviour towards wholesalers working with parallel distributors. A noble system aimed at improving patient safety should not be allowed to be mis-used for commercial gain. In this context data protection is especially important.

c) Full batch traceability throughout the distribution chain

As mentioned before, parallel distributors already maintain full batch traceability systems, supported by their IT systems. These traceability systems are linked to the volumes and data of each processing run.

In order to further reinforce the information flow between regulators and authorised supply chain participants, also across EU-internal borders, relevant information about recalls and drug incidents should be available through a central and searchable European database.

Parallel distributors of medicines in Europe welcome any technological innovation that can help improve supply chain safety and efficiency.

With regards to traceability in the distribution chain (pedigree), in the age of data protection, the Commission will need to consider clarifying issues such as ownership of this information, as well as who can access what type of information, and how. If these concerns are not addressed, a traceability system could easily be abused for commercial purposes, to control the supply chain in an anti-competitive fashion. The current investigation by DG Competition into the pharmaceutical sector may provide indications of past behaviour in this respect.

Member States such as Germany have also forbidden data supply by companies like IMS, which make prescribing doctors and dispensing pharmacies identifiable even within a defined region. Therefore, and in order to continually be able to monitor and control product, manufacturers want access to this data through tracking processes, which can be used for their own commercial benefit. This is the likely reason behind their support for a centralised register with broad access.

Furthermore, with a centrally accessible database of batch numbers, accessible by all partners along the supply chain, there is a risk that such information also becomes available to potential counterfeiters.

Such information should be kept under strict confidence solely by a regulatory authority. In addition, a system based on batch numbers would necessitate that batches created by manufacturers would be filed in this database in the first place, in particular as their size can vary significantly.

Several Member States have already established traceability systems, but these are not yet interconnected.

In Italy, a system of registration and transmission of information is i n place. The Italian Agency of Drugs maintains a central database. Supply chain partners must report product movements by indicating licence number, batch, quantity and customer/country of destination. This procedure ensures the traceability of each single pack supplied in Italy or in Europe.

In fact each pharmaceutical product in Italy has a specific progressive number of identification (see the picture below) in addition to the license number. This number is printed near to the peeling sticker and is supplied from the Italian Minister of Health directly to the manufacturer and guarantees the origin, the validity and the traceability of the product.

d) Wholesalers

The assumption of the Commission that wholesalers keep records of their transactions related to batches may not be comprehensive and up to date. The current obligations of wholesalers in a majority of Member States are limited only to keeping data on incoming products and batches. This creates a gap between the wholesaler and the dispensin g pharmacy. To close this gap, the EAEPC suggests that wholesalers be obliged to record batch numbers of outgoing products, per delivery and by pharmacy.

With this gap closed, traceability would be enhanced throughout the supply chain, from the manufacturer all the way to the dispensing pharmacy. Traceability currently exists from the wholesaler backwards, and to the parallel distributors/manufacturers, as both manufacturers and distributors keep batch files.

It would therefore appear largely unnecessary to establish a new unique and central database for the recording of all transactions, although the current one could be improved.

e) Transit and active substances

The EAEPC supports the Commission ideas suggested in the Transit section of the ideas paper, and has no comment on the active substances section, except to note that examples of contaminated active substances have in the recent past proved to be a greater threat to public health in Europe than counterfeits. The EAEPC believes that this is one are a where the Commission's limited resources should be targeted in order to deliver on the agenda of patient safety for EU citizens.

Real risks in the European supply chain

Other supply chain actors

The largest threats to public safety come not from parallel distribution, but from a range of other actors, both in the supply chain, and out of it. All sensible and independent commentators agree that the vast majority of counterfeit medicines find their way onto the market via internet sales, with studies placing the number of counterfeits sold online at up to 50% of total online medicine sales. This is a key area where we think the Commission's resources should be targeted. Action in this area could have a real impact on combating counterfeits.

The importance of internet pharmacies

Despite internet pharmacies and distributors identified as the largest sources of counterfeits reaching patients, it is worth noting that little legislative attention has been paid to them. Parts of the market are regulated, yet this remains an under-regulated area, and many consumers are either ill-informed, or not informed, as to the risks. The EAEPC would support legislation regulating this area, and creating large penalties for anyone abusing the system. The EAEPC is ready to work with the Commission on any action plan in this area.

Acknowledging that serious risks for public health may result from unregulated purchases abroad, one might look at suggesting a ban for individual purchasing from outside the EU. Purchasing of medicines that are not yet approved in the EU under the auspices of medical doctors, should of course be exempt from such a ban. Such purchases are generally guided by patient oriented clinical considerations and are normally approved by the regulatory authorities. All imports for individual patients for products without a national product license, must come through pharmacies and be documented there, including keeping a record of patient details.

Securing Europe's external borders

Parallel distribution should not be confused with medicines imported from outside of the EEA. This practice can be tainted by counterfeits, as products come in from other sources. Parallel distribution uses products exclusively bought inside one of the EU 27 Member states, directly from the manufacturers or authorised wholesalers.

The most important element for fighting counterfeits in the legitimate supply chain is raising the barriers to blocking the first entry point of counterfeit products into the legitimate supply chain in Europe.

In the case of Plavix in 2007, inspectors later said that significant amounts of fake Plavix had been seized in Hong Kong months before the product appeared in the EU supply chain. Had such information reached the legitimate wholesale business in good time, it could have acted as a strong warning signal to market participants and helped to raise the barrier.

Trade statistics may be relevant to demonstrate the increase in counterfeited material reaching the EU from the outside. However, as a guide to illuminate any perceived "danger" resulting from parallel distribution, trade statistics are irrelevant because parallel distribution is carried out exclusively within the EU.

Customs and border checks must therefore be strengthened to ensure that coun terfeits do not enter Europe in the first place. A majority of counterfeits would thus never reach European soil, and would therefore never have the possibility of entering the legitimate supply chain.

Conclusion

The EAEPC supports many aspects of the C ommission consultation paper, and stands firmly behind the principle of strengthening supply chain safety and protecting patients. Our concerns lie with measures that appear to target parallel distribution exclusively, while not having an impact on actual patient or supply chain safety in Europe. These measures are the cause of great concern to the EAEPC. Nothing presented thus far justifies radical reforms to the parallel distribution system, as implied by several of the Commission's possible legislative proposals.

Parallel distribution fits in to the 'safe and protected supply chain' that the Commission hopes to bolster, and contributes to maintaining the integrity of the original pack. EAEPC Good Distribution Practice Guidelines could be used as a model for Europe, as it incorporates additional responsibilities on supply chain partners and extra layers of safety.

The EAEPC recommendations for improving overall supply chain safety focus on the number and responsibilities of actors in the supply chain. We firmly believe that banning repackaging is not the solution to Europe's counterfeiting problem, and will not have a real impact on counterfeiters. It will however disrupt established distribution practices to the benefit and under the auspices of manufacturers. More particularly, it will end parallel distribution, terminating the only intra -brand price competition during patent life of medicines in Europe, and could directly conflict with DG Competition sector inquiry, as it would limit competition in the internal market.

The EAEPC is eager to continue working with the Commission to act decisively on the real counterfeit threats, and has also offered to work with original manufacturers, an offer thus far not responded to.

In conclusion, the EAEPC urges DG Enterprise to focus on the real counterfeit threat, and not on limiting parallel distribution in Europe. The examples and case studies provided showcase the positive impact of parallel distribution in Europe, as well as its robust 35 year safety record. W e have demonstrated the close regulatory cooperation that EAEPC members engage in, and have explained why a repackaging ban would not lead to a reduced counterfeit threat. Parallel distributors who repackage are regulated as manufacturers, and EAEPC member s have demonstrated compliance with the corresponding responsibilities. To ensure the ongoing safety of the supply chain, these requirements should be preserved.

Parallel distribution is not a safety threat for Europe. No concrete reliable evidence has ev er been presented to disprove this fact, and we urge the Commission to therefore legislate accordingly.
If the Commission had evidence that there were actors out there which do not comply with these regulations, then the Commission and the competent natio nal regulators should take decisive action against these individuals or firms. A universal ban on repackaging is not the appropriate answer.

The EAEPC has therefore put forward recommendations on repackaging, track & trace (funding of such a system remains an issue), GMP and GDP, transparency, marketing authorizations, recalls, the use of new safety technologies, and enforcement.

Dr. Heinz Kobelt

Secretary General EAEPC

ANNEX- Clarifying Definitions

In discussing parallel distribution and counterfei ting, several terms are often used or misused. Below are several of the most common.

1. Parallel distribution

a) Parallel distribution vs. imports from third countries

Parallel distribution is an exclusively intra -EU/EEA[12] practice, which consists of buying m edicine in one Member State and then transporting them, under controlled conditions, to another Member State. The medicines are then re -packaged according to local practice and legislation under supervision of an EU Qualified Person, and then resold to the local market, subject to regulatory approval, as well as to approval by the original intellectual property right owner of the repackaged box.

The practice of parallel distribution has nothing in common with the practices of importing medicines from third party non-EEA countries, which follow a different regulatory and safety path, and is by definition importing into Europe.

b) Parallel trade vs. parallel distribution

Parallel distribution is the result of commercial transactions undertaken by two types of operators: parallel importers or distributors and wholesalers.

Parallel importers or distributors distribute imported products after repackaging them according to the specifications required by the authorities of their destination market (or market of imp ortation). Repackaging requires the holding of a valid manufacturing authorisation from the national competent authorities. That means that a parallel importer is subject to the same regulation as a pharmaceutical manufacturer, namely GMP rules. In additio n, however, a parallel distributor also holds a wholesalers licence and thereby is subject to GDP rules.

The other market participants are wholesalers who make excess product available for “export” within the EEA area. These partners must be authorised w holesalers according to the national and EU law.

Within a single market it remains odd to speak about “import” and ”export”; the appropriate term should be “parallel distribution”

The terminological confusion is heightened by the fact that there are, un der regulatory considerations, roughly two types of medicines circulating in Europe: centrally approved ones by EMEA, and nationally approved ones. In the case of nationally approved medicines, regulators talk about “parallel imports”, while in the case of EMEA approved products, the term is “parallel distribution”, because the EMEA rightly holds the view that within a single market there can be no importation/exportation.

[12] The 27 EU Member States, plus Norway, Iceland, Lichtenstein and Iceland.

2. Counterfeits and counterfeiters

Counterfeits are illegal products placed, or attempted to be placed on the market, which claim to be a genuine product but are in fact either not the product, or contain incomplete active ingredients. Many of these products are made in developing nations, and attempts at infiltration are made by shipping these products surreptitiously into Europe. They are therefore by definition not the subject of legitimate parallel distribution.

The EU currently lacks a clear definition of "counterfeit medicine", and it is suggested to incorporate the respective WHO definition into the body of EU law.

3. Manufacturer status (need for GMP, QP, etc.)

Parallel import/distribution is regulated at two distinct levels, both as a manufacturing operation and at the individual product level.

Parallel importers who also repackage have the regulatory status of authorised manufacturers in order to perform the repackaging functions required by regulation and for patient safety.

In Germany, this is authorised by means of a Hersteller-Erlaubnis; in the UK, the relevant authority is the Manufacturer (assembly only) Licence. These licenses provide the necessary authorization for parallel distributors to repackage, and makes them equally responsible, qualified and authorised to perform re-packaging operations as large multinational companies such as Sanofi, Novartis and GSK. They are subject to identical national and European legal and regulatory requirements as the original manufacturers and are subject to the same controls and inspections. Parallel importers engaged in repacking must employ an EU Qualified Person (QP), who is responsible for Quality control and batch release. Parallel distributors are equally required to have effective batch recall procedures in place, and must deal with ADR reports.

The German "Arzneimittelgesetz" defines as a manufacturer "an entity which produces, prepares, formulates, treats or processes, fills as well as decants, packages, labels and releases medicinal products (definition 14 of Section 4).

From a legal and regulatory point of view – and therefore from a safety point of view – parallel importers are manufacturers.

4. Marketing Authorisations

Before placing a medicine on the market under his own name and product liability, the parallel distributor/importer must apply to the competent national authority for a marketing authorization, or to the EMEA for a distribution notice. In the UK, this authorisation is called "Product Licence for Parallel Import (PLPI), which is a "piggy-back" authorization granted by the MHRA, after extensive checks to ensure that the imported drug is therapeutically the same as the domestic version (see p. 362 of MHRA Rules and Guidance for Pharmaceutical Manufacturers and Distributors, 2007).
In Germany, the competent national regulator issues a marketing authorization to a PI company. In combination with the obligations imposed on PI companies under GMP, such as product liability, recalls, post marketing surveillance, ADRs – with the exception of PSURs – it is evident that the parallel

distributor has the same regulatory quality as any other pharmaceutical manufacturer and is also the holder of a product related marketing authorization.

The fact that this authorization has been obtained via an abbreviated procedure does not change the quality and legal character of the authorization to place the product on the market. The same applies to the EMEA distribution notice: there cannot be an additional marketing authorization for an EMEA approved product that can already, on the grounds of its first approval, be marketed anywhere in Europe – hence the term "distribution notice" to characterize the parallel distributors authorization to distribute.

5. Product integrity: Primary packaging is what matters

The primary packaging (i.e. the packaging which is in physical contact with the medicine, as opposed to the secondary packaging or outer carton) is the most important element in product safety, and is never breached by the activities associated with parallel distribution. Primary packaging is left intact, inspected for problems, in some Member States over-labelled, and then placed either in the original or a new box.

6. Repackaging (relabelling and/over-boxing)

Repackaging is term which includes relabeling and re-boxing, and is a compulsory element mandated by regulators. As a compulsory element for obtaining a marketing authorization, the parallel importer is required to submit to the regulator a sample of the PI packaging (in some countries in the form of a mock-up) and the patient information leaflet for approval. The original trademark holder also gets these samples for information and possible action under trademark law, before any product is placed on the market.

Repackaging is done in modern facilities, potentially the same facilities that manufacturers contract for their own original packaging. The process is heavily controlled and safe, with the original product integrity never threatened.

The process does however provide an additional safety layer, allowing for individual inspection of packs, by means of opening each pack, the contents of which are examined for such details as batch number and expiry date etc.

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