

The counterfeit clampdown

Proposals to ban the repackaging of drugs in Europe in order to fight counterfeiters could also put parallel traders out of business, reports Rob Skelding

Günter Verheugen, vice-president of the European Commission, made it quite clear to the European parliament in January that parallel trading and counterfeit medicines were linked - or at least that parallel trading created conditions in which counterfeiters could thrive.

Saying it posed "a considerable risk for the safety of patients," he warned of Europe's unnerving "complexity of distribution channels and supply" and indicated that more rigorous laws were urgently needed.

This represents a very real break with the past for European Union commissioners, who have almost always maintained that parallel trade in pharmaceuticals must be allowed because it embodies the 'free movement of goods' doctrine of the EU. But Verheugen launched a legislative initiative in late 2007, in response to fears that the safety risks posed by counterfeit drugs are growing.

The Commission published a comprehensive package of proposed measures to tackle counterfeit medicines in March this year. The measures would include anti-tampering seals on all medicines, electronic tracking of batches plus new controls on import/export and manufacturing facilities (see box below).

Perhaps most significantly, the proposals also include a ban on re-packaging. The Commission believes this will help stop counterfeiters, but it could also stop the legal practice of parallel trading, which must by law repackage drugs they export.

Verheugen's action plan has naturally enough drawn protests from parallel trading representatives. Independent pricing expert and former secretary general of Europe's parallel trade association (EAEPC) Don Macarthur, chairing SMI's second Annual Parallel Trade Conference held in London in February commented: "Commissioner Verheugen is from the Enterprise and Industry DG and, therefore, is supporting the R&D industry - that's their role. However, he's actually a little bit confused because he talks about parallel trade safety risks which are due to mislabelling, inappropriate labelling or a lack of labelling perhaps, but he then mixes this up with talk of counterfeits."

Macarthur makes the point that for the European pharma industry the debate on parallel trade (PT) elicits a certain show of 'emotion', which he says has 'jumbled up' the original issues with the allegation that PT and counterfeits are associated. "People in the pharmaceutical industry obviously get angry about parallel trade," he said, pointing out that Verheugen had originally commissioned two distinctly separate reports, one on counterfeit products, the other on the safety of parallel trade.

Links with forgeries

Despite distancing the legal practice of PT from the counterfeiters' illegal trade, the parallel trade representative body admit that counterfeit drugs have breached security in key European markets through parallel trade routes - albeit on just one occasion.

In the UK, fake batches of Lilly's Zyprexa (schizophrenia), Sanofi-Aventis and Bristol Myers-Squibb's Plavix (anti-platelet) and AstraZeneca's Casodex (cancer) have all found their way into the regulated supply chain. Some of these are proven to have entered directly via a parallel trader, yet the real 'everyday' concerns over PT are its tendency to tamper with manufacturer safety seals and exacerbate distribution complexity in Europe, which are both injurious to supply chain security.

Professor Meir Pugatch, director of research at the Stockholm Network, an alliance of market-orientated European think tanks, and author of several works on international pharmaceutical IP protection, says that of all the issues surrounding the 'rights and wrongs' of PT in Europe, safety and security have become the most fundamental. "Traditionally, there was a general notion that within the single European market, products based on PT would not have that much of an effect on counterfeiting. People have always acknowledged that counterfeiting exists, but in a way that said 'it will not happen to us'. Today, the threat of counterfeiting is so serious that PT, which essentially weakens the ability to track and monitor counterfeited medicines, may bring a significant health hazard to the European market."

The problem, he adds, is that there has been tremendous growth in counterfeit medicines and, while in many cases the source of origin is outside Europe, "the chain of counterfeiting eventually ends up being part of the PT process in developed European markets: herein lies a serious risk".

Could PT 'improve' safety?

Whether or not the modern-day practice of pharmaceutical PT in Europe routinely compromises supply chain security, and thereby runs the increasing risk of inextricable association with incursions by fake products, is hotly debated. The European authorities now argue openly, shoulder-to-shoulder with the innovative industry, that PT puts European patients lives at risk. However, parallel traders not only defend against this accusation as fervently as someone who feels as if they've been framed (at least in part) for a crime they didn't commit, but contend additionally that PT can even enhance the safekeeping of supply.

Next to a tall projection screen bearing the words 'Parallel distribution of medicines is safe' in bold type, Heinz Kobelt proffered to delegates at SMI's recent PT conference the contemplation that by fishing out defective products from the market (including those due to original 'manufacturer errors' as well as counterfeits), PT can actually serve to bolster, rather than fracture, the security wall.

His defence comprised clarification over several 'traditional points of criticism' levelled at PT, such as the translation of patient information leaflets between languages - which, he said was a false accusation, as only copies of approved original material for each market are used - and the process of breaking original manufacturer safety seals in the de-boxing process. He also cited cases where 'faulty' manufacturer products had been identified and eliminated from distribution by parallel traders, reminding the audience that it had been none other than a parallel trader which discovered counterfeit Zyprexa in the UK in 2007 in the first place.

This point, argues Professor Pugatch, is disingenuous given that it was only through PT that the fake products violated UK security in the first instance. "If the initial parallel trader had not allowed the counterfeit product to enter the market in the first place, then the problem would not have occurred, so it doesn't sound like the most logical argument to me."

As for the de-boxing process, while it is governed by stringent European regulations and naturally requires removing or breaking an original safety seal, the EAEPCC complained their members remain prohibited from replacing these with fresh safety seals before reselling the product. That parallel traders should be allowed to make the box as 'safe' as it was before they opened it was recognised by non-PT parties at the conference as a fair and reasonable stipulation, their preference for no interference at all by parallel traders notwithstanding.

The Harper report

Notably empathetic was Jim Thomson, Chair of the European Alliance for Access to Safe Medicines (EAASM), the organisation which published and submitted to European Parliament late in 2007 what could be described as a damning and comprehensive indictment of PT. It was shortly after authorities received this report, written by independent academic Dr Jonathan Harper (commissioned by the EAASM - though not primarily to attack PT), that EC Vice President Günter Verheugen made known his intentions to devise political and legal solutions that would mitigate the "considerable risk" of PT.

The subsequent reaction by the EAEPCC to the Harper document reportedly included a threat of legal action against the EAASM and some strongly worded releases to the press, citing the contents as "black propaganda", all of which escalated into a zealous exchange of opinion between EAEPCC president Richard Freudenberg and the EAASM's Thomson at the SMI conference.

Keen to set the record straight, and vexed by suggestions that the EAASM was 'in the pocket of pharma' (pharma does provide funding for the organisation, but its involvement is as a small compared to patient organisations and other such bodies), Thomson delivered a presentation entitled, 'European patient safety and parallel pharmaceutical trade - a potential public health disaster?'

The Harper report describes the present state of Europe's supply and distribution system as heinously complex and insecure, and says patient safety is being threatened by parallel trade in a number of ways. The report provides 20 recommendations linking PT and supply chain security, and Thomson says suggestions it could improve patient safety are a 'high-risk bluff' and denounced the EAEPCC's objectives as little more than commercial.

Parallel traders also claim they provide significant cost-savings for healthcare systems, but this is claim is also highly contentious, with no definitive evidence published to substantiate it.

"First of all, let us establish one indisputable economic fact," states Professor Pugatch of the Stockholm Network, and also a senior lecturer at the School of Policy, University of Haifa, Israel. "Parallel trade, first and foremost, serves the parallel traders. They are the ones, by definition, which make a profit from the practice. How much PT reduces the cost to the consumer is highly debatable, and I am not aware of any convincing study that supports this notion."

Getting to the source

Janice Haigh, director of European price & trade at Astellas Pharma Europe, raises the issue that while PT is not always without risk to patients, the practice is not necessarily at the very coalface of the counterfeit problem.

Although no parallel trader is permitted to source medicines from outside the European Economic Area (EEA) for ultimate sale/resale within the region, they are frequently made answerable for permitting - albeit inadvertently - (and/or increasing the risk for) counterfeits to poison Europe's supply of medicines. Yet, if they obtain their products directly from licensed dealers (European wholesalers, manufacturers and pharmacists), surely they cannot be held wholly responsible for fake drugs breaking into the EAA, perhaps from China or India, in the first instance; only where products have breached regulated European pharmaceutical supply chains - from within Europe and through PT routes - may they be held, for their part, accountable.

On this point, the EAEPC's Kobelt admitted that where PT members had, for example, distributed fake medicines in the UK in 2007, they were probably "not careful enough" when choosing a source and double-checking the products' authenticity.

Parallel traders might act unintentionally to distribute fake products in any market where the original is licensed. However, identifying a counterfeit package is now extremely difficult owing to the high quality of reproductions, even including holographic and other security elements. Consequently, is there not also a fundamental question over the security of the European dealer network, which it seems could inadvertently sell a counterfeit product to a European parallel trader for (what would otherwise be legal) resale within the EAA?

"In order for a counterfeit product to enter what should be a closed loop, a licensed dealer must purchase from a party without a licence," Haigh told Pharmafocus Europe.

"The regulatory environment must be tightened so it's very clear who may buy and sell from whom under the conditions of their licence. Buying from, or selling to any non-specified parties (which could then be considered as non-licensed parties) would be a breach of the licence conditions," she added.

Potential resolutions

Until Europe introduces new legislation to change the system for the better - perhaps simply modifying its processes, or the European courts produce decisive rulings in favour of one side or another, the practice will remain and the debate will continue.

Ultimately, it boils down to a fundamental question as yet unsatisfactorily answered by the authorities: should the trade of pharmaceuticals fall within the concept of a common European market? It seems that 'yes' is the likely answer, though with the EC moving to minimise the risk to patients of counterfeit products and protect industry from the commercial erosion of PT, the answer may become 'yes, but please read the following long list of caveats'.

"One should also bear in mind that PT is part of a larger trend in the EU, which lately seems to have adopted a more proactive approach towards competition rules at the expense of IP protection," says Professor Pugatch. "If every business practice that attempts to protect IPRs in pharmaceuticals is considered as 'violating' the principle of market competition, then in my view it's a problem."

He adds, however: "If our focus is on maintaining the principle of the single market - ie, the free movement of goods, services and people - then there is the need to secure greater liberalisation of companies' abilities to price their medicines. You cannot, on the one hand, say that you want the free movement of medicines because it is parallel trade, and, on the other hand, say to companies 'we will tell you what price to sell at in which countries'. If the market was more free in terms of companies being able to set their own prices, then at least one could cushion the negative effects of PT on the originator."

Consultation

Stakeholders have now responded to the Commission's consultation, and have made their positions clear.

The EAEPC has responded: "A ban on repackaging is in effect equivalent to the banning of parallel distribution." and adds that this is a challenge to the EU's principle of free movement of goods.

EFPIA are fully in support of the measures, and if anything fear they may not go far enough, advocating a 'zero tolerance' approach to counterfeit medicines.

Box Text: The European Commission's proposals

An unbroken seal - and a ban on repackaging

The key proposal is to ensure products cannot be tampered with by using a unique seal which is unbroken all the

way from manufacturer to retailer or wholesaler. The EC wants to apply this rule only to the most at-risk products. Crucially, it suggests this rule can be guaranteed by banning repackaging of medicines. It is this suggestion which is opposed by parallel traders, since EU law currently obliges them to repackage medicines which are being exported from one country to another.

Tracing batches

The Commission also proposes setting up a system to trace batches through the entire distribution chain. This would require a central tracking system be set up, with mass serialisation of packs. Authenticity checks would also be made on a case-by-case basis.

Other proposals include:

- * Increase transparency of authorised wholesalers through a EU database/register
- * Tightening up imports and exports
- * Tighten requirements for the import/export/transit (transshipment) of medicinal products
- * Tighten requirements for manufacture, placing on the market of active substances and inspections. A mandatory notification procedure for manufacturers/importers of active substances
- * Enhancing audit and enforceability of GMP
- * Enhance GMP inspections

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