11. Aligning Internal Regulation

11.1 Price Controls

Almost every country in the world controls or regulates pharmaceutical prices either directly or indirectly. While some countries negotiate the drug prices listed in the reimbursement schedules, a few other countries control through insurance mechanisms/formulary listing mechanisms, etc. Varieties of such techniques are used to control prices. For example, recently Germany has put a ceiling on expenditure that can be incurred on marketing and trade by pharmaceutical manufacturers effectively curbing excessive expenditures in drug promotion and excessive incentives to trade.

Due to the consolidation of distribution or due to increased collective bargaining of retailers & wholesalers, controlling margins passed on to the trade this is becoming essential to ensure that investments in R&D and quality by manufacturer take place and benefits are passed on to the consumers. Similarly, controlling marketing expenditures in generics should also be pursued to achieve the same objectives. Controlling based on cost incurred for production has become an obsolete method. The marked up prices may have no relation to wages paid in marketing/distribution/R&D and various costs incurred in sales, distribution, etc. Some of the countries of late are also insisting on reduction of sale price to consumers if the margins to marketing intermediaries are raised.

Allowing for Price Rises to Plough Back Investments into Quality

There is a case to look at the possibility of allowing companies to charge additional prices to fund their quality investments and research for DPCO products while fixing the overall marketing expenditure and trade discounts as percentage of sales for all existing products. In the absence of such mechanism, India may also end up in intense consolidation of drug trade which will cripple the manufacturers and finally end up with out investments in most essential activities required for future. The government can consider a policy of equating investments in quality assurance equipment and related personnel with R&D for the purpose of tax benefits. Such a mechanism will help avoidance of low investments in quality and help industry to reach global standards.

11.2 Quality and GMP Regulation

As of now, one of the major issues facing the Indian Pharmaceutical sector is that, it is considered to be one of the largest producers of spurious and counterfeit drugs in the world. The FDA has voiced its concern regarding the same as has the EMEA.[20] Though this is not likely to affect the large

[20] Sean Eric Smith, *Opening up to the World: India's Pharmaceutical Companies Prepare For 2005*, Working Paper, Asia/Pacific Research Centre, Institute For Int'l Studies (May 2000).

pharmaceutical companies by virtue of the FDA certifications these organizations obtain for their facilities as also due to their reputation, medium and small scale companies are likely to be hard hit by the same.

Indian prices for essential drugs are already amongst the lowest in the world. The unrealistically low domestic market prices may not be conducive to investments in quality and R&D. Quality and GMP come at a cost. Economies of scale minimises the cost escalation while pursuing quality policies.

Drug safety and drug quality can be assured in today's environment only at a significant cost. However, economies of scale can make the drugs affordable. For example, based on manufacturers from countries like India, Wal-Mart is able to give monthly supply of select drugs for just US$ 4 per month. This clearly dispels the fear of cost escalation while pursuing quality.

By raising standards on drug approvals by insisting on in-depth in-vitro studies and in-vivo bioequivalent studies, we can assure right medicines for the population. Further, such regulation will curtail the current practice of production of scores of products in a single unit with small volume sizes that does not permit economies of scale or adherence to high quality standards. Indirectly such a move will make manufacturers to choose products and go for large volumes of production. For example, one thousand manufacturing units producing 100 products each with a batch of 1 lack is far inferior to 1,000 units producing 10 products each with a batch of 10 lacs. Continuous process will avoid wastages in manufacturing, reduce changeover times and make the country cost competitive. Hence, the regulations should be constantly strengthened to promote continuous productions and economy of scales to make industry competitive and also afford stringent quality standards of today's pharmaceutical world.

Currently, under schedule M each unit should have certain manufacturing and quality equipment requirements. Often, the investments for quality will constitute a significant proportion as compared to investment on manufacturing. In order to successfully implement schedule M government has to consider feasibility of a legislation to have central quality labs which can support multiple manufacturing units located at various places. In addition such legislation can encourage consolidation of small-scale units as they become competitive and can focus on economies of scale.

If bioequivalence is made mandatory over a period for key drugs produced by any manufacturer whether approved by state FDA or central FDA, the investments to obtain or renew a license will increase. In natural selection process, different companies will focus on different drugs based on their strengths. For example, instead of 2,000 companies manufacturing 200 drugs and each having comparative disadvantage, each company will focus on a few drugs and endeavour for economies of scale. Economies of scale permit for genuine measurement of quality.

Ensuring Reliable Product Quality

Bioequivalence and demanding relevant data to prove bioequivalence for any changes in process or change of machineries or change of production sites can guarantee the drug quality. These two measures in addition to strict cGMP inspections will assure the drug quality and safety and are expected to dissuade producers with low commitment to quality.

This will go a long way in avoiding substandard products and guarding the image of the country. India has a convention of setting up minimum norms in the areas of banking, insurance, etc., as a safe guard measure to public. Even drug production is an important subject and certain minimum investments will go a long way in assuring drug safety and quality to public and avoiding production of spurious drugs.

Redefining Minimum Investments for Reliable Quality

Prescribing certain minimum investments in quality and manufacturing keeping in mind the current global regulatory standards will ensure that only quality players would be encouraged. Over a period of time, for certain prescribed products, bioequivalence should be made mandatory whether a product is approved by state or central authorities.

Over a period of time change controls should be rigorously prescribed like SUPAC guidelines of USA which will assure drug quality and safety and avoid unexpected production of spurious drugs.

Campaigning Against Spurious Drugs

States should constitute legal-cum-intelligence cells for carrying on campaign against spurious drugs. There should be separate legal Departments with State Licensing Authorities (SLAs) as well as Central Licensing Authorities to take care of the issue of spurious drugs. There is a requirement for regular inspections so that quality is maintained. However, as there is a lack of infrastructure states should be funded to take care of this aspect of creation of infrastructure by way of recruiting qualified inspectors and also to set up quality testing laboratories with advanced equipment. There is also a need to train staff i.e., regulatory personnel with advanced techniques both at Center and the state level.

11.3 Foreign Site Inspections

India imports several APIs, formulations from foreign sites. Foreign site inspection assures quality and will reduce the risk of poor quality drugs for general population. Most countries depend on rigorous inspections and rigorous data screening and evaluation to assure quality. Further, foreign inspections will create awareness and improve perception in addition to intense knowledge capture. Knowledge enhancement in public organisations flows to industry and the standards of country will enhance. Most

governments charge for all costs incurred in site inspections and India may also follow suit in charging such fees for foreign products.

Foreign Site Inspections & Stringent GMP Audits to Ensure Quality Imports

Foreign inspections to approve every site/unit/block that exports to India like any international regulatory agency should be made mandatory. In addition regular audits to ensure genuineness of compliance should take place. Also parity in fees charged for drug approvals in India for foreign drugs in with fees charged for approval of Indian drugs in those countries should be brought.

11.4 Orientation & Training of Personnel involved in Drug Regulation and control

As the drug regulations involved in research, manufacturing, storage etc are constantly evolving procedures are constantly evolving and being very complex, the officers involved in inspection of drug regulatory matters should be trained, rotated in foreign inspections and should have mandatory re accreditation of qualifications to assure continuous success of industry.

Continuous Training and Up gradation of Officers

A procedure for training and 'accreditation' on continuous basis should be evolved for officers involved in drug regulatory matters and such officers lacking accreditation may be moved to non regulatory matters.

11.5 Amendments to procedures

1. The procedures and inter departmental approvals for commercial imports, exports, test license materials, development quantity imports, etc., have to be reviewed and simplified while maintaining control.

2. In the context of economies of scale, producing a generic with several variations in processes or colours or shapes or brand names as per the formula or requirements of importers across several countries is, mandatory. Drugs & Cosmetics act could not conceive such issues of today and in general one license for one product in one brand name is given. Provisions in this regard in Drugs & Cosmetics Act need revision along with permissions to give consequent free sales certificates, Certificate of Pharmaceutical Products (CPP), etc.

Expeditious Process by ADC at Customs & Ports

The approvals given by state DCIs and central DCGI should be made online for quick verifications by ADCs at customs & ports. In the context of aggressive sourcing of business from global markets, India will have to undertake production of several products and combinations for export

purpose which has to be approved by central DCGI and some times by state DCIs as the law requires. Online availability of all approvals of state and central drug controllers should be enabled at customs or ports to enhance efficiencies at customs/ports.

3. At present many export procedures such as preparation of free sales certificate, certificate of origin, GSP certificates, NOC certificates, etc., are done manually requiring cost & time. These documents could also be made online or department attaché may be given to significant exporters to issue these documents.

Electronic Submissions & Approvals

Online submissions, approvals, clearances should be permitted at least for status holder export organizations with time bound mechanisms to create a very business friendly climate.

4. The definition of spurious drugs is wide and issues related have to be dealt separately. However, there are glaring differences between Indian regulations and international regulations. For example, bioequivalence for drugs is mandatory (other than exceptions) in many countries whether a drug is new or old or whether approved by center or state. Similarly, site variations, source variations, process variations, etc., demand good amount of study to prove equivalence and such data has to be submitted to the authorities in these countries for approval. These two measures are very crucial to assure drug quality. In addition, manufacturing processes, environment controls, GMP practices, etc., are also necessary which are somewhat lenient in developing countries as compared to developed countries. While there are several issues in the implementation of regulations of different countries which have to be studied, it is essential to realize that investments in quality are equally important like R&D. Motivating industry to invest in quality is a very important direction for the country. Ultimately, such investments in quality coupled with gradual rise of standards will eliminate the spurious drugs issue. The issue of spurious drugs has come up for debate in the last couple of years. Spurious drugs have been variously defined but broadly include, substandard drugs, altogether fake products, and drugs with misrepresentations on labels. Internationally in some countries even those drugs were considered spurious which are not registered in that country but have come into that country through land trade from contiguous countries for example in some of the African countries. Availability of substandard or misrepresented drugs has not been denied and needs to be dealt with in the most deterrent manner as it tarnishes the image of India as a potent source of inexpensive medicines. This category of offences at present attracts relatively light penalties and even the enforcement of law is deficient for a variety of reasons. The proposed amendments to Drugs and Cosmetics act which will bring in requisite deterrence to the law and expand the enforcement framework of the government are being very eagerly awaited for a fairly long time. It is reported that relevant amendments to the act are still in the process and the bill might take

some time to be tabled before the parliament. These amendments are urgently required to reassert the credibility of Indian Pharmaceutical industry and must be taken on top most priority. The government could even consider promulgation of ordnance in view of the urgency associated with the subject. Be that as it may, the reputation of Indian Pharmaceuticals has also come under acute stress due to campaigns attributed to large multinational corporations as apprehended by industry experts. Some perceive these campaigns as yet another instrument of battles which are being fought in the market place between the Indian generic manufacturers and large multinationals. It is of immediate necessity that India should launch awareness and information campaign through expert marketing agencies and its missions in countries of consequence. It would also be necessary to take measures which will fill up gaps in export procedures which might encourage trade in spurious drugs.

Equate investments in Quality with R&D to Rejuvenate Indian Manufacturing

Investments in quality should be eligible for weighted tax deduction like R&D. This is necessary to motivate industry for higher compliance standards assuring high drug safety and higher quality standards.

Creation of Special Wing for Foreign Site Inspections & Audits

Foreign site inspections and Export quality control should be assigned to a special wing. Ensuring that every import comes from high quality sources and as per documentation helps in a big way, as many small scale formulators do not have highly sophisticated instrumentation to fully verify import claims and may end up producing spurious drugs. Further such a wing should collect control samples at regular intervals from exporters and analyse for compliance. Outsourcing of such work to highly sophisticated labs with strict timelines for analysis and results will motivate drug inspectors to do result oriented work. In case of process deviations, the quality mechanisms could be addressed at the company. This will help control production of spurious drugs, if any.

Proposed amendments to the Drugs and Cosmetics Act which will introduce severe penalties against offences relating to production and trade of spurious medicines should be carried out.

Creation of Clear Regulation for Bio-Similar Products

India is becoming a major player in manufacture of bio-similar products for marketing in the EU, Canada and elsewhere. At present bio-similar products are being treated as new drugs on an ad-hoc basis since there are no regulations on bio-similars. Therefore, science based specific regulations should be developed for approval of bio-similar products by Ministry of Health and Drug Controller General of India.

The problems in respect of alleged exports of counterfeit / spurious drugs by India have been a major challenge to us. In this Report, at a few places various dimensions of this problem have been discussed and solutions suggested. It is important that India should launch a high visibility campaign to remove any impression of India being a major centre for production and export of spurious drugs. This would require dealing at several levels, namely,

(i) **A high visibility campaign to be launched around the theme of brand India involving lobbying groups, marketing agencies, Indian Missions and other expert groups in major markets.**

(ii) **Putting together process mechanism which would negate the possibility of exports of sub-standard or outright spurious drugs**

(iii) **Fighting diplomatically at various international and regional fora battles which tend to enlarge the scope of counterfeit drugs encompassing even genuinely manufactured pharmaceuticals.**

(iv) **Taking policy initiatives which would discourage manufacturing of sub-standard or mislabelled drugs. Suggestions for this have been given at various places in this Report.**