

# Drug Prices: Is There a Case for Enquiry?

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[ This article is a rejoinder to our editorial "Drug Prices : Case for Enquiry" in the issue of January 16, 1965. Arvind Nair is Information Officer of the Pharmaceutical and Allied Manufacturers' and Distributors' Association and he presents the drug industry's point of view.

Much of his article is devoted to refuting criticism of the patents system. His arguments on this subject are answered in the article which follows his by S S Sokhey, the wellknown microbiologist, who, as director of the Haffkine Institute, Bombay, for 20 years contributed much to medical and pharmaceutical research in India. Sokhey examines, on the basis of the experience of India as well as other countries and with considerable factual data, the impact of patents on drug prices and on the development of the Indian drug industry.

On the question of an enquiry into drug prices, Arvind Nair says in the last paragraph of his article that such an enquiry, "provided it is impartial and the body conducting it is formed of persons who understand the medical, scientific and business problems of the industry and who will take an independent, objective and long-range view, may do some good in that it will dispel much of the misunderstanding and many of the misconceptions about drug prices". But later on in the same paragraph he opposes an enquiry with the argument that "critics of the industry are sure to make capital out of an enquiry, if one is conducted, as did happen in the case of the Kefauver Inquiry, to tarnish its image and shatter the foreign investors' confidence in the growth potential of the Indian industry". It is not at all clear how an enquiry which will help to remove misunderstanding and popular misconceptions about the drug industry will, at the same time, tarnish its image and undermine the confidence of the foreign investor.

Further, while Arvind Nair begins with the entirely valid statement that to determine whether drug prices are reasonable or not prices must be compared to costs of production, we find not one such comparison in his article. Is it because such comparison will invariably show the industry in unfavourable light? Or is it that the facts are not available even to one in the confidence of drug firms? In either case, the need for an enquiry of the type here suggested is emphasised since it will get at the real facts about drug prices and costs.

Finally, since Arvind Nair relies so much on excerpts from reports of the Development Council for Drugs and Pharmaceuticals, it is necessary to state that, though appointed by the Government of India, the Council is in effect a body representing principally the interests of the drug industry. It is definitely not the "impartial" body capable of taking "an independent, objective" view whose impressions can be taken as conclusive evidence for or against an enquiry into drug prices.

—Ed]

THE case for an enquiry into drug prices must surely be based on stronger grounds than those adduced in your editorial. To establish a case for inquiry, it must be shown that drug prices are too high in an absolute or relative sense—high either in relation to the cost of production or high when compared to the prices of other commodities. One looks in vain for a substantiation of this point in your editorial which is fundamental to the case for an inquiry.

The peg on which the case for enquiry is hung seems to be the alleged large differential between the prices charged for librium, a tranquilliser, by the patentee in India and the price at which somebody imported it from Italy. This is cited as evidence of monopolistic exploitation by the patentee. Apart from the question whether isolated fragments can be taken as reflecting the whole picture, there is surely more than meets the eye in the librium case. One wonders how librium could be legally imported into the country from an unauthorised source by a party other than the patentee. But the more important point is that there are no less than 18 different

variations of librium, of widely differing qualities, being marketed in Italy and most of them are sold at the same price (some are actually more expensive) as the original product developed by Hoffmann La Roche of USA.. How could Italy export the drug at ridiculously low prices which bear no relation whatsoever to the price charged to the domestic consumer?

## Development Councils View

Obviously the assumption is that patents are responsible for drug prices being what they are. This assumption would have some basis in fact had you shown that prices of non-patented drugs are lower as compared with those of patented drugs or that they are on a par with prices of non-patented drugs abroad or that they bear a reasonable relation to them considering the conditions of manufacture in the country. It may be pertinent, in this connection, to quote the Technical Sub-Committee of the Development Council for Drugs and Pharmaceuticals, Government of India, which, after a thorough study of the cost of finished drugs in India, concluded:

"Despite the fact that the cost of

basic drug is usually higher in India than in other developed countries, the cost of finished preparations is, in most cases, much less than the domestic price of similar products in foreign countries. The difference between the consumer prices and the ex-factory cost of the finished preparations is much less in this country than in most of the more developed countries."

Does this mean that drug manufacturers are making excessive profit or that prices are high in relation to cost of production? The following factors responsible for the high cost of production were considered by the Sub-Committee before arriving at the aforesaid conclusion:

(1) Prices of imported raw materials and intermediates are higher in India than in foreign countries due to the heavy incidence of customs duty.

(2) Prices of indigenously available raw materials are 150 to 200 per cent more than the prices prevailing in foreign countries.

(3) The quality of indigenous raw materials is, in many cases, inferior, resulting in higher processing and production cost.

(4) Solvent losses, are high due to high temperatures.

(5) Excise duties and the procedures insisted upon by the excise authorities in handling stores, which involve special insurance premium, bank commission, etc, inflate cost by an amount almost equal to the total value of the landed cost of the raw material.

(6) Not only is the cost of imported equipment 35 to 40 per cent higher than in foreign countries, due to all these charges involved, but the cost of indigenously fabricated equipment is even higher in many cases.

(7) The scale of production in Indian factories is much smaller than in Europe or U S with the result that process loss, factory, general and sales overheads, etc, are high.

You point out that, but for patents, we could import drugs from Italy or the East European countries "for a fraction of the prices" we now pay. Apart from the important question whether it is in the larger interest of the country to import drugs from abroad, rather than to manufacture them here, even if the cost of manufacture is high, (and it admittedly is; this is what is being done now at the Government's insistence and rightly), it may be asked whether Italy is in a position to supply our needs. That country is unable to meet its own needs and is itself a large net importer of drugs.

Italian prices are not cheap, as opponents of patents would have us believe. The Kefauver Committee's own price data for a number of major antibiotics, antidiabetic drugs and tranquilisers showed that prices in Italy were significantly higher than those in other European countries with patents. This is clear from the Table.

It is possible that prices of certain drugs are lower in Italy. If that is so, it is not very surprising, because an industry like the Italian pharmaceutical industry which does little or no research and lives by piracy and imitation of the products of other peoples' research efforts, does not have to underwrite the cost of research, which cost the U S pharmaceutical industry alone \$300 million last year. Moreover, what is cheap is not always the best; especially in the pharmaceutical field, for quality is the most important ingredient of a drug. One cannot surely equate a generic-named Italian drug, which scarcely identifies its maker, with the product of a world famous patent-holding manufacturer, who stakes his entire reputation and

that of the product on the brand name it bears.

Perhaps you are referring to the Kefauver enquiry when you say that investigations in countries like the U S and the UK have established that "prices for drugs manufactured by a patent holding monopoly bears little or no relation to their cost of production". The fact, however, is that the Kefauver investigation signally failed to establish this point which was one of its principal objectives. And, arising from this, its proposal to limit drug patents and to provide for compulsory licensing at fixed maximum royalties, the need for which the inquiry was supposed to have demonstrated, was rejected by the U S Congress and drug patents continue to remain intact in that country. Even Italy, which had so long refused to recognise drug patents, is now reintroducing patents protection for drugs. Japan has unequivocally acknowledged the role patents have played in quickening its industrial development since the second World War.

#### Patents and Prices

As regards the relation of patents to prices, it may be noted here that, based on a comprehensive analysis of the Kefauver Committee's price data, which attempted to show by invalid comparison of the prices of old, unpatented drugs with the prices of new patented drugs, that patents make for high prices, patent expert George Frost, demonstrated in his evidence before the Committee that "factors other than patents far outweigh whatever influence patents have on prices and that the long run influence of patents on prices is far less than the influence of other facts affecting prices. It follows that there is no demonstration that patents, on the whole, significantly increase prices" (Kefauver Hearings Part 4, pp 2294-2315).

This view has been corroborated by no less a body than the U N Economic and Social Council in its report on the role of patents in the transfer of technology to underdeveloped coun-

tries. Here is what is the report, based on a survey of the patent system and its contribution to economic development in 48 countries, has had to say on the relation of patents to prices:

"The effect of higher prices specifically due to patent protection is almost impossible to disentangle from higher prices due to such factors as exclusive knowhow, trade secrets, restrictive practices or the dominant market position of the supplier, all of which are intrinsically unrelated to the patent system. Since patents are thus only one of the factors which may bring about higher prices, the question arises whether measures directly affecting price levels or general anti-trust legislation are not an economically more effective and administratively more feasible technique of coping with the problem than legislation devoted specifically to the patent system"

None will dispute your contention that only two factors, namely, competition and pressure from Government, could compel price reduction. But the point is whether patents stimulate or discourage competition. That disclosure of invention facilitated by patent stimulates competition by other inventors and companies who naturally desire to go one better and to produce something more effective is not disputed. It is true that a patent insulates, the inventors from the hazards of immediate imitation. But it does not protect him from competition from products and processes either not patented or already patented or which may be discovered and patented in future. This is particularly so in the drugs field where new drugs are continually coming forward. This dynamic character of product competition was demonstrated before the Kefauver Committee by pointing out: that in the oral treatment of diabetes there were four different product-leaders in the period 1951-1960.

You refer to the damage done by patents to the development of the

Table: A Comparison of Drug Prices

(Wholesale prices to druggist; in dollars)

Product	Gt Britain	W Germany	France	Italy
Chlorpromazine	0.77	0.97	0.51	1.22
Tolbutamide	1.87	1.85	2.04	2.35
Chloromycetin	2.67	—	—	3.90
Chlortetracycline	4.56	4.31	3.26	5.86
Tetracycline	4.58	4.31	—	5.86

Source: Part 4, Kefauver Hearings, pp 2,150-2,151,

Indian pharmaceutical industry but leave one wondering what precisely the damage is. The following quotation from a survey of the development of the drugs and pharmaceutical industry by B Shah, Drugs Development Officer, Government of India, will give an idea of the progress of the industry. After giving figures of the growth of pharmaceutical production since 1948 to 1962, Shah says:

"The above figures represent only one side of the phenomenal growth of the pharmaceutical industry. Together with these one has also to consider the increased number of products now being manufactured from basic stages. Several in this category include those which were formerly being produced from late intermediates that were imported into India, or merely packaged here from bulk imports. Import of finished products has now stopped with the exception of a very few preparations. New processing units have been established and old ones expanded. Quite a few units designed to undertake the basic manufacture of drugs have also commenced production. Many of these basic manufacturing units are monuments of progress in the field of chemical technology carrying out highly intricate and hazardous chemical reactions with automatic process control,

"Factories established by foreign firms or those working with foreign collaboration have undertaken to manufacture new products according to the latest methods and techniques of production developed abroad after many years of investigation and research. The entry of these firms has conferred advantages on the Indian economy in that the benefits of advanced research and technology achieved in foreign countries have been made available to us at a relatively small expenditure of foreign currency than would have been necessary if the finished drugs were to be imported".

"Indian Pharmaceutical Industry" published by the Development Council (Drugs and Pharmaceuticals), Government of India.

Have, then, patents really hindered the progress of the industry? If, as critics of patents would have us believe, patents are the real stumbling block how is it that not all drugs, and their number is indeed large, patents on which have expired, are manufactured in the country? Many of these drugs are still in use and are produced in the

country by the original patent-holder only. Are we merely looking for an excuse to cover up our failings and shortcomings?

### No Need for Enquiry

Phenomenal, though the progress of the industry has been, it could have been even faster. But this has nothing to do with patents. If a more liberal policy had been followed in respect of allowing imports of essential raw materials not available in the country and the latest machinery and equipment, if arrangements were made to ensure adequate supplies of raw materials, if expansion of capacity had been allowed more liberally, while taking steps to ensure raw materials, the progress of the industry would certainly have been much faster. There is under-utilisation of capacity to the extent of about 25 per cent due to shortage of raw materials alone. The under-utilisation of capacity not only results in production being less than what it would have been but also makes the limited output carry the entire burden of overheads. The higher production and productivity would have surely enabled prices to be brought down. These are some of the factors responsible for drug prices being what they are. They also point to the lines along which the price ques-

tion should be tackled,

An enquiry into drug prices, provided it is impartial and the body conducting it is formed of persons who understand the medical, scientific and business problems of the industry and who will take an independent, objective and long-range view, may do some good in that it will dispel much of the misunderstanding and many of the misconceptions about drug prices. It is noteworthy, in this connection, that it is for this reason the British Pharmaceutical Industry has expressed its readiness to have an enquiry conducted as demanded by the Trades Union Congress. The T U C had demanded inquiries into many industries but the Pharmaceutical Industry is the first to accept an enquiry. The Indian pharmaceutical industry is still in its infancy, though it is vigorous and kicking, and all efforts need to be concentrated on promoting its growth by encouraging domestic and foreign investment in the industry. Critics of the industry are sure to make capital out of an enquiry, if one is conducted, as did happen in the case of Kefauver Inquiry, to tarnish its image and to snatter the foreign investors' confidence in the growth potential of the Indian industry. Confidence is a sensitive plant of slow growth. Let us not destroy what we have so carefully cultivated.

## Why Drug Industry Must be Controlled

THE ethical for 'prescription.) drug industry has a number of features which tend to make it unique. For one thing there is its critical bearing on public health and welfare... It is this underlying consideration which is responsible for the fact: that most nations (including the majority of the highly developed nations) have traditionally followed a policy of refusing to grant product: patents on pharmaceuticals. It is this same consideration which is responsible for the existence of price control on drugs in countries which do not impose such controls on the general run of products,

"A second unique characteristic is the difference between buyer and orderer... Once the physician has written his prescription (usually in terms of a brand name), the consumer is limited to the product prescribed under that brand name... The consumer is 'captive' to a degree not present in any other industry.

"The drug industry is also unusual in the extent to which the demand for its products is inelastic... The fact that demand is inelastic means

that one of the checks which might serve as a possible constraint upon corporate price policies is absent in ethical drugs.

"The case that measures are needed to stimulate price competition in this held rests primarily upon the assumption that drug prices are unreasonable. The extraordinary margins and profits are made possible by a right control of the market. The control of the market in turn stems principally from three sources of what in economic literature is referred to as "monopoly power". These are the monopoly grant inherent in patents, the exceptionally large expenditures by the major companies on advertising and sales promotion, and the success of the large companies in persuading physicians to write their prescriptions in terms of trade names rather than generic names. Any effort to bring price competition into the ethical drug industry must come to grips with these three sources of monopoly power.'

—From the Kefauver Committee Report on Administered Prices in the Drug Industry".