Proposed Regulatory Amendment to Prohibit the Importation of Unapproved Drugs Destined for Use in Food-producing Animals – Comments Received and Responses Prepared by Health Canada to the Stakeholder Consultation held from November 2, 2004 to January 21, 2005

RELATED HEALTH CANADA INITIATIVES

It has been recommended that the following related initiatives be pursued to complement this regulatory amendment.

(a) Health Canada should maintain control over the sale of unapproved drugs
Health Canada will continue to enforce the *Food and Drug Regulations*.

(b) Health Canada should make every effort to reduce drug approval times and Health Canada must ensure that a sufficient number of registered products are continuously available for veterinarians to ensure both the health of animals and the safety of the food supply.
In fiscal year 2003 - 2004, Health Canada's Veterinary Drugs Directorate (VDD) reduced by 90 per cent, the number of submissions that were 24 months or older (i.e., as of April, 2003). In 2004-2005, VDD had established an even more aggressive target of completing the review of 90 per cent of all data packages received over 18 months ago (i.e., as of April, 2004). This target was exceeded with 96 per cent of reviews completed.

Although VDD realizes that these targets can be improved upon, this is a substantial achievement considering its current resources. Health Canada would continue to act within its mandate to address the availability of quality, safe and effective drugs in Canada. VDD would continue its efforts to address the backlog and establish shorter time lines for the evaluation of submissions including consideration of priority reviews and increasing the availability of drugs for Minor Uses /Minor Species (MUMS).

(c) Health Canada should account for the fact that the pharmaceutical industry does not always find it to be cost-efficient to pursue drug approval in Canada.
Stakeholders have expressed concern about the availability of approved veterinary drugs in Canada and pointed to the reluctance of drug manufacturers to market drugs in Canada for reasons of cost-effectiveness. The proposed regulatory amendment would improve and validate the Canadian legal framework for veterinary drugs and should provide greater incentive to drug manufacturers to follow the pre-market approval requirements in the *Food and Drug Regulations* as the Canadian veterinary pharmaceuticals market would no longer be undermined by imported cheaper unapproved drugs.

(d) Health Canada should harmonize with international and especially United States Food and Drug Administration's drug approval process, in particular by accepting U.S. approved products (for example generic products with the same active ingredient as products approved in Canada) and assigned Maximum Residue Limits (MRLs).
All countries enact laws that apply to their specific national legal framework. Canada's drug approval system is a product of the Canadian constitutional, federal and provincial legal

framework. Health Canada's responsibility for the regulation of veterinary drugs is legislated under the *Food and Drugs Act and Regulations*. As such, drugs must be approved according to this established legal framework. It must also be ensured that VDD policies and regulations do not conflict with those of other federal departments and provinces and their Acts and Regulations. This has implications for international harmonization, for example: how another jurisdiction manages an issue.

In addition, the international agreements that Canada is signatory to must be respected, for example: the WHO Technical Barriers to Trade Agreement (TBT Agreement) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). VDD leads the Canadian delegation of the Codex Alimentarius Committee of Veterinary Drug Residues in Food, working to consider methods of sampling and analysis, to develop codes of practice, and to recommend maximum levels of residues of veterinary drugs in foods.

International cooperation is a core activity and a priority in VDD's Strategic Plan. Resources (human and financial) are dedicated to these activities. Health Canada's mandate includes the responsibility to evaluate and monitor the safety, quality, and efficacy of veterinary drugs for Canadians; and Canadian standards may differ from those used in other countries. Health Canada is working towards international harmonization as part of VICH, a trilateral (EU-Japan-USA) program aimed at harmonizing technical requirements for veterinary product registration. In addition, VDD participates in bilateral meetings and has recently signed a Memorandum of Understanding (MOU) with the Australian Pesticide and Veterinary Medicines Authority, and has an arrangement with the FDA Center for Veterinary Medicine (CVM) under an MOU between the US Food and Drug Administration and Health Canada's Health Products and Food Branch (HPFB).

(e) Support for this regulatory amendment also included related recommendations for other Health Canada initiatives on the issues of Active Pharmaceutical Ingredients (APIs), Extra-Label Drug Use (ELDU), Compounding, and Antimicrobial Resistance.
VDD is very aware of the linkages between these issues and is working to create a coordinated suite of policies and regulations to protect human and animal health, and the safety of Canada's food supply.

(f) As a result of the current pace of changes to the regulation of veterinary drugs, a phase-in of some of the new regulatory measures was recommended to allow suppliers time to comply.
Health Canada is addressing the issue of unapproved drugs in a multi-pronged approach, of which this regulatory amendment is one of several related initiatives. In addition to the proposed regulatory amendment, VDD is participating in Health Canada's Canadian Health Protection Legislative Renewal initiative, which includes, among many other issues, a complete policy review of Personal Use importation of veterinary drugs and other regulated products.

RELATED STAKEHOLDER INITIATIVES

Health Canada has been advised of related efforts to address food-safety issues under provincial jurisdiction such as the national harmonization of veterinary dispensing

practices and drug schedules. Stakeholders also drew our attention to the need for consistency of this proposed regulatory amendment with food safety initiatives such as the Canadian Food Inspection Agency's (CFIA) *On-Farm Food Safety Recognition* program, livestock tracing programs, provincial veterinary association guidelines, and provincial government policy.

CONCERNS

Concern 1: Drug Availability: Number of EDR Requests

After exhausting the list of possible therapeutic choices of approved drugs, as labelled or extra label, it is apparent that in some cases unapproved drugs are needed for treatment of a disease or condition, particularly for minor species such as goats, sheep, and cervids. Therefore, by restricting personal use importation of unapproved drugs for use in food-producing animals, there is concern that the proposed regulatory amendment may cause an increase in the volume of requests for access to unapproved drugs by way of Health Canada's Emergency Drug Release (EDR) program under Sections C.08.010 and C.08.011 of the *Food and Drug Regulations.* Reliance on the EDR program also raises concerns regarding the cost for each EDR submission, and the delay between the time Health Canada receives the request and the time the unapproved drug is received by the veterinarian from the manufacturer and administered to the animal/s. Such a delay could contribute to the proliferation of disease within a flock/herd.

Health Canada is aware of the additional volume of EDR applications that may result from this regulatory amendment. The EDR program permits the manufacturer of a drug that is not marketed in Canada to sell a limited amount of the drug to a veterinary practitioner for the purpose of diagnosing or treating a medical emergency in a patient (or flock/herd) under his or her care. Utilization of the EDR program is preferable to the current situation because aspects of the drug product, including efficacy, safety and environmental impact are considered before issuing EDR approval for the use of an unapproved drug to a veterinarian. Prior to VDD authorizing first time or repeat releases, the veterinarian submitting the request must meet a set of criteria (for example, they must provide follow-up reports, detailed rationale, and treatment schedules) before gaining access to the drug. A thorough review/evaluation of all information submitted for an EDR is conducted to protect animal health, human health and the safety of Canada's food supply. In particular, it is valuable for Health Canada and the CFIA to know how and where unapproved drugs are used in order to facilitate monitoring of drug residues, follow-up of adverse drug reactions and develop appropriate compliance strategies.

The cost of the EDR program is prescribed by the *Veterinary Drug Evaluation Fees Regulations* under the authority of the *Financial Administration Act*. The EDR charge is only a portion of the actual cost of the review by VDD scientists (for example, $100 per EDR for drugs intended to be used in food-producing animals).

Health Canada will make every effort to continue to process EDR submissions quickly. The EDR program will be strengthened as needed and turn-around time should remain at the current standard of 48 hours, provided that sufficient information is included in the EDR request.

Related to this, the Department has been working toward streamlining the EDR process by developing technology solutions. As well, VDD policy initiatives to improve access to drugs for Minor Uses/MinorSpecies (MUMS) may, in time, help to reduce the overall number of EDR requests. Health Canada has no control over the time of delivery once an EDR authorization is granted since this depends on the importer/manufacturer of the specific drug. Health Canada recognizes the implications of delay on the health of an individual patient or a herd/flock of animals and informs manufacturers of the importance of a prompt delivery of EDR drugs.

Concern 2: Cost to Canadian livestock producers

a. ***Requiring a health advantage to justify importation of unapproved drugs***
Production costs for foods of animal origin could be increased by the implementation of the regulatory amendment, since it would drive producers to purchase and use Canadian approved drugs instead of less expensive unapproved drugs. Drug manufacturers do not always pursue drug approval for the Canadian market, as it may not be cost-effective to market certain drugs in Canada. Some drugs approved for use in other jurisdictions are not approved in Canada. Prohibiting the importation of drugs destined for use in food-producing animals and reliance on the EDR program will require a health advantage, not just a cost advantage, in order to access drugs approved in other jurisdictions.

When taking into consideration risks to human health, public safety and animal health, the cost advantage is not a sufficient reason to permit the importation of unapproved veterinary drugs. There are a number of substantial benefits to requiring a health rationale and veterinary supervision for the importation and use of unapproved veterinary drugs in food-producing animals.

The importation of human drugs for personal use is permitted with the understanding that the person importing the drug for their own use is knowledgeable of and personally assumes the risks associated with the unapproved product. The importation of veterinary drugs for "personal use" for one's own food-producing animals implicitly goes beyond the personal assumption of risk by the importer and requires that Canadian consumers of food products from animals treated with such drugs unknowingly assume potential risks. This situation is one in which Health Canada must exercise its duty of care to intervene to protect the public.

b. ***Blocking access to cheaper US approved drugs***
In some cases there may have been approved drugs in Canada for which generic versions were available at a lower price in the US but not in Canada. The proposed regulatory amendment would cause producers to purchase Canadian approved drugs which may be more expensive. Since the Canadian and US approved products would both have the same active pharmaceutical ingredient, the prohibition of the importation of the US generic version would require producers to pay more for the drug without there being a corresponding enhanced level of safety for Canadian consumers.

Health Canada reviews and approves drugs, not single ingredients. The review process includes all aspects of the drug's formulation which may affect quality, stability, clinical safety, efficacy and human health. In addition to the active ingredient, consideration of the formulation and

manufacturing of the drug determine its quality, safety and efficacy.

The issue of availability of approved veterinary drugs on the Canadian market may be related to the reluctance of drug manufacturers to market drugs in Canada for reasons of cost-effectiveness. As previously noted, the proposed regulatory amendment will improve and validate the Canadian legal framework for veterinary drugs and will provide greater incentive for drug manufacturers to follow Canadian approval requirements.

The cost of a veterinary drug submission is lower in Canada than in the US or European Union under current user fee frameworks. The pricing of pharmaceutical products is primarily a market issue and is not within the authority of Health Canada. There is no federal government price control for non-patented drugs. The Patented Medicines Pricing Review Board (PMPRB), an independent quasi-judicial body operating under the *Patent Act*, limits the prices set by manufacturers for all patented medicines sold in Canada to ensure they are not excessive.

The decision to market a drug in Canada and its price are beyond the scope of Health Canada's authority. However, departmental officials intend to facilitate discussion between producers and drug manufacturers to try to resolve this issue.

c. *Differential regulatory treatment of Canadian and international livestock producers*
The proposed regulatory amendment would prohibit the importation of unapproved drugs for use in Canadian livestock, but would continue to allow the importation of food products from animals that may have been treated with drugs approved in the country of origin but not approved in Canada. Potential residues from unapproved drugs, whether drug use occurred within Canada or outside Canada, pose the same human safety concerns.

In circumstances where Canadian consumers purchase both Canadian-produced and imported products of animal origin, the regulatory amendment may jeopardize Canadian producers' ability to compete against their international counterparts and put them at a relative disadvantage.

Currently, a drug marketed by a pharmaceutical company in a number of different countries may have slight or substantial variations in formulation from one country to the next.
As per Canada's obligations under the WTO Agreements, we choose to recognize the equivalency of food products originating from countries with equivalent food safety, hygiene practices and regulatory systems, such as the US and EU. The safety of food products from these countries is assumed to be the result of all relevant aspects of jurisdictional drug and food safety regulatory systems. Likewise, worldwide consumers of Canadian food products know they can rely on the safety of Canadian food products. Furthermore imported foods are monitored by the CFIA to ensure that Canadian safety standards are met.

Concern 3: The amendment only benefits Canadian pharmaceutical companies and veterinarians.
There are clearly substantial benefits to other stakeholders, and particularly to Canadian consumers. This is substantiated by the significant support for the proposed regulatory amendment from sectors other than the pharmaceutical industry and veterinary associations.

See Appendix A - BENEFITS

See Appendix B - LIST OF STAKEHOLDERS WHO PARTICIPATED IN THIS CONSULTATION