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**DEPARTMENT OF HEALTH & HUMAN SERVICES**

Public Health Service

Food and Drug Administration

Rockville MD 20857

**STATEMENT OF**

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**ASSOCIATE COMMISSIONER FOR**

**POLICY AND PLANNING**

**JOINT HEARING  
OF THE**

**SUBCOMMITTEE ON HEALTH CARE  
AND  
SUBCOMMITTEE ON INTERNATIONAL TRADE**

**COMMITTEE ON FINANCE**

**UNITED STATES SENATE**

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## **INTRODUCTION**

Mr. Chairman and Members of the Committee, I am William K. Hubbard, Associate for Policy and Planning at the U.S. Food and Drug Administration (FDA or the Agency).

I appreciate the opportunity to testify regarding the cost of prescription drugs and the issues relating to proposals that would legalize the importation of prescription drugs into the United States. Although FDA has very limited expertise in the area of international pharmaceutical trade, we are happy to provide our perspective on the health and safety issues that are implicated in the importation of pharmaceutical products into the United States.

At FDA, our statutory responsibility is to assure the American public that the drug supply is safe, secure, and reliable. For more than 60 years, the Federal Food, Drug, and Cosmetic (FD&C) Act has ensured that Americans can be confident that, when they use an FDA-approved drug, the medicine will be safe and effective and will work as intended in treating their illness and preventing complications. In carrying out this responsibility, FDA also works to do all we can under the law to make medicines accessible and help doctors and patients to use them as effectively as possible, through such steps as expanding access to generic medicines, reducing the time and cost of showing that new medicines are safe and effective, and providing up-to-date information for health professionals and patients to obtain the benefits and avoid the risks associated with powerful medicines. That is the primary mission of the thousands of dedicated staff,

including leading health care experts, doctors, economists and scientists who work tirelessly at FDA in public service for the American people. FDA has substantial concerns about unapproved, imported pharmaceuticals whose safety and effectiveness cannot be assured because they are outside the legal structure and regulatory resources provided by Congress. We have also taken steps within the law to improve the availability of affordable medicines and reduce drug costs, without compromising safety. In my testimony today I look forward to having the opportunity to engage in a constructive dialogue about the issue of importing prescription drugs as well as discussing steps to provide greater access to more affordable prescription medications.

## **REDUCING DRUG COSTS**

FDA shares with Congress its great concern for senior citizens and other patients who have difficulty paying for prescription drugs. That is why the Administration worked with Congress to enact the new Medicare prescription drug law. And that is why FDA has made it a priority for its medical and scientific experts to establish and expand programs that promote access to innovative treatments to help Americans live healthier lives and assure that Americans have access to medications and treatments that they can afford.

FDA has taken a number of significant steps to provide greater access to affordable prescription medications, including unprecedented steps to lower drug costs by helping to speed the development and approval of low-cost generic drugs after legitimate patents

have expired on branded drugs. Generic drugs typically cost 50 to 70 percent less than their brand-name counterparts. On June 18, 2003, FDA published a final rule to improve access to generic drugs and lower prescription drug costs for millions of Americans. These changes will save Americans over \$35 billion in drug costs over the next 10 years, and will also provide billions in savings for the Medicare and Medicaid programs. Elements of this rule were codified as part of the recently enacted Medicare law and, with FDA's technical assistance, the law added additional mechanisms to enhance generic competition in the marketplace.

In addition, last year the Administration supported and Congress enacted an increase of \$8 million for FDA's generic drug program, the largest infusion of resources into this program ever. This increase in the generic drug budget enables FDA to hire additional expert staff to review generic drug applications more quickly and initiate targeted research to expand the range of generic drugs available to consumers. Improvements in the efficiency of review procedures have led to significant reductions in approval times for generic drugs since 2002, and consequently will save consumers billions more by generally reducing the time for developing generic drugs and making them available.

The Agency has also taken steps to help improve the development process to help lower the high cost of developing new drugs. In particular, FDA is continuing to improve the methods by which assistance and advice is provided to sponsors regarding what we believe are the best approaches to develop new therapies and maximize the prospects for swift FDA approval. These ongoing efforts are designed to provide sponsors with the

best possible information and thus increase the efficiency of the development process. We expect that reforms in drug and biologic manufacturing requirements should help reduce manufacturing costs by 20 percent. FDA has identified several priority disease areas, such as cancer, diabetes and obesity, and new technologies including gene therapy, pharmacogenomics and novel drug delivery systems that are good candidates for efforts to clarify regulatory pathways and clinical endpoints.

FDA is also working to prevent adverse events through new rules that would require bar coding for drugs and better ways to track adverse events automatically with the goal of preventing billions of dollars in unnecessary health care costs each year. FDA's final rule requiring bar coding of drug is estimated to have net economic benefits of approximately \$3.5 billion per year. Avoiding such preventable medical complications will also help reduce health care costs, while enhancing quality and safety. In addition, the Agency is striving to promote electronic prescribing, to improve quality and reduce prescription costs as well.

## **IMPORTATION OF PRESCRIPTION DRUGS**

Sixty-five years ago, Congress responded to widespread instances of unsafe drugs by directing FDA to create a system for assuring that Americans have a drug supply they can trust will not harm them. Over forty years ago, Congress required that legal drugs be proven to be effective as well, because modern medicines – when they are produced, distributed, prescribed, and used properly – should not only be safe but also should

prevent the many complications and side effects of diseases. More recently, in 1988, Congress enacted the Prescription Drug Marketing Act (PDMA) to establish additional safeguards to prevent substandard, ineffective, or counterfeit drugs from entering the U.S. Under PDMA, it is illegal for anyone other than the drug's original manufacturer to re-import a prescription drug into the U.S. that was manufactured in the U.S. This law was enacted with strong bipartisan support because of high-profile cases of unsafe and ineffective drugs entering the U.S. in large volumes. In one instance, over 2 million unapproved and potentially unsafe and ineffective Ovulen-21 "birth control" tablets from Panama were distributed throughout the U.S. In another case, a counterfeit version of Ceclor, a widely used antibiotic at the time, found its way into the U.S. drug distribution from a foreign source. Over the years, FDA's dedicated professional staff has employed PDMA and other authorities to build a drug safety infrastructure to ensure that Americans enjoy the highest-quality drug supply in the world.

Unfortunately, the drug supply is under unprecedented attack from a variety of increasingly sophisticated threats. This is evident in the recent significant increase in efforts to introduce counterfeit drugs into the U.S. market. FDA has seen its number of counterfeit drug investigations increase four-fold since the late 1990s. Although counterfeiting was once a rare event, we are increasingly seeing large supplies of counterfeit versions of finished drugs being manufactured and distributed by well-funded and elaborately organized networks. At the same time, inadequately regulated foreign Internet sites have also become portals for unsafe and illegal drugs. For example, FDA recently worked with domestic and international authorities to shut down a website that

was advertising “FDA-approved” and safe “European” birth control pills and other drugs, but was actually responsible for importing ineffective, counterfeit drugs. Evidence strongly suggests that the volume of these foreign drug importations is increasing steadily, presenting an increasingly difficult challenge for Agency field personnel at ports-of-entry, mail facilities, and international courier hubs, and our laboratory analysts and border and law enforcement partners.

FDA is doing its best to use its limited international authorities and resources to stop the increasing flow of violative drugs into this country, but the task is daunting. Each day, thousands of individual packages containing prescription drugs are imported illegally into the U.S. FDA’s Office of Regulatory Affairs has inspectors who work in the field who perform investigational work pertaining to imported prescription drugs, a job that is not limited to inspections at ports-of-entry.

## **SAFETY CONCERNS RELATING TO IMPORTATION**

FDA remains concerned about the public health implications of unapproved prescription drugs from entities seeking to profit by getting around U.S. legal standards for drug safety and effectiveness. Many drugs obtained from foreign sources that either purport to be or appear to be the same as U.S.-approved prescription drugs are, in fact, of unknown quality. Consumers are exposed to a number of potential risks when they purchase drugs from foreign sources or from sources that are not operated by pharmacies properly licensed under state pharmacy laws. These outlets may dispense expired,

subpotent, contaminated or counterfeit product, the wrong or a contraindicated product, an incorrect dose, or medication unaccompanied by adequate directions for use. The labeling of the drug may not be in English and therefore important information regarding dosage and side effects may not be available to the consumer. The drugs may not have been packaged and stored under appropriate conditions to prevent against degradation, and there is no assurance that these products were manufactured under current good manufacturing practice standards. When consumers take such medications, they face risks of dangerous drug interactions and/or of suffering adverse events, some of which can be life threatening. More commonly, if the drugs are subpotent or ineffective, they may suffer complications from the illnesses that their prescriptions were intended to treat, without ever knowing the true cause.

Patients also are at greater risk because there is no certainty about what they are getting when they purchase some of these drugs. Although some purchasers of drugs from foreign sources may receive genuine product, others may unknowingly buy counterfeit copies that contain only inert ingredients, legitimate drugs that are outdated and have been diverted to unscrupulous resellers, or dangerous sub-potent or super-potent products that were improperly manufactured. Furthermore, in the case of foreign-based sources, if a consumer has an adverse drug reaction or any other problem, the consumer may have little or no recourse either because the operator of the pharmacy often is not known, or the physical location of the seller is unknown or beyond the consumer's reach. FDA has only limited ability to take action against these foreign operators.

The Agency has responded to the challenge of importation by employing a risk-based enforcement strategy to target our existing enforcement resources effectively in the face of multiple priorities, including homeland security, food safety and counterfeit drugs. However, this system, as it works today, is already overwhelmed by the number of incoming packages, and this presents a significant ongoing challenge for the Agency.

Recent spot examinations of mail shipments of foreign drugs to U.S. consumers revealed that these shipments often contain dangerous or unapproved drugs that pose potentially serious safety problems. In 2003, inspectors found that the majority of the packages examined in these “blitzes” contained illegal, unapproved drugs. Last summer, FDA and CBP conducted blitz examinations on mail shipments at the Miami and New York (JFK) mail facilities in July, and the San Francisco and Carson, California, mail facilities in August. In each location, the agencies examined packages shipped by international mail over a 3-day time span. Of the 1,153 shipments examined, the overwhelming majority (1,019 packages, or 88 percent) contained unapproved drugs. The drugs arrived from many countries. For example, 16 percent entered the U.S. from Canada; 14 percent were from India; 14 percent came from Thailand, and 8 percent were shipped from the Philippines.

A second series of import blitz exams, conducted in November 2003, also revealed potentially dangerous, illegally imported drug shipments. Of the 3,375 products examined, 2,256 or 69 percent were violative. FDA found recalled drugs, drugs requiring special storage conditions and controlled substances. These blitz exams were

performed at the Buffalo, Dallas, Chicago and Seattle international mail facilities and, for the first time, the private courier hubs at Memphis and Cincinnati. Canadian parcels appeared most frequently (80 percent of the mail parcels), while 16 percent were from Mexico, and the remaining 4 percent came from Japan, the Netherlands, Taiwan, Thailand and the United Kingdom.

Examples of the potentially hazardous products encountered during the exams include:

- Unapproved drugs such as 1) anti-azathioprine an immunosuppressant drug that can cause severe bone marrow depression and can be associated with an increased risk of infection and cancer development; and 2) human growth hormone, which can have serious side effects if used inappropriately or in excessive doses.
- Controlled substances – FDA and Customs found over 25 different controlled substances were found, including Diazepam; Xanax; Codeine; Valium Lorazepam, Clonazepam and anabolic steroids.
- Drugs withdrawn from the U.S. market for safety reasons such as Buscapina, which appears to be the drug dicyclanole, removed from the market in 1977 due to reports of association with agranulocytosis -- a sometimes fatal blood disease.
- Improperly packaged drugs shipped loose in sandwich bags, tissue paper or envelopes.

- Animal drugs not approved for human use such as Clenbuterol, a drug approved for the treatment of horses but also known as a substance of abuse in the “body building” community and banned by the International Olympic Committee.
- Potentially recalled drugs -- American consumers were sent Serevent Diskus and Flovent Diskus medicines from Canada for the treatment of asthma. Shortly after the blitz, certain lots of the Canadian versions of these drugs were recalled in Canada.
- Drugs requiring risk management and/or restricted distribution programs -- For example, Canadian-manufactured isotretinoin, which in the U.S. is subject to a stringent risk management plan, under which prescribers are required to screen, educate and monitor patients to avoid certain serious risks such as birth defects.
- Drugs with inadequate labeling such as those with missing dosage information or labeling that is not in English.

But its not just FDA that has identified both legal and safety concerns about importation of prescription drugs, so have many other professional regulators, including state pharmacy boards and most recently courts. On November 6, 2003, Federal District Court Judge Claire V. Eagan, U.S. District Court for the Northern District of Oklahoma, issued a decision in United States v. RX Depot, Inc. and RX of Canada LLC, granting a preliminary injunction to immediately prevent these defendants who operate business that

import prescription drugs from Canada, because such unapproved drugs were a clear violation of the FD&C Act. In addition to her unequivocal findings of law, the Judge concluded that these companies could not assure the safety of the drugs they have been importing and, as a result, in violating the law have put Americans at serious risk. The Judge concluded that “unapproved prescription drugs and drugs imported from foreign countries by someone other than the U.S. manufacturer does not have the same assurance of safety and efficacy as drugs regulated by the Food and Drug Administration.” She continues: “Because the drugs are not subject to FDA oversight and are not continuously under the custody of a U.S. manufacturer or authorized distributor, their quality is less predictable than drugs obtained in the United States.”

## **RECENT STATE ACTIONS**

Despite this ruling and the concerns raised by the Agency, recently, several governors and mayors have proposed to create systems whereby their employees and/or constituents could be directed to Canadian pharmacies for purchasing Canadian drugs. FDA has spoken with a number of such officials about our concerns, and many have declined to proceed and have turned to other legal, proven ways to safely reduce drug costs.

However, some states and localities, including the state of Minnesota and the state of Wisconsin have proceeded to establish state run websites linking citizens to entities dispensing drugs purportedly from Canada.

Recent research by the state of Minnesota pointed out significant problems related to purchasing non-FDA approved pharmaceuticals from foreign Internet pharmacies. Even Canadian pharmacies that participate in the Canadian Internet Pharmacy Association were observed engaging in problematic practices during a single, voluntary, pre-announced “visit” by Minnesota State officials. Minnesota State health officials noted dozens of safety problems, such as:

- 1) several pharmacies used unsupervised technicians, not trained pharmacists, to enter medication orders and to try to clarify prescription questions;
- 2) one pharmacy had its pharmacists review 100 new prescriptions or 300 refill prescriptions per hour, a volume so high that it would have been impossible to assure safety;
- 3) one pharmacy failed to label its products, instead it shipped the labels unattached in the same shipping container, even to patients who received multiple medications in one shipment; and
- 4) drugs requiring refrigeration were being shipped un-refrigerated with no evidence that the products would remain stable.

At least one of the Canadian pharmacies visited by Minnesota health officials dispensed many drugs that apparently were not even of Canadian origin, and many of the drugs were obtained from prescriptions that had been written and rewritten across multiple Canadian provinces. These types of systematic safety problems, which appear to be a common way of doing business, would generally be clear regulatory violations that

would not be tolerated under the comprehensive system of Federal and state regulation of drug safety in the U.S.

## **DRUG COUNTERFEITING**

In addition, counterfeiting of prescription drugs is a growing global concern. In fact, counterfeiting of drugs is commonplace in many countries. In the U.S. counterfeiting of drugs has been kept to a minimum because of our extensive system of laws, regulations, and enforcement by Federal and state authorities. As a result, Americans have a high degree of confidence in the drugs they obtain from their local pharmacy. In recent years, however, FDA has seen growing evidence of efforts by increasingly well-organized counterfeiters, backed by increasingly sophisticated technologies and criminal operations, intent on profiting from drug counterfeiting at the expense of American patients.

To respond to this emerging threat, FDA convened a Counterfeit Drug Task Force that received extensive comment and ideas from security experts, Federal and state law enforcement officials, technology developers, manufacturers, wholesalers, retailers, consumer groups, and the general public. Based on these comments, on February 18, 2004, FDA issued a report that contains specific steps that can be taken now and in the future to protect consumers from counterfeit drugs and secure the U.S. drug supply chain.

The report's framework describes how to strengthen our drug safety assurances against modern counterfeit threats through a multilayered strategy that includes modern anti-

counterfeiting technologies. Promising developments such as “track and trace” technologies that cannot be faked like a paper drug pedigree, and verification technologies built not only into tamper-resistant drug packaging but also into the drugs themselves will make our job of verifying the legitimacy of drug products much easier. FDA is working to speed the availability of these anti-counterfeiting technologies, but these technologies have not yet been proven, and they are intended to complement and reinforce an underlying system for assuring the safety and effectiveness of prescription drugs.

Thus, anti-counterfeiting technologies hold great promise for strengthening our legal drug distribution system, but to be effective they must be used in conjunction with effective legal authorities.

## **IMPORTATION PROPOSALS**

At a time when FDA faces more challenges than ever in keeping America’s supply of prescription drugs safe and secure, legislation to liberalize drug importation without providing concomitant enhancements in FDA’s authorities and resources to assure the safety of these imports could seriously compromise the safety and effectiveness of our drug supply. The volume of importation that could result from enactment of these bills could overwhelm our already heavily burdened regulatory system. Many of these bills fail to provide FDA with adequate authority or resources to establish and regulate the major new “legal” channels for incoming foreign drugs - manufactured, distributed,

labeled, and handled outside of our regulatory system - or even to ensure their safety. Some of these proposals would even limit FDA's existing authorities, which are already being stretched. They would impose unprecedented restrictions on FDA's ability to inspect and test drugs, and FDA's authority to block the distribution of drugs we think are unsafe.

Today, FDA drug approvals are manufacturer-specific, product-specific, and include many requirements relating to the product, such as manufacturing location, formulation, source and specifications of active ingredients, processing methods, manufacturing controls, container/closure system, and appearance. Under section 801 of the FD&C Act, only manufacturers may import drugs into the U.S. The drugs must be produced in FDA inspected facilities. These facilities and the drugs produced in them are currently covered by the U.S. regulatory system, and it is legal to import these drugs.

We want to be clear that our objections to legislative proposals that would create large, legal channels for drugs to enter our drug supply without assurances of safety are based on concerns that they will create substantial drug safety problems without clear, large-scale, long-term benefits. FDA has particularly raised concerns about legislative proposals that would create such channels by weakening our existing safety protections rather than providing the necessary resources or additional authorities to enable the Agency to assure drug safety and security. Furthermore, our economic experts as well as many others have raised concerns about the limitations of potential longer-term benefits and savings that could be realized from imported drugs. The Congressional Budget

Office has estimated that the savings from even broad, multiple-country importation proposals would be smaller than can be obtained through the generic drug reforms that Congress and FDA are in the process of implementing now. Even the Canadian Internet pharmacy operators have said that they cannot provide safe drugs for Americans on a large scale. These are important concerns, but that does not mean that we are opposed to undertaking a thorough effort to determine whether and how importation could be accomplished safely. But this cannot be accomplished by fiat or with a presumption of safety.

Some Members of Congress are working on the difficult challenge of identifying the resources and authorities necessary to assure safety for certain types of imported drugs. This is a much more constructive approach than simply declaring imported drugs to be legal or restricting FDA's authorities to keep the U.S. drug supply safe. To help determine whether and what specific authorities and resources would provide for the safe importation of drugs, the conference report of the new Medicare law gave the Secretary of Health and Human Services specified requirements for a study of drug importation. Among these requirements, the conference report asked the Secretary to "identify the limitations, including limitations in resources and in current legal authorities, that may inhibit the Secretary's ability to certify the safety of imported drugs" and to "estimate agency resources, including additional field personnel, needed to adequately inspect the current amount of pharmaceuticals entering the country."

## **MEDICARE IMPORTATION STUDY AND TASK FORCE**

Last year, when Congress enacted the Medicare Modernization Act, it recognized these safety issues and included language that required that the Secretary certify the safety of prescription drugs prior to authorizing their importation. At the same time, Congress directed the Department to conduct a comprehensive study and prepare a report to Congress on whether and how importation could be accomplished in a manner that assures safety. The Department is currently working on that analysis and has created an intergovernmental task force to steer this effort to completion by the Congressional deadline later this year.

The taskforce includes representatives from FDA, the Centers for Medicare and Medicaid Services, Customs and Border Protection, and the Drug Enforcement Administration.

The taskforce is bringing together a wide variety of health care stakeholders to discuss the risks, benefits and other key implications of the importation of drugs into the U.S., and to offer recommendations to the Secretary on how to best address this issue in order to advance the public health. The statutory language and the conference report provide detailed, comprehensive requirements for the importation study.

As an integral part of the study process, the task force is holding a series of meetings to gather information and viewpoints from consumer groups, health care professionals, health care purchasers, industry representatives and international trade experts. This process affords Congress and the Administration an opportunity to fully address the

complex public health, economic and legal questions in order to make appropriate and effective recommendations about importation of prescription drugs and the associated fundamental changes to the FD&C Act and in safety resources that may be required.

## **CONCLUSION**

The standards for drug review and approval in the U.S. are the best in the world, and the safety of our drug supply mirrors these high standards. The employees of FDA constantly strive to maintain these high standards. However, a growing number of Americans are obtaining prescription medications from foreign sources. U.S. consumers often seek out Canadian suppliers, sources that purport to be Canadian, or other foreign sources that they believe to be reliable. While some foreign drug manufacturers submit their products to FDA for approval, the imported drugs arriving through the mail, through private express couriers, or by passengers arriving at ports-of-entry are often unapproved drugs that may not be subject to any reliable regulatory oversight. FDA cannot assure the safety of drugs purchased from such sources.

The vigilance of FDA and BCBP inspectors is an important tool in detecting imported products that violate the FD&C Act. Given the available resources and competing priorities facing these agencies, however, experience shows that inspectors are unable to visually examine many of the parcels containing prescription drug products that arrive through the mail and private courier services each day. The growing volume of

unapproved imported drugs, which often are generated from sales via the Internet, presents a formidable challenge.

FDA firmly believes that we can and should do a much better job of making safe and innovative drugs more affordable in the United States, but to succeed we need to find safe and affordable solutions that, when implemented, do not put consumers at risk. We appreciate and support the bipartisan commitment to making drugs more affordable for seniors and other consumers and are working hard to achieve the goals of safety and affordability. We believe that Americans should not have to settle for less.

We all agree more needs to be done to continue to address the high cost of prescription medicines. But we must be cautious and deliberate as we consider proposals to accomplish this goal. FDA would urge that Congress ensure that any changes to our drug regulation system do not require American citizens to give up the “gold standard” in drug safety that has become a hallmark in this country. FDA’s scientists, doctors, health care experts and regulators must be empowered to protect us from bad medicine. We owe it to patients today and tomorrow to make our medical future brighter, healthier and more affordable.

Thank you for the opportunity to testify. I look forward to responding to any questions you may have.

