

**Bayer (India) Limited:
The "Other Side" of the Story**

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Data Notes

Lakh is 1,00,000.

Million is 10,00,00.

Crore is 1,00,00,000.

Billion is 1,000 million.

Trillion is 1,000 billion.

Dollars are U.S. dollars unless otherwise specified.

1 U.S. Dollar = 39 Indian Rupees (April 1998).

1 D.M. = 21 Indian Rupees (April 1998).

Tpa is tonnes per annum.

Mt is million tonnes

Indian Financial Year is April-March.

Background

In the last week of March 1998, as India was beginning to end its financial year and the new coalition government led by the Hindu nationalistic party, Bharatiya Janata Party, won the vote of confidence in Indian Parliament, senior officials of Bayer (India) Limited (BIL) were also celebrating, but, for completely different reasons. The reasons were not difficult to seek as the company put out a press release in Mumbai which claimed that it had increased its profits to the tune of 7.3 percent.¹ This achievement was attained in 1997 as compared to the figures for the previous calendar year. In rupee terms, this would mean an increase of Rs 98 million when compared to the figure of Rs 91 million for the previous year. In the same period, the figure of sales and other related income stood at Rs 4,833 million as against the mark of Rs 4,569 million in the previous year.² The company release stated that the net sales and income of the company had also shown an increase of nearly 6 percent. The rise in profits indicated that the fortunes of one of the oldest TNCs in India had registered a turnaround, and now its "no-growth" phase was a thing of the past.

The growth registered by BIL in the financial year 1997 was by no means insignificant as compared to other companies operating in similar businesses in the country. Its agrochemicals products achieved impressive growth against the backdrop of adverse agroclimatic conditions in India. In fact, the BIL launched several new products in 1997. These products included: *Kelthane*, an acaricide used for controlling mites; *Goal*, a herbicide used on various crops; and *Kerathane*, a fungicide used to control powdery mildew. Most importantly, BIL's leading brand, the domestic pesticide - Baygon Power - recorded a satisfactory growth. Similarly, the rubber chemical products also achieved satisfactory growth in spite of flooding of cheap imports due to reduction in the import tariffs, a downward trend in the international prices and a slump in the local user industry. In the consumer care products, sales of BIL grew in both volume and value.

Till the 1990s, BIL received very little attention from its parent company, Bayer AG, Germany. Since no major new products were launched by the parent company in India prior to this period, sales turnover remained either stagnant or average and the company could at best be called a mid-sized company. However, there has been a significant turnaround in the operations of the company in the 1990s. This turnaround coincided with the economic liberalisation programme which was launched in the 1991 in India. A major thrust of liberalisation programme has been to open up India's economy to foreign investments and TNCs by giving them more incentives and concessions. The new liberalised investment environment in India provided new opportunities to Bayer AG, Germany to focus its attention towards its Indian subsidiary. This can be authenticated by steps taken up by the parent company to restructure Indian operations through "re-engineering"; launching of new products in the Indian markets; taking over of Indian domestic companies involved in similar businesses; and making India as the hub of its operations in South Asia as well as as a major source base for certain products for its international markets. In early 1997, Manfred Schnieder, worldwide chairman of Bayer AG also visited India. This was the first ever visit by head of the Bayer AG to its Indian subsidiary.³

¹ "Bayer India reports 7.4 % rise in net profit; to pay 25%," *The Financial Express*, March 31, 1998.

² "Bayer sales rise Marginally, to pay 25 percent," *Business Line*, March 31, 1998.

³ "Off the mark, finally," *Business India*, January 13-26, 1997.

Box 1

Bayer (India) Limited: Financial Data

Chairman: H.V.Goenka

Registered Office: Bayer House, Cent. Avenue, Hiranandani Gardens, Powai, Mumbai - 76.

Telephone: (022) 577 9300

Fax: (022) 577 8423

Year of Incorporation: 1958.

Shareholding

Number of shareholders:	10,756
Indian Promoters :	8.5 %
Foreign Collaborators :	51.1 %
Indian Institutions :	24.8 %
FII's :	-
Public Free float :	16.1 %

Foreign Exchange Transaction (1997)

Fx inflow	Rs m	477
Fx outflow	Rs m	508
Net fx	Rs m	-31

Income Data

Gross sales	Rs m	3,148	2,999	4,490
Other income	Rs m	139	53	77
Total revenues	Rs m	3,287	3,052	4,567
Gross profit	Rs m	379	353	549
Depreciation	Rs m	76	67	100
Interest	Rs m	150	200	299
Profit before tax	Rs m	153	86	150
Tax	Rs m	0	6	56
Profit after tax	Rs m	153	80	94
Gross profit margin	%	12.0	11.8	12.2
Effective tax rate	%	0.0	7.0	37.3
Net profit margin	%	4.9	2.7	2.1

Balance Sheet Data

Current assets	Rs m	1,621	1,931	1,920
Current liabilities	Rs m	622	648	790
Net working cap to sales	%	31.7	42.8	25.2
Current ratio	x	2.6	3.0	2.4
Inventory turnover ratio	Days	74	80	60
Debtors turnover ratio	Days	69	87	56
Net fixed assets	Rs m	865	970	1,019
Share capital	Rs m	162	162	162
"Free" reserves	Rs m	406	408	458
Net worth	Rs m	492	629	692
Long term debt	Rs m	1,226	1,215	1,140
Total assets	Rs m	2,523	2,938	2,976
Interest coverage	x	2.0	1.4	1.5
Debt to equity ratio	x	2.5	1.9	1.6
Sales to assets ratio	x	1.2	1.0	1.5
Return on assets	%	6.1	2.7	3.2
Return on equity	%	31.1	12.7	13.6
Return on capital	%	17.6	15.2	21.5
Exports to sales	%	4.2	8.0	9.0
Imports to sales	%	8.7	8.1	10.5
Net fx	Rs m	-103	24	-31

Fx: Foreign Exchange

Source: *The Quantum Stock Market Yearbook 1998*.

The visit had been preceded by a visit of Dieter Becher - a board member of Bayer AG - in June 1996. At this point, the parent company appointed a new managing director at the BIL, Mr. Alan P McGilvray. Within months of taking charge, Mr. Alan declared that Bayer India would make strategic shifts in tune with the new nature of the industrial regime in India. He also promised to double the company's turnover by the year 2000 and put it on the map of Bayer AG. It is debatable whether Bayer India has become an important strategic subsidiary for Bayer AG or not, but there is no denying that it has registered a better performance in the past few years.

However, this transformation is not so smooth and natural as it is often portrayed by the company. To a large extent, the improved growth of BIL has been built on anti-labour policies; clever violation of existing laws and regulations governing industrial activity in India; hostile and unprincipled takeovers of other existing Indian companies; and scant commitment towards the society and environment. Let us briefly look into the instances which unfolds the "other side" of the story that a "willing" media has so far ignored.

Off-Loading Labour

One of the most controversial issues involving the process of structural reforms in India has been the contentious issue of reducing the number of employees. While industry argued that an oversized work force that was protected by the government was primarily responsible for the industrial slowdown, trade unions and other pro-workers' groups argued that industry was wrong in its arguments as it was not making sufficient investments to enable them to compete in the global market. But, the government fell in line with the industry's argument and while foreign competition was allowed in sectors that had hitherto remained protected, it also allowed the Indian companies to radically restructure the nature of their workforce.

Since the mid-1990s, massive reduction in the size of the work force has been a recurring phenomenon in a large number of companies and Bayer India has not been an exception. This was preceded by Bayer India's decision in 1985 to ban recruitment of workers in the unionised category.

Box 2

Bayer (India) Limited: A Brief Profile

Bayer (India) Limited is a 51 percent subsidiary of Bayer AG, Germany. The R P Goenka Group, one of the leading domestic industrial house, is the majority Indian Partner in the company. The operations of the Indian subsidiary can be categorised as agrochemicals, organic and rubber chemicals, healthcare products and consumer products, animal health products and diagnostics. The consumer care products of the company are sold under the brandname of 'Baygon' Since 1996, the diagnostic division of the company was spun off to form Bayer Diagnostics for a consideration of Rs 25.3 million.

The agrochemicals division still occupies the dominant position, contributing over 60 percent of revenues. The company recently introduced 'BILFEN' - a synthetic pesticide used for control of harmful pests on a variety of crops. The healthcare division launched Bayer's Ciprofloxacin in 1997. The company's Baygon brand continued to be the top selling brand of insecticides. The Public Health division introduced SOLFAC used for control of Malaria. The company is the sourcing base for some products to its parent company in Germany. The export turnover for the 1997 stood at Rs 404 million, a substantial increase over the Rs 240 million achieved during the previous 9 month accounting period.

From a total workers' strength of 1400 in 1980, the number had come down to 1350 by 1990 and 1267 by 1993 by when the process of liberalisation had begun to show its negative impact on the workers.⁴

"Productivity" and "Labour Flexibility" have become the new buzzwords in the new liberalised environment. However, a closer look will reveal that these terms have very little meaning except off loading the "extra" workforce. In a very systematically planned operation since 1994, Bayer India has systematically lured - and also coerced - nearly half its existing work force into accepting what has been called the proverbial "golden handshake". Called the Voluntary Retirement Scheme - named initially by the government - Bayer India launched its scheme in early 1994 when it targeted workers past the age of 57. One year later, the scheme was extended to workers of any age. Various short term financial allurements were given to those workers who accepted the scheme. These included:

- Waiving of housing loan if availed from company;
- Subsidising life insurance premiums held by worker;
- Monthly pension varying between Rs 500 to Rs 2500;
- Nominal health facilities after retirement (voluntary); and
- One time payment subject to a maximum of Rs five lakh.

The VRS scheme of Bayer India was also part of several other corporate strategies aimed at drastically cutting the number of workers. Following are some of the "suspect" methods used by BIL:

- Introduction of the concept of Flexible Work Practices;
- Launch of an "efficiency and effectivity study" in June 1995;
- Delaying an agreement with the trade union from 1995; and
- Introduction of the concept of multi-skill allowance and relating it to a multi-task agreement to prove redundancy in company.

Trade union leaders now admit that the management of Bayer India has succeeded, to a greater extent, in luring workers who have fallen for short terms gains and have failed to perceived the long terms gains made by the company by being able to off load more than 500 of its 1300 strong work force. Even the agreement (signed between the management and unions and valid for the three year period between 1995 and 1998) was signed only in April 1997. This agreement concedes little for the company and extracts the most from the workers as they have been forced to perform duties other than those they were employed for, for an additional allowance of only Rs 800. Moreover, the agreement has already become redundant, but the management has shown no urgency so far in calling the labour unions to the negotiation table to finalise the agreement for the next three years beginning April 1998.

Similarly, new tactics such as sub-contracting and parallel production are also being used by the company. Various analysts have looked into this phenomenon which is widespread prevalent,

⁴ Arvind Shrouti and Nandkumar, *New Economic Policy, Changing Management Strategies - Impact on Workers and Trade Unions*, Maniben Kara Institute and Friedrich Ebert Stiftung, 1994.

Box 3

The Reality of German Investments in India (1991-96)

Since 1991, the Indian government has announced many policy measures to attract foreign investments as part of structural adjustment programme. Germany stand seventh in the list of top investor in India in terms of approvals during August 1991-April 1997. During the period 1991-96, the industrial sector alone contributed nearly 90 percent of the total German collaborations. The agriculture sector collaborations amount to less than 2 percent of the total collaborations and the rest belong to service sector.

There are several factors which have contributed in the rapid surge in the foreign investments from Germany into India. The rapid increase in German investments in India as compared to other countries, since 1991, has been made possible by the intense lobbying and pressures from German TNCs as well as government representatives, besides efforts made by the Indian governmental agencies to woo them. The German investments have been largely facilitated by offering major concessions which include Investment Protection Treaty and Double Tax Avoidance Pact between India and Germany. Much of pressure from Germany to amend India's Patent Act has come from big German TNCs involved in drug business in India.

The major attractions for German investors in India are cheap labour, huge domestic market, and lax environmental and public health regulations with ineffective implementation by state machinery.

The cheap labour with toothless labour legislations in India are one of the major attractions for German investors. The growing wage disparities between India and Germany can be understood by putting this question - Whom would you rather employ- one German worker, two Americans, five Taiwanese, eight Brazilian or 128 Indians? The hourly wage bill for each of these five groups of workers turns out to be the same. If an Indian manufacturing worker can be hired for only Rs 8 (25 cents) an hour, compared to \$32 in Germany, surely it makes sense for German investors to shift their production to India. German TNCs do not loose but gain more by shifting production processes to India as activities such as design, patent, marketing and finance contribute many times more than the value (eg. a shirt) than its basic manufacture.

Instead of advocating improvements in the living conditions of the workforce and effective implementation of existing labour laws and schemes, there has been a growing demand by German investors and government for the dilution of labour laws. Germany has been consistently pressurising India to change existing labour legislations through various foras. The major demands centres around amendments in Industrial Disputes Act and introduction of an Exit Policy. Many German corporations in India are adopting new strategies to marginalise and reduce the bargaining power of the Indian labour. These strategies include ban on new recruitments in unionised categories, parallel production, Voluntary Retirement Schemes, etc.

Another major attraction for German investors is India's huge domestic market of goods and services. Our investigations found that 82 investment proposals from Germany were cleared during the period, 1991-96, into areas which can be defined as 'low-priority' areas. These investment proposals include products like Beer, toilet soaps, cosmetics, perfumes, jewelry, decorative tiles, BMW mobikes, Mercedes Cars, fruit juice concentrates and many more. Besides, many German TNCs are involved in takeovers and mergers with existing Indian companies thus capturing increasing share in domestic markets. German TNCs - Seimens, Bayer and Hoechst are involved in takeovers and mergers in India.

With the growing awareness of people on environmental and health and safety issues and subsequent strict enforcement of these standards in Germany, German corporations are getting more attracted to India where one can get easily away from any catastrophe. German companies are currently investing in dyestuffs, PVC, agrochemicals, foundaries and forging, and other polluting industries in India. India is becoming a major manufacturing base for German corporations.

contd. on next page

Wage Disparities

Hourly labour costs in manufacturing (US\$)

Country	1985	1995
Germany	9.60	31.88
Japan	6.34	23.66
France	7.52	19.34
United States	13.01	17.20
Italy	7.63	16.48
Canada	10.94	16.03
Australia	8.20	14.40
Britain	6.27	13.77
Spain	4.66	12.70
South Korea	1.23	7.40
Singapore	2.47	7.28
Taiwan	1.50	5.82
Hong Kong	1.73	4.82
Brazil	1.30	4.28
Chile	1.87	3.63
Poland	na	2.09
Hungary	na	1.70
Argentina	0.67	1.67
Malaysia	1.08	1.59
Mexico	1.59	1.51
Czech Republic	na	1.30
Philippines	0.64	0.71
Russia	na	0.60
Thailand	0.49	0.46
Indonesia	0.22	0.30
China	0.19	0.25
India	0.35	0.25

Source: Morgan Stanley, 1996

German companies involved in dyestuff industries are closing down shutters as environmental movement has gained political clout and implementation of anti-pollution norms has become very stringent. With the high cost of effluent treatment plants and other anti-pollution measures, it becomes economically unviable for these companies to continue their plants in Germany. Out of total investments of Rs. 302 million in India's dyestuff industry during 1991-96, 52% has come from Germany alone.

Following are some of the recent instances of violation of existing environmental, public health and other regulations by the German TNCs in India. These instances clearly indicate that German companies have been allowed to get away easily whereas in Germany both public opinion and state machinery would have ensured otherwise.

- In 1996, Boehringer Mannheim India Limited was involved in a controversy as its drug, Comsat Forte, was found to be contaminated which led to the death of two people and seriously affected several others.
- Hoechst India has been accused of its involvement in transfer pricing by importing a drug intermediate from its German company Hoechst AG, at seven times more than the international competitive prices.
- In 1994, Siemens was accused of dumping in India a cancer cure machine which has been banned in the West. Siemens was offering these machines at dump prices in order to get rid of the large stocks of sub-standard equipment which it cannot market in the West.
- In 1996, Bayer India was accused of 'modifying' production processes and claiming price control exemption on the grounds that the new processes are being developed through indigenous R&D.
- Hoechst, which is also involved in biotechnology, has been found of taking biological/genetic resources from India and making commercial use of these resources, including by obtaining patents.

Source: Excerpted from Kavaljit Singh, *The Reality of Foreign Investments: German Investments in India (1991-96)*, Madhyam Books, New Delhi, 1997.

especially in the Bombay-Thane region of Maharashtra where the main plant of BIL is located. BIL has been accused of following the unscrupulous practice of sub-contracting part of its operation to other companies and thereby making substantial savings on industrial benefits and in the process denying workers their due. This is being done for more than one hundred workers in their plant in Thane where the "heavy gang"⁵ department along with the workers' canteen and gardening section has been sub-contracted to other private companies.

While in reality, these workers work for BIL at its plant, but in effect, legally it has no responsibilities towards them as they are employees of small individually-owned private companies. As a result, the workers are denied the basic welfare benefits which include health and insurance cover. What however, compounds the Bayer's "crime" is the fact that while company officials sit and participate in meetings between the contracting company and its workers during wage settlement negotiations, they do not officially are a party to the agreement. Through this process, BIL avoids any legal obligation towards the workforce.

Another very serious "irregularity" omitted by Bayer India relates to the fact that most of the products manufactured by the company have variable demand in the course of the year. The demands for pesticides normally reaches its peak in the months after monsoons and touches its lowest point during peak summer. Instead of increasing production at its Thane unit, the management prefers to meet the requirements by getting the products manufactured by smaller companies in the region and elsewhere. In effect, the smaller companies using substandard processes carry out the production of products while BIL only take care of marketing of these products under its brand name. For instance, we found that the batch of Baygon Power being sold in the first quarter of 1998 in the markets of New Delhi (batch number BYA/8/11, dated February 1998) has been manufactured by the Aero Industries located at Vapi, Gujarat (nearly 250 km. from the Bayer's plant at Thane, Maharashtra) and marketed by BIL.

These subcontract companies (their number goes in excess of 20) maintain poor health and safety standards. None of subcontract units can claim of following quality controls and standards. None of these companies (their number goes in excess of 20) maintain safety standards that can be talked about in an appreciative manner. Most of these small companies are little but hastily put together operations established only to serve the requirements of large companies, mainly TNCs. There have been reports that some of these companies simultaneously produce products for both Bayer and some of its rivals. The working conditions in these manufacturing plants is so pathetic that even the owners and promoters of such units also admit it. Since the labour and environmental regulations are not followed in such units, these provide manufactured goods at a very cheap rate. Majority of workers in these units work on contract or temporary basis and get very low wages. No mandatory health and safety measures for the workers are followed in such units. Formation of unions in these units is not easy and as a result, they largely remain non-unionised. Companies such as Bayer and others prefer to get goods manufactured at such plants as it not only makes economic sense but also provides them protection from the prospects of a labour or environmental dispute. Besides, this strategy also helps in weakening the bargaining power of the unionised workers based at its main plant. The unionised workers cannot afford to take steps such as strikes or lockouts to force management to accept their demands because there is an

⁵ Heavy Gang refers to manual labour.

imminent fear that the management will get production done outside the company through subcontracting firms. Thus, the power of unions and unionised workforce at the main plant has also got weakened and they tend to follow the dictates of the management. On the whole, workers whether they are unionised or not; whether they work at the company's main plant or at the subcontract units are the main losers.

Box 4

Pesticides Industry in India: A Glance

- Higher incidence of insects, owing to India's hot and humid climate results in higher consumption of insecticides. The installed capacity of the Indian pesticide industry is about 124,000 tonnes. However, demand is seasonal - the maximum being consumed in the months from July to November. Thus average capacity utilisation stands at 65 percent.
- Nearly 67 percent of pesticides manufactured in India are used for two crops; namely rice and cotton, which are grown during July to November. Pesticide consumption is also skewed geographically, limited to Green Revolution areas. Andhra Pradesh and Punjab alone consume 47 per cent of pesticides produced in the country.
- Pesticides can be manufactured and sold mainly in two forms: technical and formulations. Technical is the first stage of manufacture where the chemical is concentrated and unsuitable for direct use. This is then processed with other materials to create formulations. The technical grade segment is dominated by the organized sector while the unorganized sector mainly operates in the formulation segment. There are over 600 formulators of which around 20 per cent are associated with the technical grade manufacturer.
- The industry is working capital intensive. Working capital accounts for nearly 45-50 percent of the total capital employed. Thus, TNCs with their strong financial clout dominate the Indian industry.
- Since the industry caters to the farming community, majority of the sales is on credit. Recently, nearly 100 farmers in the states of Andhra Pradesh, Karnataka and Maharashtra committed suicide because they were unable to repay debts to local moneylenders when they bought large quantities of pesticides last year to fight against pest menace due to delayed monsoon. To overcome pest problem, the farmers overused pesticides and in the process got their standing crops damaged.
- India loses Rs 100 bn annually due to crop losses. The current demand for technical grade pesticides stands at about 85,000 tpa and has been growing at 5-10 percent annually.
- The exports of pesticides from India are likely to surge in the coming years. Availability of trained manpower at a reasonable cost and less stringent environmental regulations make India an attractive sourcing base.
- With the current emphasis on increasing production (for exports and domestic consumption), and coupled with improve the quality of agricultural products, the country's dependence on better quality seeds and irrigation will have to increase. This in turn will translate into a higher demand for pesticides.
- Under the new product-patent regime as laid out under the GATT negotiations, the Indian companies will no longer have access to newer molecules after the grace period of 10 years. Thus, Indian companies will lose to TNCs such as Bayer given their low level of inclination for research and development. Alternatively, they will have to enter into agreements with TNCs for use of patents.

Flirting with Hazards

Bayer India has been accused of promoting extremely dangerous pesticides products in the country without providing adequate information and warning to the users. In a petition prepared by a Mumbai-based citizen's group, Sachetan, it has been emphasised that the Bayer India has been producing and marketing the extremely dangerous pesticide Baygon Power, without forewarning its buyers that the product contains the lethal chemical Propoxur. Propoxur has been rated as "highly hazardous" in the Toxicity Data Handbook, Volume IV - Pesticides B, published by Indian Toxicology Programme (CSIR), Environmental Information System, Department of Environment & Forests (Government of India). Moreover, the New Jersey Department of Health, in its Hazardous Substance Fact Sheet states that:

"Propoxur can affect you when breathed in and it quickly enters the body by passing through the skin. Severe poisoning can occur from skin contact. It is a moderately toxic carbonate chemical. Propoxur may cause mutations. Exposure to Propoxur can cause severe poisoning with symptoms of headache, nausea, vomiting, diarrhoea, muscle twitching, loss of co-ordination and even death. It can also cause cancer and decrease fertility in human beings. Repeated exposure can cause chronic effects."

Controlled experiments have been carried out to determine the quantity of Propoxur released from Baygon Power. The findings are ominous: approximately 600 milligram of Propoxur is released in a room when the nozzle is kept pressed for 30 seconds. Given the twin facts that 30 seconds is the minimum time the consumer keeps the nozzle pressed, and modern houses contain rooms measuring on the average 27 meter cube. The result is a Propoxur concentration of 22.2 milligram per meter cube. The Threshold Limit Value - Short Term Exposure Limit (TLV-STEL) i.e. recommended air borne exposure limit adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) is 2 milligram per meter cube for a period of 15 minutes. In effect this means that the consumer of Baygon Power is exposed to ten times higher concentration of Propoxur. Children, old people and the sick are naturally at greater risk during exposure to Propoxur.

Despite these facts, Baygon Power is marketed as a domestic pesticide and it is the market leader in India. This product can be bought across the counter and there is no age bar on the person buying it. Its label, suppresses the fact that the container has inflammable LPG as a propellant gas. Moreover, the leaflet which is enclosed along with the product does not provide any information about the dangerous nature of the product. But, most importantly, the product is advertised on TV and other media in just like any other consumer product. It is advertised as "a handy, convenient aerosol spray that gets rid of cockroaches and mosquitoes on the spot". The public is advised to use the product as an aerosol spray i.e. to say it is to be sprayed in the air. The public is told that the can of Baygon Power can be kept "by your side" in the bedroom, the living room, bathroom and the office. There is clearly no attempt to educate the potential buyers of the possible consequences if the product is wrongly used.

According to Section 3 (k) of the Insecticides Act in India which Bayer India has to conform to a product is termed 'misbranded' if :

- its label contains any statement, design or graphic representation which is false or misleading,

- or if its package is otherwise deceptive in respect of its contents; or
- if it is an imitation of, or is sold under the name of, another insecticide; or
 - if its label does not contain a warning or caution which may be necessary to prevent risk to human beings or animals; or
 - if any word, statement or other information required by or under this Act to appear on the label is not displayed thereon in such conspicuous manner as the other words, statements, designs or graphic matter have been displayed on the label and in such terms as to render it likely to be read and understood by any ordinary individual under customary conditions of purchase and use.

These facts have been well documented in the petition prepared by the Sachetan.⁶ It is thus evident that Bayer India is violating several sections of the Act. But, the government has yet to initiate action against them despite strong demands by consumer protection groups.

Is BIL's Plant at Thane safe?

Recently, the Maharashtra High Court ordered six chemical units located in the Thane region to shift their plants because of possible threat to life due to pollution to the public living near these plants. BIL's plant was one of the these chemical units ordered to be shifted. Besides Bayer, two other plants belonged to German TNCs - Boehringer Mannheim and Colour Chem. The proximity of hazardous chemical units to a larger cluster of population was the concern which led the court to suggest that these units should be shifted out of this region. However, the verdict of the High Court was later challenged at the Supreme Court by these companies, including Bayer. To the surprise of many, the Supreme Court gave a verdict in the favour of these companies. Although the companies are extensively using the judgement of the Supreme Court to prove their claim that these plants pose no threat, the local people as well as concerned environmental and other NGOs are far from convinced. Instead of taking steps to educate the public living near the plant about the hazardous and dangerous chemicals being used and what precautionary steps people should take in the event of an industrial mishap, the management

Table 1: The Hazardous Chemicals and Safety Zone

Unit	Hazardous chemical	Safety Zone (no development)
Bayer	Ethylene Oxide	400 metres
Colour Chem	Ethylene Oxide	400 metres
Boehringer Mannheim	Ethylene Oxide	400 metres

Source: *Business India*, May 20-June 2, 1996.

⁶ In 1996, Sachetan prepared this writ petition to be filed at the High Court, Bombay but still it has not been filed. A copy of the petition is given in Annex A. Those who wish to get in touch with the organisation for further details, should contact the organisation at this address: 79, Carter Road, Bandra, Bombay 400 050. Phone: 022 6040739.

of BIL is making false claims that people in the neighbourhoods should not feel insecure as there is no threat to their lives from the plant. No one can deny the fact that BIL's plant is engaged in the manufacture of a whole range of chemicals, pesticides and drug products which involve hazardous chemicals. Storage and movement of hazardous chemicals and discharge of effluents is very much a part of its operations. Besides, hazardous chemicals, carbon disulphide and ethylene oxide, are stored in sizeable quantities in its plant. In fact, in the early 1990s, fearing the prospects of a Bhopal like disaster in the region, the Maharashtra Pollution Control Board constituted a high power committee under the chairmanship of Dr. R.K. Garg. This committee studied nearly 60 units in this region which could pose pollution problems to people and places. BIL's plant was included in this list of companies which were studied.

The Garg Committee Report III of 1990 had also stated that no development closer to these plants be taken up as these plants store hazardous and toxic chemicals which can pose serious threat to the life of people. However, no action was taken to enforce the recommendations and as a result, a large number of dwellings have come in the nearby areas of these plants, posing a potential danger to the people.

Shifting of Polluting Processes to India

Bayer AG, Germany was instrumental in the shifting of polluting production processes from its own plant in Germany to India. In 1991, a new agrochemicals formulation plant of BIL was set up in India at a cost of Rs 40 million, which produces foliodol dustable powder, an agricultural insecticide. Bayer has shifted its production of metasystox, a crop protection product, from its Leverkusen based agro-chemical plant to its Indian operations. This plant was set up at Thane unit. This facility has a production capacity of 800 mt per annum, of which 50 per cent will be picked up by the parent company. In 1995, Bayer announced that its entire global requirement of metasystox will be sourced from India. The decision to source the insecticide from its Indian subsidiary is part of the company's long-term plans to make India as the hub of Bayer's operations in the South Asian region.

Similarly, the dyestuff industries, in which Bayer is a major player, is also getting relocated from Germany to India. TNCs with their plants in Germany are closing down shutters as environmental movement has gained political clout and implementation of anti-pollution norms has become very stringent. With the high cost of effluent treatment plants and other anti-pollution measures, it becomes economically unviable for these companies to run their plants. In comparison, India offer low production and labour costs with hardly any restrictions and virtually toothless environmental laws and regulations. Thus, it is convenient to these corporations to shift their production to India.

At the global level, only half a dozen of TNCs account for more than 50 percent of the global output of dyestuffs, of 1.2 million tonnes. The global markets are dominated by Hoechst, BASF and Bayer of Germany, Sandoz and Ciba Geigy of Switzerland, and American Color and Atlantis Chemicals of the US. Relatively, the Indian industry contributes only 6 percent of the total world product but Germany alone accounts for the second largest share of Rs. 1333 million. With the three major German TNCs Hoechst, Bayer and BASF shifting production processes to India, the production capacity will increase substantially, Hoechst AG has recently set up

Dystan India, which will be a 100 percent subsidiary of Dystan GmbH of Germany, the 50 : 50 Joint Venture between Hoechst AG and Bayer AG. With this, Colour Chem (India), the dyes and pigments business of Hoechst will produce only dyestuffs and Dystan will produce the entire range of Hoechst and Bayer dyes and export these and Colour Chem's products.

Exploiting Loopholes in India's Drug Policy: The case of Bayer

In 1996, BIL was accused of allegedly "modifying" production processes and claiming price control exemption on the grounds that the new processes are being developed through indigenous research and development (R&D). Under the new Drug Policy, a pharmaceutical firm, which develops a new drug through indigenous R&D, is given the liberty to fix its price. The Drug Policy announced in 1995 raised the 5-year price control exemption to 10 years in order to promote R&D activity in the country. Since India recognizes process patent and not product patent, in most cases, firms "alter" the production process of a marketed drug to claim price control exemption for 10 years. □B

yer (India) Limited has sought exemption of anti-histamine Mebhydroline salt stating that it has developed a new process wherein the chemical route has been changed. According to industry sources, neither do these processes provide a major breakthrough nor do they claim import substitution, thus the company is exploiting the loopholes in the new drug policy. "LeaveDe alone development of new drug, these R&D do not lead to improvement in technology, cost reduction, import substitution or ecofriendliness," say industry sources.

The expert committee set up to verify Bayer's claim is also aware of such "modifications" under which drug TNCs are taking advantage of this clause. The committee is faced with a Catch-22 situation. In order to promote R&D, certain incentives have to be provided to the firms. "If we exempt them from price control, they raise prices; if we do not, they do not undertake R&D," says a panel member of the expert committee.⁷

Widening Presence through hostile Takeovers and Acquisitions

At a time when global mergers and takeovers among TNCs are taking place, BIL is also actively involved in takeover of existing Indian companies. The main purpose behind the takeover and acquisition is to eliminate domestic competition and increase its market share in India. Its desire for monopolistic power has been further facilitated by the new liberalisation policies.

Bayer India embarked on an acquisition spree in 1996. Without first sorting out the crisis it faced in the Thane unit, it entered into a tie-up with the Chennai-based Sanmar group to manufacture thermoplastic polyurethanes. Significantly, BIL acquired a majority 51 per cent equity holding in the company. In quick succession after being emboldened by the 'success' in Chennai, Bayer also took over the Baroda-based ABS Industries which was primarily engaged in the production of plastics. Within the week of this acquisition, another Chennai based company Indian Systans Ltd that makes leather chemicals was acquired. The management of Bayer India has sought to highlight the acquisitions and has cited the acquisitions as evidence of its growth. However, experts

⁷ "Firms escape price control exemption," *Indian Express*, August 4, 1996.

have argued that acquisitions destroy competition; give rise to monopolistic powers; and acquisition per se can not be equated with growth.

Besides, serious allegations have been made about the manner in which BIL took over these companies. For instance, the Securities and Exchange Bureau of India (SEBI) which monitors of corporate functioning has initiated a probe against BIL into allegations of insider trading.⁸ The main charge against BIL is that it had secretly told some senior officials of ABS Industries - before it initiated acquisition moves - to buy shares of the company. Later, after BIL made the open offer to buy shares of ABS Industries, these shares were offered by the officials to BIL. Through such a move, which is considered illegal by the Indian authorities, BIL managed to pick up sufficient shares to takeover the ABS Industries. The SEBI officials are currently investigating the charges even though BIL has denied it. The SEBI had also asked the minutes of its board meetings to ascertain the facts. At the time of writing, the investigations by SEBI are going on.

This is not the first time that BIL has come under a financial cloud. Even earlier there were enquiries by other Indian authorities against the BIL. In 1997, the Excise Board made a case against the evasion of excise duties by the company.

Concluding Observations

BIL which was a fringe player in the Indian industrial scenario till major liberalisation policies were announced in the country in 1991 has significantly increased its presence since then. However, this growth has been accompanied by deteriorating commitment to industrial values and total disregard for social and environmental concerns. BIL has greatly succeeded in marginalising the trade unions and is seeking to impose its new industrial culture among its workers. BIL has also benefited with lax regulatory bodies which have not acted as the society's watchdogs over industry. In the process, BIL has sullied its image and tarnished its reputation among the conscientious citizens of India. Given the Indian government commitment not to initiate any strict policy actions against TNCs as it fears that such a move will give a wrong signal to foreign investors and new foreign investments will suffer, BIL is likely to benefit from its restructuring and re-engineering programme in the coming years. However, this raises an important public policy issue, not only in the case of Bayer alone but also in the case of other TNCs - At what cost should we invite foreign investments and TNCs in India?

⁸ Rajeshwari Adappa Thakur, "Sebi probing Wipro, Bayer for insider trading," *The Economic Times*, April 3, 1998.