

**Counter-Proliferation Export Controls Workshop  
Abu Dhabi, United Arab Emirates, 7 June 2006**

***Implementing CWC Obligations – An Australian Perspective***

***Vanessa Masters  
Executive Officer  
Arms Control Section and  
Australian Safeguards and Non-Proliferation Office***

**History**

At the end of World War I, 113,000 tons of chemical warfare agents had been used. Chemical warfare agents were responsible for 1.3 million casualties and around 100,000 fatalities. The use of chemical weapons during the First World War led to the negotiation in 1925 of the Geneva Protocol which prohibited the use of chemical weapons but did not prohibit their acquisition or stockpiling. It was this omission which permitted states to continue to develop chemical weapons legally.

The international reaction to Iraq's use of chemical weapons in the 1980s created impetus to move forward with the long-stalled negotiations for an international treaty stronger than the Geneva Protocol to ban chemical weapons, leading to the Chemical Weapons Convention (CWC).

Australia is strongly committed to the CWC as a fundamental element of chemical weapons non-proliferation. Hopefully, by sharing some of our experiences including the challenges and problems encountered and possible solutions, we may be able to provide ideas to others on ways that help to fulfil obligations under the Convention.

**Australia and the CWC**

Australia signed the CWC on 13 January 1993 and ratified it in May 1994. The CWC came into force on 29 April 1997, as did Australia's national implementing legislation.

On a world scale, Australia's chemical industry is small to modest in size, although in terms of terms of CWC declarable facilities it is one of the largest in South East Asia. The associated chemical production and importation primarily serves our industrial, agriculture and mining sectors.

Australia has an active chemical industry with, consequently, considerable reporting and inspection obligations. The total number of facilities eligible for inspections at present is 38, with most of them producing discrete organic chemicals (DOC). The definition of a DOC is any chemical compound belonging to the class of compounds of carbon except for its oxides, sulfides and metal carbonates. Australia has at least one of each of the three types of Scheduled chemical facility.

## **Principle CWC Obligations**

Many chemicals produced or used for every day industrial, medical or research activities can also have applications in the manufacture of chemical weapons. Historically, chemical industries have been used to produce chemical warfare agents. So to provide assurance of compliance with CWC obligations, States Parties undertake to:

- declare information (twice yearly) on certain chemical activities to the OPCW;
- permit routine inspection of relevant facilities by the OPCW;
- monitor and regulate international trade in certain chemicals to prevent possible assistance to CW programs in other countries; and
- encourage ratification.

Therefore, through declarations and inspections, the OPCW monitors countries' production, trade, and in some cases, usage of certain toxic chemicals and precursors, to verify that these are for legitimate purposes only.

## **Australia's CWC Legislation**

Australia's National Authority implements Australia's CWC obligations through the following legislation and associated regulations.

The CWC is implemented in the main through the Chemical Weapons (Prohibition) Act 1994 and its associated regulations. The Act makes it an offence, by penalty of life imprisonment, if any Australian citizen or resident assists, encourages or induces, in any way, any person in or outside Australia to engage in any activity prohibited under the Convention or to develop, produce, acquire, stockpile, retain or use CW. The use of riot control agents as a method of warfare is also prohibited. Australia has no CW but should any be found and recovered, they would be automatically be forfeited to the Government for declaration to the OPCW and subsequent destruction.

The Act also establishes a system of permits and notifications for the chemical industry in order that Australia is able to make accurate industry declarations to the OPCW. A permit is simply a mechanism for ensuring that the particular requirements of the CWC, as they relate to a facility or site, are met. It is the means for gathering information to be declared to the OPCW, and for ensuring that any inspection takes place smoothly. In order to reduce the administrative burdens on industry, permits remain valid for up to 5 years, with a twice yearly reporting obligation. Detailed requirements affecting permit holders, and organisations making notifications are set out in regulations under the Act. The regulations specify times when notifications and reports must be made and permits renewed, as well as certain reporting and record-keeping requirements.

The Act provides for routine inspection of facilities which require a permit, or make a notification, either by the National Authority or OPCW inspectors. The focus of national inspections is to check compliance with requirements under the Act, to assist preparation for possible OPCW inspection and to ensure appropriate security is given to Schedule chemicals.

To meet the CWC's requirements in relation to international trade of scheduled chemicals, Australia implemented appropriate changes to existing regulations under our *Customs Act 1901* to cover imports and exports of CWC Scheduled chemicals.

- *Customs Act 1901*
- *Customs (Prohibited Imports) Regulations 1956* (Reg 5J)
  - administered by National Authority
- *Customs (Prohibited Exports) Regulations 1958* (Reg 13E)
  - administered by Defence
  
- Permit system established – includes annual notification to the National Authority of imports
- Permit conditions apply – counter terrorism initiative
- Trade in Schedule 1 and 2 chemicals to States not Party to the Convention is strictly prohibited.
- Criminal and administrative penalties apply for importing/exporting without a valid permit.

Relevant legislation and regulations can be found at: <http://scaleplus.law.gov.au/>

### **Australian Safeguards and Non-Proliferation Office**

The Australian Safeguards and Non-Proliferation Office (ASNO) is the CWC National Authority in Australia and is part of the Department of Foreign Affairs and Trade. ASNO is a relatively small office. Apart from the two senior executive officers, its staff consists of 10 scientists and two support staff. The goal of ASNO is to enhance Australian and international security through activities which contribute to effective regimes against the proliferation of weapons of mass destruction.

ASNO is responsible for the domestic implementation of the CWC. This includes administering related legislation; collecting and declaring relevant chemical information to the OPCW; and facilitating occasional facility inspections, while protecting commercial and national interests. ASNO assists implementation and universalisation of the Convention through regional outreach

In addition to implementation of the CWC, ASNO is also responsible for implementing Australia's WMD Treaty obligations under the Nuclear Non-Proliferation Treaty, the Comprehensive Nuclear Test-Ban Treaty.

### **ASNO's operating environment**

Australia has a number of domestic and international stakeholders that assist the National Authority in its key role to implement the Convention.

On the international front ASNO cooperates with other National Authorities, in particular, with New Zealand and the United Kingdom. Upon request, Australia has provided technical advice and assistance to a number of countries including Vietnam, Thailand, Fiji and Cambodia, as well as presenting in a variety of CWC-workshops.

On the domestic front ASNO works closely with the Arms Control Branch within the International Security Division of the Department of Foreign Affairs and Trade, in particular providing technical advice on implementation issues. In order to fulfil Australia's CWC obligations, close cooperation and communication between ASNO and other Australian Government agencies is vital for the following CWC-relevant activities. This includes:

- regulation of chemical exports (*Department of Defence, Defence Trade Control and Compliance Section*)
- compliance with import and export controls (*Australian Customs Service, ACS*)
- issuing of OPCW inspector visas (*Department of Immigration*)
- destruction of old chemical munitions (*Department of Defence*)
- point of entry clearance procedures for OPCW inspectors and non-scheduled flight clearance (*ACS, Quarantine, Immigration, civil aviation and transport authorities*)

### **Permits and Notifications**

Australia has a system of permits for importing, exporting, producing, processing or consuming Scheduled chemicals.

Schedule 1 (High Risk) – CW agents, binary, toxins, limited use Schedule 2 (Significant Risk) – toxic chemicals, Schedule 1 precursors, dual-use Schedule 3 (Risk) – Common dual-use eg phosgene, triethanolamine
---

There are several types of permits available, depending on the Schedule and type of activity. A facility requires a permit if:

- it produces, acquires retains, uses or transfers any amount of Schedule 1 chemical;
- it produces, processes or consumes a Schedule 2 chemical above the annual threshold; or
- it produces more than 30 tonnes of a Schedule 3 chemical.

All permits are issued for one year but are automatically renewed for a further four years. Their effective life is 5 years. Annual automatic renewal is dependent upon timely submission of reports specified in the permit. There is no direct cost to industry for the issue of permits or other regulatory activities undertaken by ASNO.

Permits are also required for all trade on Scheduled chemicals. Individual permits are required for each shipment of Schedule 1 chemicals with permit applications made at least 37 days in advance. Import permits are valid for one year and may include any number of CWC Schedule 2 and 3 chemicals with no limits on quantity. The condition of transfer is that the chemical may only be used for research, medical, pharmaceutical or protective purposes. It is also a requirement that ASNO be notified of the receipt of chemical.

Australia also declares to the OPCW chemical facilities producing non-Scheduled discrete organic chemicals, above threshold quantities. This requirement relates to the

production capability that could be potentially used for CW agent manufacture, particularly multi-purpose plants, and not to specific chemicals. It is this aspect of the CWC which probably has the most widespread impact for Australian industry. Rather than requiring a permit, DOC facility operators are required to submit annual notifications. This is essentially a catch-all provision.

### **Security Measures**

As part of the conditions of issuing a permit, ASNO also requires that certain chemical security measures be implemented for non-proliferation and counter-terrorism purposes. The permit holder must provide ASNO with:

- immediate notice of any unexplained loss, theft or suspicious incidents that involve CWC Scheduled chemicals (they must also inform other relevant authorities);
- where closure of a company is proposed, prior written advice and disposal details for excess stocks of CWC Scheduled chemicals, including quantities transferred or destroyed;
- a description of security measures for the physical protection of CWC Scheduled chemicals, with annual updates; and
- where possible, written advice prior to any alterations to contact details, ownership, company name or address.

### **Trade Restrictions**

There are a number of trade restrictions in place for trade to States not Party to the CWC. These include:

- trade in Schedule 1 and Schedule 2 (above 10%) chemicals is strictly prohibited; and
- end-use certificates are required by DTCC for exports of CWC Schedule 3 chemicals.

### **Regulating Trade**

Australia was the 11th country (March 2003) to formally adopt the 6-digit harmonised systems of codes recommended by the World Customs Organisation for CWC Scheduled chemicals.

To better track and regulate Australia's overseas trade in CWC Scheduled chemicals, ASNO and DTCC have assist the Australian Bureau of Statistics to introduce unique customs and import tariff and export classification codes (AHECC) for each chemical. These codes are based on those of the World Customs Organisation and are 8 digit codes for exports and 10 digit codes for imports.

Data from Customs – based on listed classification codes – is requested on twice-yearly basis to help identify new importers. However, customs data alone is not reliable enough for declarations purposes.

One permit is valid for one year and can include any number of CWC Schedule 2 and 3 chemicals with no limits on quantity. Permit conditions also include annual notification of imports to ASNO and there is an additional permit condition which requires security advice for storage of chemicals as well as notification of theft, loss or suspicious events.

### **Status of Implementation in Australia**

Australia consistently and comprehensively meets its obligations under the Convention. Australia also has been at the forefront of supporting and introducing improved implementation practices such as its unique customs codes to track CWC Scheduled chemicals. The support of chemical companies and traders, and the Plastics and Chemical Industries Association (PACIA) is fundamental to Australia's achievements.

Australia regulates approximately 100 facilities in total. Australia's protective purpose facility produces very small quantities of Schedule 1 chemicals for defensive research including analytical studies and the testing new material for uniforms. Australia has other research facilities, such as universities, producing and/or using Schedule 1 chemicals - but at quantities of less than 100 grams and therefore not requiring to be declared.

There are 10 Schedule 2 facilities (6 declarable, 1 inspectable) involved in processing/consumption of Schedule 2 chemicals, but no production. Australian facilities use Schedule 2 chemicals for their flame retardant properties in fireproofing fabrics and polyurethane foam, as well as being used in the paint industry.

The number of facilities declared as working with Schedule 2 chemicals varies annually depending on whether above threshold quantities (ie 1 tonne) have been used throughout the year. Australia currently has one facility processing above the verification threshold (ie 10 tonnes) and that facility has been subject to inspection. We require permits are required for all facilities processing Schedule 2 chemicals, including those using less than 1 tonne in any given year. This system enables ASNO to monitor activities with Schedule 2 chemicals and ensures that all facilities that need to be declared in any given year are included in the annual declaration.

Schedule 3 facilities are the easiest to identify as declarations required for production only and, unlike Schedule 2, specific chemicals rather than families of chemicals are identified. Importantly, production includes intermediates in, or byproducts of a process. The Schedule 3 plants are primarily associated with hydrogen cyanide "captive" production en route to sodium cyanide, and in one case triethanolamine production.

Australia also declares a number of facilities producing DOC's including speciality chemical manufacturers as well as other industries eg pesticides (glyphosates), organic fertilizers (urea), and industrial alcohols. Production refers to production through a chemical reaction and may include formulations which involve a chemical reaction (eg conversion of glyphosate to its isopropylamine salt).

## Declarations

Australia's annual declaration of past activities includes information on Australia's Schedule 1 Protective Purposes Facility, Schedule 2 processing and consumption facilities (6), Schedule 3 production facilities (3, with 2 being "captive use") and DOC production facilities (approx. 33). Australia also declares imports of CWC Scheduled chemicals (approx 45 importers) and a lesser number of exports, both primarily Schedule 2 and Schedule 3 chemicals.

Whilst our declarations are as complete, accurate and timely as we can make them, the OPCW may require clarification of some data on occasion, especially in regard to trade reconciliations. However, we view this as a standard and necessary practice and use it as a means to correct past and improve future declarations.

From the Australian perspective, the main elements for making good declarations are:

- Identifying all relevant facilities and trade;
- Establishment of CWC implementing legislation with offences and penalties;
- Establishing a CWC National Authority or empowered coordinating agency;
- Implementing a domestic regulatory and reporting system;
- Establishing cooperative arrangements with other agencies, eg the Department of Defence (who control CWC Schedule chemical exports) and Customs (who enforce import and export controls at the border);
- Having the necessary National Authority management and IT tools;
- Adhering to CWC declaration timelines, format and content guidelines;
- Actively cooperating with the OPCW Technical Secretariat and other States Parties; and
- Implementing checking and review systems.

Prior to the Convention's entry-into-force in 1997, Australia identified most CWC relevant companies and institutions through major surveys, outreach programs and by drawing upon assistance from peak industry associations and other relevant agencies such as Customs. This database of regulated companies has grown through ongoing identification effort by ASNO and to the best of our knowledge, captures all of them. The companies most difficult to identify are the small scale agricultural chemical producers, and traders of chemical mixtures (usually under trade names) that contain CWC Scheduled chemicals.

The main identification tools are:

- Awareness raising through brochure/CD distribution, webpage, journal articles, and conference presentations;
- Data exchange with other regulators both State and National;
- Commodity specific industry surveys, such as the agricultural industry or the textile industry (eg use of Schedule 2 chemicals as flame retardants);
- Opportunistic use of other surveys such as the OPCW Technical Secretariat national industry surveys;
- Facility outreach visits, which include discussion of company competitors;

- Exploitation of Customs data, particularly using Australia’s unique import and export classification codes for all CWC Scheduled chemicals and classes; and
- Making use of OPCW trade reconciliation requests.

Australia’s policy on CWC declarations and implementation in general is to be as complete and as transparent as possible. Australia’s annual declarations include a statement of clarification upfront to note any changes from previous declarations, and to explain further our declaration practices. This includes any concentrations thresholds that are applied, how data is reported and what types of DOC facilities are captured in the declaration.

## **Inspections**

Australia currently has 38 facilities, mainly producing discrete organic chemicals that may be subject to an OPCW inspection. Since 1997, Australia has had 18 OPCW inspections, including five of our Protective Purposes Facility, two Schedule 2 facilities, four Schedule 3 and seven DOCs. Of these inspections, five have been sequential, either totally within Australia or shared with other countries.

Australia’s approach to inspections is to be as cooperative and transparent as possible, while protecting national security and commercial sensitivities. This includes by being proactive in OPCW and States Parties efforts to improve the efficiency and effectiveness of Convention’s inspection arrangements. Specific examples of Australia’s involvement are:

- Providing input to work on developing an improved risk-based model for selecting discrete organic chemical facilities for inspection;
- Supporting efforts to increase the proportion of inspections allocated to Schedule 3 and discrete organic chemical facilities, although this may mean more inspections in Australia;
- Agreeing for Australia to be subject to sequential inspections;
- Declaring and being subject to inspections of “captive use” Schedule 2 and 3 facilities,
- prior to the recent Executive Council decision supporting this requirement;
- Assisting proposals for better criteria in deciding whether Schedule 2 facilities should be subject to Facility Inspection Agreements; and
- Sharing Australian experience in regard to our preparations in case there is a CWC challenge inspection to the country.

Informing and preparing industry has been a key element of Australia’s inspection management processes and this has included publishing a brochure specifically relating to inspections.

## **Monitoring Compliance**

Australia continues to monitor its compliance through a range of activities including:

- industry awareness raising and outreach;
- customs’ systems to detect non-compliance;

- OPCW discrepancies of trade data;
- data sharing with trading partners (including UK, Japan, Singapore); and
- cross-checking importers' notifications against Customs' data.

### **Engaging the Chemical Industry**

ASNO has an extensive Australian on-site consultation and outreach program aimed at raising awareness of affected parties of CWC obligations, confirming declared activities, collecting information necessary for declarations and preparing sites for routine compliance inspections by the OPCW. The National Authority tries to ensure all of its regulated facilities are visited every two to three years.

### **Challenges**

There are a number of challenges which exist for effectively managing the importing and exporting of Schedule chemicals, including:

- The assignment of incorrect classification codes for chemical imports – often due to lack of expertise in chemistry, lack of information or laziness – can result in false positives or false negatives in Customs data.
- Identifying chemical mixtures containing regulated chemicals is problematic because such codes are not unique to CWC-scheduled chemicals and therefore are not flagged in Customs systems as requiring permits.
- Identifying unauthorised transfers of regulated chemicals for which unrestricted chemical classification codes are inadvertently or deliberately applied.

### **Misclassification of chemicals**

One of the problems that Australia has encountered with using unique customs and import tariff and export classification codes is the potential for misclassification of the chemical.

Misclassification can lead to chemicals being imported or exported without the necessary permits and, therefore, may inadvertently be sent to restricted destinations or dubious end-users. Misclassifications can also lead to unnecessary delays in importer receipt of goods from the docks if brokers use a flagged classification code for unregulated chemicals.

When left uncorrected, misclassifications can lead to incorrect trade statistics and have the potential to cause international embarrassment. For example, a recent World Customs Organization report incorrectly identified tonnes of Schedule 1 chemical imports into Australia. The CWC sets a one-tonne limit for possession of Schedule 1 chemicals per country. The reality is that Australia only rarely imports Schedule 1 chemicals and in milligram quantities.

## **Solutions**

Australia has identified and utilised a number of methods for reducing misclassifications of chemicals and other misleading data. These methods include:

- Awareness raising – through visits, presentations, articles, letters to traders;
- Facilitation – CD, webpages, permit conditions, profile waivers, brochures;
- Control systems – Customs officer education, system enhancement, exchanges with partners, mixtures; and
- International cooperation – The OPCW is helpful in identifying mismatches in declared trade. Trading countries cooperate on a commercial-in-confidence basis to resolve discrepancies and this may assist in identifying new traders.

## **Engaging with the OPCW and other States Parties**

ASNO also promotes effective implementation of the CWC and especially as it relates to the regulation of trade in dual-use goods which may be of use in WMD programs. In December 2005 Australia co-hosted a CWC National Awareness Raising Workshop in Cambodia which was organised in conjunction with the OPCW and Japan. Australia continues to assist other States Parties upon request and has provided technical comment on CWC legislation and Royal Decrees in regional countries.

## **Publications**

ASNO has produced a number of publications to assist in implementing Australia's obligations under the CWC, including:

- The Chemical Weapons Convention – A guide for Australian industry producing, using or trading chemicals
- The Chemical Weapons Convention – Information for the importers of chemicals
- The Chemical Weapons Convention – Inspection information for producers of chemicals
- International Chemical Trade Control – Information for Australian Importers and Exporters of Chemicals CD (joint Department of Defence and Department of Foreign Affairs and Trade publication)

These publications can be found on ASNO's website at: [www.dfat.gov.au/cwco/index.html](http://www.dfat.gov.au/cwco/index.html)

## **Contacts**

The Australian Safeguards and Non-Proliferation Office, Australia's National Authority for the CWC, can be contacted on:

Email: [asno@dfat.gov.au](mailto:asno@dfat.gov.au)

Phone: +61 2 6261 1920

Fax: +61 2 6261 1908

ASNO Web Site [www.dfat.gov.au/cwco](http://www.dfat.gov.au/cwco)