

CWC and the Australia Group: Trade Compliance

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Key Points

- Australia is committed to the full and universal implementation of the Chemical Weapons Convention (CWC) as central to chemical weapons disarmament and non-proliferation.
- The CWC imposes chemical trade restrictions to or from non-States Parties and requires reporting of trade, along with other chemical reporting and inspection obligations, for verification purposes.
- CWC national authorities need to engage extensively with industry and other agencies to monitor compliance and prevent unauthorised chemical transfers.
- All countries are encouraged to adopt Australia Group chemical control lists, which represent best practice controls and are a guide for international action. These controls complement the CWC and Biological Weapons Convention (BWC).
- Questions about the activities of the Australia Group can be addressed through outreach that the Group undertakes to a large number of countries each year.

1. Principle CWC Obligations

Many chemicals produced or used for industrial, medical or research activities can also have applications in the manufacture of chemical weapons (CW). To provide assurance of compliance with CWC obligations, States Parties undertake to declare information on certain activities to the Organisation for the Prohibition of Chemical Weapons (OPCW). They also undertake to permit routine inspection of declared facilities by the OPCW, report and regulate international trade in certain chemicals to prevent possible assistance to CW programs, and encourage CWC ratification.

2. CWC Implementation in Australia

The Australian Safeguards and Non-Proliferation Office (ASNO) is Australia's CWC National Authority and implements CWC obligations through the *Chemical Weapons (Prohibition) Act 1994*, its associated regulations, and other relevant trade legislation. To implement the CWC, ASNO collects and declares required chemical information to the OPCW and facilitates OPCW inspections, while protecting commercial and national interests. ASNO also assists with implementation and universalisation of the CWC through regional outreach.

A number of domestic stakeholders assist ASNO to implement the CWC, including industry and other agencies. The Department of Defence regulates chemical exports and destroys old chemical munitions from past wars if they are retrieved from land or sea. The Australian Customs Service administers compliance with import and export controls. Australia has a permit system for importing, exporting, producing, processing or consuming CWC 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 e.g. phosgene, triethanolamine

All facility permits are issued for one year but are automatically renewed for a further four 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. Australia declares to the OPCW chemical facilities producing unscheduled discrete organic chemicals (DOC) 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 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.

As part of permit conditions, ASNO requires certain additional security measures for non-proliferation and counter-terrorism purposes. The permit holder must provide immediate notice of any unexplained loss, theft or suspicious incidents that involve CWC Scheduled chemicals (must also inform other relevant authorities). Where closure of a company is proposed, prior written advice and transfer and disposal details for excess stocks of CWC Scheduled chemicals is required. ASNO requests 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.

3. CWC Trade Regulation in Australia

Restrictions on trade with non-States Parties to the CWC include strict prohibition on trade in Schedule 1 and Schedule 2 (above 10%) chemicals, and end-user certificates required by the Department of Defence for exports of CWC Schedule 3 chemicals. Permits are required for all trade in CWC Scheduled chemicals. Individual permits are required for each import of Schedule 1 chemicals with permit applications required at least 37 days in advance. The condition of transfer is that the chemical may only be used for research, medical, pharmaceutical or protective purposes. It is a requirement that ASNO be notified within one month of the receipt of the chemical. Other import permits are valid for one year and may include any number of CWC Schedule 2 and 3 chemicals with no limits on quantity. Permit conditions include annual notification of imports to ASNO and security advice on the storage of CWC Scheduled chemicals as well as notification of theft, loss or suspicious events.

Chemicals requiring an export permit are listed in the Defence and Strategic Goods List (refer to www.defence.gov.au/strategy/deco). These include CWC Scheduled chemicals and other sensitive chemicals, such as those listed by the Australia Group

(www.australiagroup.net). All export permit applications for CWC Scheduled chemicals require end-user certificates.

Australia uses 10-digit tariff codes for import and the 8-digit Australian harmonised export commodity classification (AHECC) codes for export based on the 6-digit harmonised system (HS) of codes recommended by the World Customs Organization (WCO) for CWC Scheduled chemicals. Customs data, based on listed classification codes, is requested on a twice-yearly basis to help identify new importers. This data alone is not reliable for declarations purposes, but is useful for cross checking the annual trade notifications made by importers under the current permit system.

4. Engaging the Australian Chemical Industry

Prior to the entry into force of the CWC in 1997, Australia identified CWC relevant companies through surveys, outreach programs and by drawing upon assistance from industry associations and relevant agencies such as Customs. This formed the basis of a company database that has grown over time through ongoing identification effort by ASNO and to the best of our knowledge, captures all of them. The companies most difficult to identify have been small scale agricultural chemical producers and traders of mixtures (usually under trade names) that contain CWC Scheduled chemicals.

ASNO engages with the chemical industry on CWC implementation including trade obligations through brochures, CD, internet, industry newsletters and conferences. It exchanges data with other regulators, undertakes surveys (such as of the chemical industry) and makes use of other open source industry databases and information (such as the OPCW Technical Secretariat Article VI project). It also undertakes outreach visits to chemical facilities, uses Customs data, and makes use of OPCW trade reconciliation requests.

Australia monitors its CWC compliance in various ways including through outreach to industry, Customs' systems to detect non-compliance, OPCW discrepancies of trade data, data sharing with trading partners (including Japan, Singapore and the United Kingdom) and cross-checking importers' notifications against Customs' data. ASNO undertakes extensive on-site consultation to raise awareness about CWC obligations, confirm declared activities, collect information for declarations and prepare for routine compliance inspections by the OPCW. ASNO seeks to visit regulated facilities (about 40 facilities are currently eligible for inspections) every few years.

There are various challenges to managing the import and export of CWC Scheduled chemicals. The assignment of incorrect classification codes for chemical imports can result in false positives or negatives in Customs data. Identifying chemical mixtures containing regulated chemicals is problematic because such codes are not unique to CWC Scheduled chemicals and are not flagged in Customs systems as requiring permits. There is also a need to identify unauthorised transfers of regulated chemicals for which unrestricted classification codes are inadvertently or deliberately applied.

5. Australia Group 'Best Practice' Controls

The Australia Group (AG) is a cooperative and voluntary body, chaired by Australia since its inception 23 year ago, dedicated to the adoption, implementation and

enforcement of cutting-edge measures to counter the spread of technologies and materials that could assist states of concern and terrorist groups in obtaining or developing chemical and biological weapons (CBW). The 41 AG participants aim to ensure that their exports do not contribute to the development of chemical or biological weapons. They do this by licensing the export of certain chemicals, biological agents and dual-use chemical and biological manufacturing equipment.

Put simply, the purpose of the AG is to stop proliferators from exploiting differences in national export control systems by enabling the harmonisation of measures applied to dual-use chemicals, biological agents and chemical and biological manufacturing equipment. The AG Guidelines outline ways participants cooperate to ensure a high degree of compliance with obligations under both the CWC and BWC. These include common approaches on end-user undertakings and a 'no undercut policy' between participants, by which an export that is essentially identical to one denied by another AG participant will only be granted after consultation with that participant.

The AG seeks to ensure that its control lists keep pace with industry and technological developments. AG control lists represent best practice controls and serve as a guide for international action. The lists cover chemical precursors, viruses, plant and animal pathogens, various bacteria, toxins and dual-use chemical and biological equipment. Harmonisation of these standards between AG participants – and the adoption of similar standards by other exporters and international organisations – has significantly restricted opportunities for proliferators to source through normal trade items for the manufacture of CBW. These same measures have also protected AG participants from inadvertently allowing dual-use materials from falling into the wrong hands.

In the past the AG has attracted criticism. Some have complained that AG controls restrict technology transfer to developing countries. Others have said that the AG would be more properly exercised under the auspices of the CWC and BWC. But we have heard less such criticism in recent years and it is worth considering why. A key reason is that it has become more apparent that AG controls are well-balanced and harmonised, and bring security to trade without restricting legitimate trade. It is in the economic interest of all countries for there to be more trade and technology transfer in the chemical and biotechnology sectors, while ensuring a high level of security in this trade. In this way, the AG complements the CWC and BWC.

Countries that do not participate in the AG are encouraged to adopt controls consistent with AG guidelines. Every year the AG briefs a large number of non-participants on its meetings and makes available lists of chemicals, biological agents and related equipment and technologies of proliferation concern. Many AG participants are involved in outreach to non-participant countries, and respond to countries that make specific requests for assistance from the Group. AG participants also recognise the importance of informative and cooperative outreach to their own domestic industry and academic sectors.

Details about the AG are at www.australiagroup.net. This website is accessible in Arabic, Chinese, English, French, German, Russian and Spanish.