

**AUSTRALIA****CHEMICAL WEAPONS CONVENTION (CWC) IMPLEMENTATION
ADJUSTMENT OF AUSTRALIAN EXPORT AND IMPORT LICENSING
MEASURES****1. Overview**

- 1.1 The regulatory and administrative procedures described in this paper have been undertaken to ensure that Australia satisfies its obligations under the Chemical Weapons Convention (CWC), including the requirement set out in Article XI 2(e), to review existing regulations in the field of trade in chemicals in order to render them consistent with the object and purpose of the Convention. Australia has implemented the necessary procedures to meet requirements related to international trade in scheduled chemicals under the CWC, and keeps its implementation obligations under continual review.
- 1.2 Australia's practice on export controls is non-discriminatory: licences for controlled chemicals are required for exports to all destinations, including CWC States Parties.
- 1.3 The Chemical Weapons (Prohibition) Act 1994 is Australia's principal implementing legislation for the CWC. CWC obligations on monitoring/regulating international trade in chemicals have been implemented through amendments to the pre-existing Customs Act 1901. Further details on the legislative procedures are set out below.

2. Export licensing

- 2.1 In order to implement Convention obligations, Australia has required individual licences since December 1996 for exports to all destinations of chemicals on the CWC schedules. These measures operate universally and on a non-discriminatory basis: licences are required for all destinations, including CWC States Parties. The Strategic Trade Policy and Operations Section of the Department of Defence administers export licences for chemicals, as well as other military and dual-use goods.
- 2.2 Requirements have been included in the Customs (Prohibited Exports) Regulations (Section 13E) and administrative guidelines to implement the following requirements in the CWC's Verification Annex (VA):

2.3 Schedule 1

- a. Exports of Schedule 1 chemicals are only permitted to other States Parties to the CWC (VA Part VI para 3).
- b. Re-exports of Schedule 1 chemicals are prohibited (VA Part VI para 4).
- c. 37 days advance notification of an export must be given (VA Part VI para 5 requires 30 days notification to the Technical Secretariat). (Although Convention requirements are for 30 days notice, Australian regulations require 37 days notice to ensure sufficient domestic processing time.)

2.4 Schedule 2

End-use certificates must be obtained for exports of Schedule 2 chemicals to non-States Parties (VA Part VII para 32).

2.5 Schedule 3

End-use certificates must be obtained for exports of Schedule 3 chemicals to non-States Parties (VA Part VIII para 26).

3. Import Licensing

3.1 Requirements have been included in the Customs (Prohibited Imports) Regulations (Section 5J) to implement the following requirements in the CWC's Verification Annex:

3.2 Schedule 1

- (i) The requirement to provide 30 days advance notification of plans to import a Schedule 1 chemical has been implemented as part of the new Customs (Prohibited Imports) Regulations (pursuant to VA Part VI para 5). (Although Convention requirements are for 30 days notice, the Customs (Prohibited Imports) Regulations require 37 days notice to ensure sufficient domestic processing time.) The Regulation creates a requirement for licences for such imports. Imports from non-States Parties are specifically prohibited under the Regulations pursuant to VA Part VI para 3.
- (ii) These procedures are administered by Australia's national authority for the CWC - the CWC Office (CWCO) - which is a separate unit within the Foreign Affairs and Trade portfolio.

3.3 Schedule 2

- (i) While imports of Schedule 2 chemicals do not presently require licences, the process of amending the Customs (Prohibited Imports) Regulations has commenced which will allow such imports only from other States Parties after April 2000 (Part VII para 31). The proposed amendments will, in effect, establish an open-ended licence system for the import of Schedule 2 and 3 chemicals.

- (ii) The requirement to provide declarations to the OPCW of aggregate national figures for imports of Schedule 2 and 3 chemicals is currently being implemented through industry surveys. However the proposed amendments to Section 5J of the Customs (Prohibited Imports) Regulations, will enable the Government to more accurately monitor the import of Schedule 2 chemicals, and to move away from a survey-based system.

3.4 Schedule 3

Import licences are not currently required for Schedule 3 chemicals. Trade data on imports of these chemicals is collected through extensive industry surveys. The proposed amendments to the Customs (Prohibited Imports) Regulations (as outlined above) to establish an open-ended licence system will reduce the burden on industry and will provide a framework for amendments to import licensing of Schedule 3 chemicals if such steps are required pursuant to a decision of the Conference of States Parties.

4. Trade in other chemicals

- 4.1 The Article I obligations of the CWC require States Parties to undertake never, under any circumstances, to transfer chemical weapons to anyone or to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party.
- 4.2 A wide variety of chemicals has been sought for CW proliferation purposes. Australia requires individual licences under the Customs (Prohibited Export) Regulations on a number of other chemicals not listed in the CWC schedules which pose a proliferation risk. These measures also operate universally and on a non-discriminatory basis: licences are required for exports to all destinations, including CWC States Parties.
- 4.3 It is not possible to identify and describe, for regulatory purposes, all other chemicals that might be used in a CW program. Also, in cases where dual-use chemicals have widespread commercial application, it would be impractical to include them in regulations (if included in regulations, all exports of these items would require a licence, which would create an unnecessary administrative burden on the licensing authority as well as for industry).
- 4.4 The Weapons of Mass Destruction (Prevention of Proliferation) Act 1994 addresses the Article I obligation with respect to chemicals not included under the Customs Act (1901). The WMD Act provides the Government with the authority to prevent the export of items to destinations considered to pose an unacceptable CW proliferation risk: it prohibits the export of goods and services which will or may be used in a WMD program. It provides for prosecution in circumstances where the person concerned knew or suspected the goods or services were to be used in a program of concern.

