Chemical industry compliance of the Chemical Weapons Convention

Dear Director General Üzümcü, Excellencies, Ladies and Gentlemen,

I first of all would like to thank you for inviting Cefic to this important seminar.

I would like to start my presentation with the reminder that the chemical industry manufactures products that the whole world depends upon every day for health, safety, transportation, communication, agriculture, medicine – touching virtually every aspect of our lives. Chemical companies do not make chemical weapons, yet some very common chemicals can be misused as – or transformed into – chemical weapons. So industry’s agenda is not about disarming existing chemical weapon stocks but is one about non-proliferation.

As the CWC transforms from a disarmament treaty to a – what we consider - Confidence Building Measure this question is emerging: “Does preventing the re-emergence of chemical weapons and combating the misuse of toxic chemicals take on more importance?” I therefore welcome this timely opportunity to address some of the issues raised by this question from the premise that industry best practice in chemical site housekeeping and customer vetting can be used to provide a high degree of compliance and confidence in response to the non-proliferation aspects of the Convention.

I am not aware of any major transgressions by industry that suggest that there needs to be a change in the 200 or so industry inspections that take place every year. Of course inspection of production facilities has limited value as a confidence building measure. Maintenance run-off points can be used to extract illicit material from a plant between inspections. A visual inspection by itself is therefore unlikely to uncover illicit activity. Paperwork audits at a plant site are probably a better indicator of non-proliferation. What goes in must go out. If no chlorine molecules go into a plant then it is impossible for chlorine to be present at the end of the process. For Schedule 3 and DOC sites however, we consider that a “walk through – talk through” inspection is best suited, rather than increasing declaration data.

For dual-use chemicals controlling the risk, not the hazard, is the key to enforcing the CWC where it matters most. Nearly 2000 inspections have taken place at more than 1100 separate industry facilities in 80 nations around the world. Not one of the inspections at a private commercial facility has ever resulted in a serious violation of the Convention, other than uncovering technical infringements! The OPCW non-proliferation inspection net needs to be cast wider, but where? Not surprisingly, the answer is: mainly at production sites and chemical storage facilities that have not previously been inspected or those that have failed to submit full declarations.

The primary front line defence to stop commercially available toxic chemicals getting into the wrong hands comes from responsible behaviour within industry. If the reduction of CW-related inspection programmes provides more resources for industry to maintain its
programmes of vigilance then that is to be welcomed, unless inspection frequency, duration and intensity are meant to increase.

There is a symbiotic interest at play here. Universal adherence of the CWC is dependent on industry cooperation. From the outset, industry has always understood the requirements to satisfy National Authorities and OPCW inspection teams that the chemicals we make or handle are used legitimately. However, the chemical industry community does not want CWC non-proliferation criteria to tie up resources or get in the way of legitimate trade and production of chemicals.

The chemical industry does its utmost to comply with all the obligations defined in the Convention. The screening of its products for CWC relevance is very demanding due to the number of chemical compounds handled in the companies. As a matter of priority the OPCW should make available the full Scheduled Chemicals Database in a format which could be directly integrated into companies IT systems. The current very limited search function is unsuitable for daily business activities.

There is some concern in industry that the OPCW seeks – or is perceived to seek - new roles in global anti-terrorism initiatives. Arguably any formal involvement of the OPCW in global anti-terrorism initiatives would take it beyond its Article X remit. There are already new regional initiatives that are looking to controlling access by potential terrorists to explosive precursor chemicals or on surveillance or on physical barriers to shield facilities from external attack. The most likely security weaknesses will either be infiltrators or will be outside of the site perimeter, particularly during the transportation of chemicals. So an on-site role for the OPCW in anti-terrorism measures is questionable.

There are of course many other regulations governing high hazard sites, explosive materials as well as consumer and environmental requirements such as REACH and waste treatment regulations. Many of these regulations duplicate CWC trade and production data requirements. Several audit systems (e.g. ISO 9000, 14000, GMP, GLP) have been developed to improve environmental, safety, health and quality performance. Plant personnel are therefore usually familiar with external auditors. Successfully passing these audits requires – among other things – responsible operations and good documentation. There may thus be synergies between Quality Control and CWC procedures and documents even though the goals are quite different.

CWC verification coverage must therefore adapt to reflect the new production and trade situation and should apply less frequent call for sites with robust management systems. Indeed, chemical industry regulators are increasingly applying a lighter touch for sites with proven compliance records and so it should be for the CWC.

For more than 25 years, the Responsible Care management code has promoted safety and security practices that safeguard our workplaces, communities and the broader environment. Companies should have policies that put in place robust and well-documented work processes so that all employees are quite clear what is expected regarding products that appear on CWC schedules. Ideally, a single company policy on record-keeping, declarations and export controls should cover CWC and all other restrictions to trade.

Companies that endorse the Responsible Care ethic are expected to exceed the performance levels of non-Responsible Care companies and governments are aware of the difference. OPCW should recognise this by clearly assigning a lower inspection frequency to Responsible Care companies, especially if they are involved with national authorities to improve inspection methodologies and effectiveness, help with the training of inspectors and on company vigilance practices.
A new and growing aspect to Responsible Care is the introduction of Security Codes of Conduct. There has been such a code operating in North America for a number of years and an equivalent code is to be introduced in Europe in 2011. The European code is modelled on many aspects of the North American code and is designed to help companies achieve continuous improvement in security performance using a risk-based approach to identify, assess and address vulnerabilities, prevent or mitigate incidents, enhance training and response capabilities, and maintain and improve relationships with key stakeholders and authorities.

Under the European security code, Responsible Care companies require senior leadership commitment to continuous improvement through policies, provision of sufficient and qualified resources and established accountability. They are encouraged to undertake periodical analysis of threats, vulnerabilities, likelihood and consequences using adequate methodologies.

If security weaknesses are revealed then security measures should be developed and implemented, commensurate with the risks. As effective security practices evolve, companies are encouraged to keep pace by enhancing security awareness and compliance through training and guidance. They should also open and maintain effective lines of communication such as sharing effective security practices with others throughout industry and maintaining interaction with law enforcement officials.

In response to security threats and near misses the Code advises companies to evaluate, respond, report and communicate security threats and security incidents and take corrective action for security incidents including ‘near misses’. Companies are expected to periodically review their security programmes, processes and measures to reaffirm those which are in place and take corrective action as necessary.

In addition to physical security best management practice Responsible Care is also about making sure that chemicals do not fall into the wrong hands. Guidance is increasing becoming available from a number of national chemical trade associations as well as States Parties national authorities. This best practice could be pooled and re-issued through the OPCW.

Responsible Care is there to help regulators, not hinder them. But an effective non-proliferation programme is not totally reliant on industry co-operation. There is a fiduciary responsibility on the OPCW to extract as much value as possible out of its industry verification programme and on States Parties to fulfil their obligations too. The harmonisation of the declaration practice by national authorities must be a top priority otherwise some Other Chemical Production Facilities (OCPF) remain undeclared. An inspection programme based on incomplete data is a concern of companies that have plant sites that are more frequently inspected than others. Also, plant sites which have already been inspected and no violation of CWC provisions was found should receive a lower probability of being inspected. Inspection visits under different Schedules (2, 3 or DOC/PSF) at mixed plant sites, i.e. plant sites which are inspectable under Part VII, VIII or IX of the Verification Annex, should be carried out together, without however extending the overall inspection time of maximum five days total. Multi-company inspections should be arranged for sites within close proximity of each other, especially where long distance visits are required.

Of course there are many other factors involved in determining the right level of industry monitoring, not least national threat assessments, or a transfer of resources to more cost effective programmes to meet the OPCW’s most pressing targets. For industry, much rests on the policymakers’ response to the core question: “Does the potential or actual misuse of
unscheduled toxic chemicals constitute the same security threat as the potential use of scheduled CWs?" I think that case is far from proven.

Ladies and gentlemen, the chemical industry remains an ardent supporter of the OPCW and its key objectives. We should find intelligent ways of working together to focus your and our resources on the real risks of diversion of chemicals into the wrong hands for illicit or terrorist purposes. This is not achieved if industry is burdened by new commitments. The risk is that if industry is perceived to be the problem, it will only strictly do what is required, instead of feeling to be a partner in a common project.

Thank you for your attention!