OPCW

Conference of the States Parties

AUSTRALIA

AUSTRALIA'S EXPERIENCE IN TRACKING SYSTEMS FOR INTERNATIONAL TRADE IN CHEMICALS LISTED IN THE CHEMICAL WEAPONS CONVENTION'S SCHEDULES OF CHEMICALS

Executive summary

1.   In addition to relying on an approval-based mechanism for exports and imports of chemicals listed in the Schedules of chemicals of the Chemical Weapons Convention (hereinafter "the Convention"), Australia monitors and better regulates such trade through customs classification and electronic processing systems. These customs classification systems make an important contribution to the compilation of Australian trade data for declarations under the Convention. However, there are a range of classification systems that can be used, and the quality of the resulting data will depend on the nature of the system, and the effort expended in making it work. Several of these systems and their combinations are described, with the more sophisticated ones perhaps being better suited to States Parties that carry out substantial trade in scheduled chemicals. It may be possible for States Parties to pool their experience on such classification systems, with a view to developing "best practices".

Introduction

2.   This paper outlines Australia's experience in developing and implementing arrangements to regulate and track its international trade in scheduled chemicals. This experience may be of interest to States Parties grappling with this complex issue. In building these arrangements, unexpected challenges have emerged, and a range of measures have been developed in response.

The issues

3.   Effective tracking of trade in scheduled chemicals is an important part of national compliance efforts to more fully adhere with the Convention's declaration requirements. Parts VI, VII and VIII of the Verification Annex to the Convention (hereinafter "the Verification Annex") detail trade declaration requirements for Schedule 1, Schedule 2 and Schedule 3 chemicals, respectively.

4. For OPCW declaration purposes, not only does the quality of the data need to be good, but also declaration practices should be standardised across States Parties. Both elements help to improve the reconciliation of trade data carried out by the OPCW's Technical Secretariat and the States Parties. The Consolidated Unclassified Verification Implementation Report (April 1997 - 31 December 2002), dated 25 April 2003 (RC-1/S/6) stated that "Approximately 78% of the export/import data as declared by the end of 2001 did not match".

5. Fortunately, progress is being made in the Industry Cluster meetings on standardised declaration practices, for instance, through the introduction of standardised means for low quantity trade in aggregate national data declarations (C-7/DEC 14, dated 10 October 2002). However, more could be done to assist States Parties, including through their own efforts, to improve the quality of their raw data. Some possible national systems are described below.

Systems and solutions

6. Australia has found that the collection of trade data and development of associated support systems have a number of phases. There was the initial effort to identify traders and compile relevant trade data for the initial declaration to the OPCW. Afterwards there was an effort to introduce task-specific management and data collection systems on a permanent basis. Over time, these systems were refined, and their performance in discharging their functions was improved.

7. For the initial identification of relevant traders and levels of activity, Australia used a range of approaches, including industry surveys and outreach, analysis of chemical company directories, working closely with industry associations, and making use of customs data. In Australia, the Australian Safeguards and Non-Proliferation Office (ASNO) is the CWC National Authority and specifically regulates the import of scheduled chemicals, while the Department of Defence is responsible for export controls.

8. Once this comprehensive first phase had been completed, purpose-tailored long-term monitoring/regulatory systems were introduced. Australia has implemented or is familiar with the systems listed below. There may of course be many other systems or variations on the ones described. The licensing/permit systems are particularly useful both in regulating and in tracking trade, while customs-related classification systems support regulation and internal verification of declared data, primarily by tracking trade:

   (a) **Licensing/permit systems** - This system requires companies to seek authorisation to export or import regulated goods. The license or permit is issued subject to certain conditions, such as a company reporting its activity on a regular basis. Approval-based systems are particularly important for exports to ensure that Schedule 1 and Schedule 2 chemicals are not supplied to States not Party;

   (b) **WCO recommended classifications for scheduled chemicals** - This Recommendation was approved by the Customs Co-operation Council (now World Customs Organisation, WCO) in June 1999. It promotes a system of

agreed six-digit classifications for groups of scheduled chemicals, as detailed later in this paper; and

(c)   **Unique import and export customs classifications** - Some countries, such as Australia and Canada, have gone further by using unique eight- or ten-digit customs classifications for scheduled chemicals, albeit based on the WCO Harmonised System of Classifications. Countries have this latitude beyond the six-digit level.

Licensing/permit systems

9.   For Australia, a licensing and permit system is essential for the notification and regulation of relevant chemical exports. Under its Convention legislation, Australia also introduced such an arrangement for imports, having found that customs data alone were not comprehensive or accurate enough for OPCW reporting purposes. Associated with these regulatory systems are a range of requirements, including that permit holders must make annual activity reports to the regulatory agencies in February each year for declaration purposes.

Using customs data

10.   Although Australia has found that the licensing/permit system is the most practical and effective element of its overall compliance regime, we believe that States Parties with a significant chemical industry and international trade may also benefit by having some form of customs-specific chemical classification system within its regulatory process. Each year Australia has about 80 separate imports of scheduled chemicals and about 30 such exports, mainly of Schedule 2 and Schedule 3 chemicals. Customs data can be particularly useful in reviewing the data provided by individual companies and identifying previously unknown companies that should be subject to regulation. Most importantly, accurate identification of chemicals in real time through the use of electronic data bases can enable customs authorities to check chemicals and hold them, if necessary, pending approval.

11.   In Australia, customs clearances for both import and export cargo are affected by means of such an electronic self-reporting system, operated by registered owners and licensed brokers. The system is dependent on the owner/broker entering directly into the customs clearance system the correct Australian Harmonised Export Commodity Classification (AHECC) or Tariff Classification (import) and other data related to the transaction. Once the full data has been entered, Australian Customs Service (Customs) uses a combination of electronic and manual scrutiny to check the transactions. Both the customs import and export systems use 'flags' (electronic alerts for certain classification numbers) which are raised to ensure that owners of goods entered against Tariff/AHECC items for regulated chemicals are in possession of a valid permit.

WCO Recommended classifications for scheduled chemicals

12.   Australia is in the process of becoming the ninth country to adopt formally this WCO Recommendation on Classifications, the other eight being Argentina, Brazil, Canada, Cuba, Hungary, Korea, Peru and Turkey. The Recommendation was developed in

conjunction with the OPCW and in an attempt to have a harmonised classification system for trade in scheduled chemicals. It is likely that many additional countries largely work to the Recommendation, even if they have not formally adopted it.

13.   Although the specificity of Australia's customs classification system goes beyond the WCO guidelines, it remains entirely consistent with the WCO approach. Also, Australia was only able to adopt the Recommendation because it incorporates some flexibility in that it is permissible to satisfy the majority, but not necessarily all, of its elements. The WCO-recommended six-digit system, however, is not specific enough to allow customs data to capture relevant trade without submerging it in potentially large numbers of other non-relevant transactions. For instance, at the six-digit level, seven of the scheduled chemical chlorides, including phosgene, all fall, with no further differentiation, under the broad category of Chlorides and Chloride oxides, 2812.10. In Australia's coding system, each scheduled chemical chloride has its own unique import and export classifications.

Unique import and export customs classifications

14.   For monitoring and regulatory purposes, Australia introduced unique eight- and ten-digit classifications for scheduled chemicals relating to exports (AHECC) and imports (Tariff), respectively.   These classifications apply to all scheduled chemicals and chemical classes and their more common representatives, 106 in total. Such classifications were introduced for Schedule 3 chemicals and some Schedule 2 chemicals in 1999, and then for Schedule 1 chemicals and the remaining Schedule 2 chemicals, including chemical classes, on 1 January 2002. Details of the system are available from the ASNO website, www.dfat.gov.au/cwco.

15.   Effective implementation of the unique classification approach, in our experience, requires both extensive industry outreach and the development of a range of significant measures and tools. The quality of relevant trade data received by Customs declined in 2002 with the introduction of the extended unique classifications, because of operational technical difficulties and unintentional industry misclassification. In some cases, the number of false positive transactions has risen fourfold, thereby making identification of the actual transactions more time-consuming. Australia has introduced a number of measures to address this problem, including: developing and distributing an Importers/Exporters Guidance CD (also on ASNO website); requiring permit holders to provide adequate chemical identification details to brokers, including the Chemical Abstracts Number (CAS); and undertaking industry-wide and company-specific outreach.

16.   Miscoding can arise for a number of reasons, and can be compounded if there is insufficient outreach and education prior to the introduction of classifications. For Australia, the implementation challenges have been most pronounced when industry has had to select classifications for chemical classes such as Alkyl (Me, Et, n–Pr or i–Pr) phosphonyl difluorides. In our case, this class as a whole, where a chemical was not otherwise specified, was given the descriptor "Other" under the main heading. Frequently, the term "Other" is a favourite choice made by customs brokers, often erroneously, when looking for a suitable commodity classification. Additional problems include the adoption by traders of a single classification to cover a consignment of a diverse range of chemicals in small amounts, and often using

classifications for product types like "Anti-Freezing Preparations" rather than Convention-specific chemical classifications. In the latter case it is in the industry's interest to apply the right classification, because the specific chemical has a lower duty than the general product. Even when the correct classification is used, the chemical might not be regulable if its concentration falls below the regulated limit, a fact which is not evident from the customs data.

Customs classification system variations

17. Selected unique classifications - Another means to make use of customs trade data is to only adopt unique classifications on a selective basis. This could be done only for specific chemicals that are the object of some trade in a given country. Australia, for instance, only regularly imports and/or exports 25 Convention chemicals (mainly Schedule 2 and Schedule 3), some in sub-kilogram quantities. Unique classifications for commonly traded chemicals can result in a significant reduction in development and implementation work as well as in confusion within the chemical industry, and also in better quality and more manageable customs data. To some extent, Australia has also gone down this route; it already targets the established chemicals when processing customs data, having found very specialised classes of chemicals to be much more prone to miscoding. A disadvantage in being too selective in this regard is that trade in unexpected chemicals may be missed.

18. Selected unique classifications plus WCO Recommendation - It is also possible that a country could combine the selective system with the WCO Recommendation. In this way the customs data could be processed for the most relevant chemicals, but adhering to the WCO Recommendation would ensure "catch all" data on other scheduled chemical groups, as well as observance of an international standard.

19. A simple summary of this range of potential customs chemical classification systems is shown in the following table. It probably applies best to a country like Australia with a modest to medium-size chemical trade.

SYSTEM	DESCRIPTION	ADVANTAGES	DISADVANTAGES
1. WCO Recommendation	6 digits for CWC groups	International standard Adoption not difficult	Limited regulatory & monitoring capability
2. Unique Classifications	8-10 digits for specific CWC chemicals & classes	Potentially very good regulation/monitoring	Large development and administrative burden
3. Selected Unique Class	8-10 digits for CWC traded chemicals only	Potentially good for traded chemicals. Less work involved	May miss unexpected chemicals
4. 1 plus 3	Combination	Combination	More work than 1 or 3 alone

20.   A means of enhancing the quality of any of these approaches to collecting data is to exchange details of trade data with relevant States Parties well before the annual declaration time. This was a German proposal, and we are currently undertaking such exchanges with Germany and other partners, including Singapore and the United Kingdom of Great Britain and Northern Ireland.

The way ahead

21.   Australia will continue to rely heavily on its proven licensing/permit system to regulate chemical trade and collect quality data, and will refine it further. Nevertheless, we also believe it important to develop complementary measures, such as the customs classification systems. The unique classification system we use has been highly useful, but its optimisation requires considerable additional work, especially as concerns industry outreach.

22.   Australia recommends that those States Parties currently without a customs tracking system consider introducing one to complement data from their primary system, which may rely on permits. This customs tracking system should be tailored to satisfy specific state needs rather than to satisfy the most comprehensive system for its own sake. For larger trading countries, a more comprehensive system, such as unique classifications, may be justified.

23.   Australia would welcome advice from other States Parties on how their trade is regulated and how the related data are collected and utilised. Rather than doing this on a bilateral basis, it would be desirable that it be done on a broader basis such as in regional meetings of National Authorities or in some other OPCW forum. In this way, it may be possible to identify a number of "best practices" which could be improved further by discussion, and proven in operation. This would be beneficial to a range of States Parties, including those with fledgling or developing systems, as well as those whose systems are at the stage of refinement.

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