

ORGANIZATION OF AMERICAN STATES



INTER-AMERICAN DRUG ABUSE CONTROL COMMISSION

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DRAFT FINAL REPORT

**GROUP OF EXPERTS ON
CHEMICAL SUBSTANCES**

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**GROUP OF EXPERTS ON
CHEMICAL SUBSTANCES**
June 2 - 4, 2004
Brasilia, Brazil

**OEA/Ser.L/XIV.4
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June 7, 2004
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FINAL REPORT

Preliminary Version

I. BACKGROUND

The Group of Experts on Chemical Substances met in Brasilia, Brazil August 23-25, 2003. The Chairman of the Group presented the final report from this meeting to the Commission at its thirty-fourth regular session held in Montreal, Canada, November 17-20, 2003. The Commission considered and accepted the Group's report and recommendations. In doing so, the Commission directed that the Group should meet during 2004 to deal with the recommendations in the aforementioned report and possibly identify new issues related to the control of chemical substances.

CICAD's Expert Group on Chemicals subsequently met from June 2 to 4, 2004 in Brasilia, Brazil. The Group was chaired by Mr. Ronaldo Urbano, General Coordinator of Brazil's Counterdrug Police, Department of the Federal Police.

II. PROCEEDINGS

A. PARTICIPANTS

1. MEMBER STATES OF CICAD

Twenty-six experts from the following member states participated in this meeting: Argentina, Bahamas, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Mexico, Peru, Paraguay, United States and Venezuela. (List of Participants attached).

B. SESSIONS AND ORGANIZATION OF THE MEETING

1. OPENING SESSION

A joint opening session for this expert group meeting and the one on pharmaceuticals took place at 9:00 a.m. on May 31 in the Hotel Grand Bittar in Brasilia. The following individuals offered opening remarks:

- Mrs. Maria Ribeiro Luiza Lopez Da Silva, Ministry of Foreign Affairs
- Mr. Paulo Lacerda, Director General, Department of the Federal Police
- Mr. Cláudio Maierovitch Pessanha Henriques, Director of ANVISA, Ministry of Health
- Mr. Ziggy Malyniwsky, Chief of the Supply Reduction and Control Section, OAS/CICAD

2. WORKING SESSIONS

The Group of Experts on Chemical Substances met during five working sessions to consider the issues of pre-export notification (PEN), methods to enhance communication and coordination and alternative codes used in the identification of chemicals. A copy of the schedule of activities is attached.

In addition to discussing and considering the foregoing, the Group received two presentations by the delegation of Brazil concerning the exchange of administrative information and intelligence and combined operations in border areas. The delegation of Colombia provided a presentation on the Chemical Abstract Service (CAS) and Harmonized System Code (HSC) used as unique identifiers for chemical products.

Before proceeding with the schedule of work, the meeting began with a round table discussion of issues and problems that the participants have been encountering regarding the control of chemicals. The problems or issues identified included the following:

- Implementation of the pre-export notification (PEN) system
 - o No notification received
 - o No reply to notification sent
 - o PEN sent to a country where the chemical is not controlled or for which PEN's are not required
 - o PEN's sent with short notice regarding a shipment
 - o Limited awareness by some countries regarding PEN's
 - o Shipments received from countries that have not ratified the 1988 United Nations Convention and as a consequence do not send PEN's
- Legislation/regulations
 - o Inadequate
 - o Not responsive to current developments
- Trained administrative and enforcement personnel
 - o Not aware of legitimate commercial uses of chemicals thereby affecting import permit issuing process
 - o Not aware of chemicals that can be used for the production of illicit drugs
 - o Not aware of safety issues in processing or investigating chemical shipments
 - o Not aware of safety issues related to investigating illicit laboratories and disposing of chemicals in an appropriate manner
 - o Lack of a reference manual regarding chemicals
- Control of tablet making machines or presses that can be used to produce synthetic or chemical-based drugs
- Control of chemical mixtures
- Re-export of chemicals
- Safe disposal of chemicals
 - o Seized from legitimate industrial sources

- Seized from illicit laboratories

The round table proved to be an excellent forum for participants to exchange experiences and identify problems regarding chemical control. The Group agreed to consider the foregoing under the appropriate issue in the program or separately as the case may be.

A. Pilot project on the acknowledgement of receipt of pre-export notification (PEN)

Further to the last meeting of the Group of Experts, the delegation of Uruguay was to have coordinated a pilot project concerned with acknowledging the receipt of PEN's. Unfortunately, Uruguay was not able to attend the current meeting and information concerning the status of the pilot was not available. As such, the Group decided to focus on the issues concerning PEN's raised during the round table.

A number of delegates noted a problem with failure of certain countries to send PEN's. This was primarily a problem with countries outside of the hemisphere but in some cases included CICAD member states. In previous discussions, one reason for this problem was attributed to not knowing the name and contact information of the person in a given country who is responsible for receiving and responding to PEN's. Since the last meeting of the Group, the Executive Secretariat contacted all member states and requested this type of information, which was subsequently posted to the CICAD web page. The Executive Secretariat reported that it had received replies from 13 member states and that it was following up with the remaining countries to secure this information. The Group underlined the importance of member states providing the Executive Secretariat with routine update information and amendments regarding contact information for inclusion in the CICAD web page.

The International Narcotics Control Board (INCB) is the entity responsible for monitoring the implementation of the United Nations Conventions including the provisions concerned with PEN's. The Executive Secretariat offered to approach the INCB regarding the problem of countries failing to send PEN's. To do so, the Executive Secretariat would need input from the member states identifying specific problem countries.

The lack of a response to PEN's continues to be a problem for some member states. Since the last meeting of the Group, some member states have amended their procedures to ensure that they send an acknowledgement confirming receipt and advising that in the absence of notification to the contrary sent within a specified period of time, there would be no objection to the shipment in question.

When sending PEN's, the Group encouraged countries to consult the CICAD web page for the contact information of the person responsible for receiving PEN's to ensure that it was being directed to the appropriate party. In the case where no reply is received, the Group proposed that member states take this up directly with the country in question.

- PEN sent to a country where the chemical is not controlled or for which PEN's are not required
- PEN's sent with short notice regarding a shipment
- Limited awareness by some countries regarding PEN's
- Shipments received from countries that have not ratified the 1988 United Nations Convention and as a consequence do not send PEN's

Many of the remaining problems identified during the round table suggested a lack of understanding by some countries regarding the PEN process and corresponding responsibilities. The INCB distributes information concerning the foregoing and has available information regarding chemicals that are controlled by individual countries and the ones for which PEN's are required in each case. The Executive Secretariat will consult with the INCB regarding what materials are available and how it might assist with or facilitate the dissemination of this information. The Group also proposed that the Executive Secretariat prepare a brief information bulletin concerning the PEN process to be posted to the CICAD web page and in doing so address some of the problems that the Group identified. The delegation of Peru offered to work with the Executive Secretariat on this initiative.

B. Mechanisms to Strengthen Communication and Coordination in the Control of Chemical Substances:

The delegation of Brazil delivered a presentation concerning their chemical control system and details regarding a joint operation they conducted in cooperation with the Government of Bolivia.

Responsibility for the control of chemicals is shared between the Federal Police and ANVISA. The presentation provided an overview of the component of the system that these two agencies implement. This administrative and regulatory system depends on interagency cooperation and information exchange.

The delegation then provided an overview of a jointly operation involving police from Brazil and Bolivia. The operation was focused on the border area between these two countries. It involved a small licensed company that over time purchased large quantities of various chemicals (9 tons) and then sold them in 5 kilo bags in what was called "ant trafficking" to move the chemicals from Brazil to towns across the border in Bolivia. The chemicals had legitimate uses but were also involved in the production of illicit drugs.

This operation had been in place since 1990 and used the legitimate system of permits and invoices to divert the chemicals. The owner of this company maintained excellent records that ultimately defined the scope and nature of the operation and facilitated its demise. The police in the two countries were able to work together, exchange information and coordinate their efforts to successfully conclude the case and terminate the operation.

The presentation served as an introduction to a broader exchange of experiences among the members of the Group regarding mechanisms used for communication, the exchange of information and coordination in relation to the control of chemicals. These mechanisms included the following:

- the use of regular (eg. monthly) inter-agency meetings to discuss trends and problems identified and work together to seek solutions or plan joint operations in response
- the establishment of joint, inter-agency and international operations such as the Seis Fronteras operation
- regular distribution of information on trends, seizures and other information among agencies or departments using a bulletin or some other hard copy or electronic format
- organization of multi-agency operational and/or intelligence units to exchange information and organize monitoring, investigative and interdiction activities
- the gathering and dissemination of statistical information related to chemical sales, seizures and other related activities

The type of mechanisms that might be employed to facilitate information exchange and coordination of activities depend on a variety of factors. They include the parties involved, the nature of the information, the security considerations and the objective of the exchange to name a few. The dynamic nature of information exchange and coordination make it difficult to develop a paper on best practices concerning the foregoing. At the same time, it is possible to define some basic principles that agencies and departments should apply in this effort. They include but are not limited to the following:

- entities involved in the control of chemical substances need to be proactive in establishing and cultivating contacts with colleagues in-country or counterparts in other countries. Entities should take the initiative to approach colleagues and counterparts and provide them with contact information regarding officials involved in the control of chemical products
- entities need to develop specific mechanisms for information exchange and coordination that respond to their needs and the circumstances and restrictions that exist

C. Product codes used to identify chemicals

The delegation of Colombia delivered a presentation on the Chemical Abstract Service (CAS) code used to identify chemical substances. The Harmonized System Code (HSC) is the current international standard used by most countries for international trade in identifying chemical products. It is the code that the World Customs Organization recognizes and promotes for this purpose.

The HSC is based on a 10-digit code. Only 6 of the digits are used to identify a chemical. This does not allow for enough specificity in identifying individual products containing this “base” chemical. This is further complicated by mixtures that containing varying concentrations. Countries have the option to use the remaining 4 digits for this purpose. In doing so, there is no consistency between countries creating potential confusion.

At present, countries are required to include the HCS code in PEN's. One proposed that countries also include the CAS code in the PEN. The chemicals listed in the tables of the 1988 Convention have specific HCS code numbers. For this reason, some participants felt that the inclusion of the CAS code as well would create confusion and additional, unnecessary work for those completing the PEN form. In the end, the implementation of the proposal to include both the CAS and HCS codes in PEN's was left to the individual countries to decide.

While the CAS code is more specific for the identification of chemical products, it does not cover mixtures. According to the participants, the distribution and control of mixtures represents a significant problem for member states. This generated a great deal of discussion. The CICAD model regulation speaks to the issue of mixtures and sets a level of 30% of an individual chemical substances as the threshold for control. Traffickers are using various means to bypass this threshold thereby creating problems for the effective control of chemical products. The delegation of Canada reported on their recent experience with new chemical control legislation and regulations and offered to share information in this regard with other members of the Group. Other countries with similar information were invited to do the same. This is sensitive information so it will not be possible to post it to the web page.

The Group recommended that the Executive Secretariat consult with the World Customs Organization (WCO) regarding the HCS code and the potential to use all 10 characters for more specificity in identifying chemical substances. The Executive Secretariat should also consult with the WCO regarding mechanisms to control mixtures of chemical substances.

D. Other Issues

Transnational Organized Crime

The Executive Secretariat provided the Group with a report on recent discussions regarding transnational organized crime (TOC) that have been taking place within the Commission . This included the discussions that took place during the Commission's XXXII regular session (December 2 to 5, 2002) in Mexico City.

Further to these discussions, the Commission directed that an Ad Hoc Group on Transnational Organized Crime be established and meet to examine this complex issue. The Group, chaired by Ambassador Miguel Angel Felix Gonzales of Mexico, met in Washington, DC (March 15-17, 2004).

During the Commission's thirty-fifth regular session (April 27-30, 2004), the Chair presented the Group's final report. The Commission accepted the recommendations contained in the report. One of these recommendations called on CICAD's Groups of Experts to review "existing model regulations and other initiatives in order to consider the relevancy of incorporating aspects related to transnational crime".

The Group of Experts on Chemical Substances considered this recommendation from the Ad Hoc Group. While the model regulations on chemicals do not make specific reference to transnational organized criminal groups, the Group stressed that they were prepared to strengthen the capacity of member states to control chemical diversion by such groups and anyone else attempting to do so. As such, the Group believed that the model regulations addressed transnational organized criminal groups and for this reason, no amendments were required at this time.

Model Regulations for the Control of Chemical Substances

In discussing the issue of transnational organized crime, the Group considered the necessity of reviewing the model regulations. During the last review of the model regulations in 1999, the Group set aside a number of sections for consideration in the future. This included provisions for safe storage of chemicals, low risk disposal and re-exportation. The Group also considered the need to include a section concerning penalties.

The participants concluded that there was no need to review the model regulations to include the above noted provisions. In many instances, some of these provisions are addressed in other statutes and regulations concerning trade or manufacturing. On the issue of penalties, this is normally included in the statute rather than the regulations.

The one area of concern shared by many of the participants related to the safe and environmentally sensitive disposal of chemicals. This was also identified during the round table discussion. The concerns expressed involve chemicals seized in relation to illicit drug production and those obtained from legitimate sources for various reasons. In many instances, national laws prevent the resale or use of these chemicals. In other instances, the integrity of the chemicals cannot be confirmed. Within this context, the participants were concerned about the following issues:

- lack of information concerning effective and safe methods for the disposal of chemical both in controlled settings and in the field at illicit laboratories
- lack of training in officer safety for enforcement personnel investigating and dismantling illicit chemical laboratories
- the cost of disposing of chemicals
- confronted with large volumes of chemicals to be destroyed

Some participants reported that they need information on the safe disposal of chemicals. The Executive Secretariat reminded the Group that there exists a manual on chemical control on the CICAD web page. It includes a section on officer safety and the disposal of chemicals. The Group proposed that the Executive Secretariat consult with member states to see what manuals or procedures exist that could then either be posted on the web page or identified with links to where they could be found. The Group also proposed that the Executive Secretary expand its chemical control training program with particular emphasis on officer safety and the disposal of chemicals.

While in some countries, the safe disposal of chemicals is governed by legislation dealing with manufacturing or environmental issue, the Group proposed that the model regulations should be amended to include a section on this issue along with practical examples of procedures that might be used.

Checklist for the review of national chemical control legislation, regulations and administrative systems

The Executive Secretariat reported that the last round of the Multilateral Evaluation Mechanisms (MEM) highlighted problems in many member states regarding their control of chemical substances. In some instances, the problems related to outdated or non-existent legislation and regulations or insufficient administrative or regulatory procedures and systems.

Since that time, the Executive Secretariat has worked with several member states to address these problems. In doing so, the Executive Secretariat prepared a checklist to assess draft proposals. Officials in Peru used a similar approach when preparing new national legislation for the control of chemicals. The Executive Secretariat presented a partially drafted matrix that, once finalized, could be used by member states to help assess draft legislation or their control systems. A copy of the draft matrix is attached.

The Group agreed that this could be a useful reference tool for member states. As such, using the draft matrix as a starting point, the Group will expand on the sections and individual elements or questions raised in each, working to finalize the matrix. The contents of the matrix must be consistent with and link to the CICAD model regulations and the relevant international conventions. The Executive Secretariat will send a note to all members of the Group to request their input. Once completed, the Executive Secretariat will seek comments on the matrix from the INCB and post the final product on the web page.

Tablet making machines or presses

Tablet making machines and presses are used extensively in the pharmaceutical industry. At the same time, drug traffickers also use them to manufacture illicit drugs such as Ecstasy and other synthetic drugs. A number of participants expressed concern regarding an evolving problem with the diversion and use of these machines for this illicit purpose. Several members reported the seizure of such machines coupled with an increasing trend in the distribution and use of synthetic drugs. While in the past, these drugs have been imported from Europe, there is anecdotal evidence that suggests that traffickers are starting to establish laboratories for local production of synthetic drugs in the countries of the Americas. In some instances, member states do not have laws or mechanisms to control these machines.

The Group proposes that the Executive Secretariat consult with other international organizations such as Interpol and the United Nations as well as countries where these machines are control. In doing so, the Executive Secretariat should gather information regarding the controls that are in place and their experiences in this area. This can then form the basis for discussion by the Group during its next meeting and the elaboration of strategies or reference tools that member states could use to strengthen their control over these machines.

3. CLOSING SESSION

The Group of Experts concluded its work at 2:00pm on June 4. The Chair of the Group closed the meeting and thanked the members for their participation.

III. CONCLUSIONS AND RECOMMENDATIONS OF THE GROUP OF EXPERTS

RECOMMENDATIONS TO CICAD IN ITS THIRTY-SIXTH REGULAR SESSION:

1. That, on the issue of PEN's the Commission should:
 - Direct the Executive Secretariat to consult with member states regarding problems they have experienced with the failure of exporting countries to send PEN's and to seek the assistance of the INCB to resolve these problems
 - Direct the Executive Secretariat and the delegation of Peru to prepare a brief information bulletin concerning the PEN process to be posted to the CICAD web page and in doing so address some of the problems that the Group identified
2. That the Commission direct the Expert Group on Chemical Substances to complete the following tasks and report to the Commission during its XXXVI regular session:
 - amend the model regulations on chemical substances to include a section on the safe and environmentally acceptable means to destroy these substances along with practical examples of procedures that might be used for this purpose.
 - prepare a draft matrix for use by member states in assessing their chemical control legislation, regulations and systems to be finalized at the next meeting of the Group
 - prepare a guide or other reference tool for use by member states to strengthen their capacity to control tablet making machines.
3. That the Commission direct the Executive Secretariat to:
 - consult with the World Customs Organization (WCO) regarding the HCS code and use all 10 characters for more specificity in identifying chemical substances. The Executive Secretariat should also consult with the WCO regarding mechanisms to control mixtures of chemical substances.
 - consult with member states to see what manuals or procedures exist regarding the safe and environmentally sensitive disposal of chemicals for posting to the web page
 - expand its chemical control training program with particular emphasis on officer safety and the disposal of chemicals

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