



The second form (interdiction control) entails criminal penalties for the diversion of controlled substances, whether the action is treated as an autonomous offense or as a form of drug trafficking. This control requires the intervention of the police and/or the prosecutor's office—depending on each country's criminal procedure—and the courts impose the corresponding sentences based on legislation in force.

The control of chemical substances and/or drug precursors is clearly a very complex task. This document endeavors to gather the lessons learned and best practices in the countries of the region, and to propose the main elements to be considered when implementing or upgrading administrative control.

## Chapter I

### Administrative Control of Chemical Substances and Precursors

1) Definition:

One of the key tools in the strategy against illicit drug trafficking is control of the possible diversion of chemical substances and/or precursors that can be improperly used for illicit drug production.

The “United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances” of 1988 states “that measures are necessary to monitor certain substances, including precursors, chemicals and solvents, which are used in the manufacture of narcotic drugs and psychotropic substances, the ready availability of which has led to an increase in the clandestine manufacture of such drugs and substances.”

The “Hemispheric Plan of Action on Drugs, 2011–2015” establishes the need to “adopt or strengthen control measures to prevent the diversion of chemical substances to illicit activities,” through the following actions:

- a) Review existing regulations and control measures to prevent the diversion of controlled chemical substances to illicit channels, and, on the basis of this review, modify programs or introduce new ones as necessary.
- b) Evaluate the results achieved through the implementation of measures and programs aimed at preventing the diversion of controlled chemical substances to illicit activities.
- c) Promote inter-agency coordination among all government agencies and promote the participation of the private sector in the control of chemicals.
- d) Promote or strengthen methodologies for risk analysis of diversion in foreign trade transactions.
- e) Promote or strengthen the use of non-intrusive inspection equipment at customs.
- f) Promote, when applicable, the estimation of legitimate needs for chemical substances to prevent possible diversion.
- g) Create or strengthen, as appropriate, research centers and/or laboratories that contribute to the strengthening of control activities for controlled chemical substances.
- h) Promote the utilization of pre-export notification information systems.

- i) Strengthen the mechanisms for the exchange of secure information among member states concerning possible cases of chemical diversion.

Administrative control is nothing more than observing, testing, validating, and monitoring all of the economic activities related to the production, import, transformation, use, and marketing in the country of controlled chemical substances and/or precursors that could be diverted to illicit drug production.

Since these substances are necessary and indispensable for carrying on many licit economic activities, care must be taken that control of them does not affect the normal operation of market activities. For this purpose, the control organ must use a balanced prevention strategy, designed to minimize the impact (in time, costs, and procedures) of the control mechanisms, and provide guidance and assistance to users.

Although this control is primarily preventive, it can identify clues or evidence that can be the basis of criminal proceedings involving the crimes of illicit drug trafficking or illicit trafficking in chemical substances and/or precursors.

The CICAD document titled "Model Regulations for the Control of Chemical Substances Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances" should be reviewed.

- 2) Objectives:

The primary objective of administrative control is to predict, detect, and prevent the diversion of chemical substances and/or precursors to illicit drug production. To do this it is necessary to have in-depth knowledge of their use and destination, and the real quantity used in the licit market.

- 3) Targets:

Many countries use the quantity of chemical substances and/or precursors seized as an indicator. This indicator, which in principle is useful for assessing the results of interdiction actions, does not appear suitable for measuring administrative control actions.

Logic indicates that if preventive control works, fewer substances will be diverted and there should be a lower volume of seizures.

So far the international community has not been able to identify or agree upon indicators to measure administrative control.

- 4) Governing principles:

- a) Comprehensive approach of the control

- **Commercial involvement:** Administrative control must be exercised on all activities involving chemical substances and/or precursors (such as buying, selling, storage, transformation, transfer, loans, recycling,

destruction, transport, distribution, etc.), including foreign trade operations and activities in customs zones.

- **Interagency involvement:** Public agencies that in one way or another are involved in the fight against drugs must be included, through interagency cooperation agreements or legislation.

This will permit sharing of the relevant information that each agency generates or to which it has access (with the exception of information that is privileged or confidential under domestic law).

- **Regulatory involvement:** Regulations for the control of chemical substances and/or precursors must be specified in detail in legislation that addresses illicit drug trafficking. It is important that the legislation include appropriate administrative and criminal penalties, including fines, for infractions related to noncompliance with regulations for the control of chemical substances and/or precursors or criminal penalties for diversion.

b) Dynamic control

The control strategy must address all ways that could be used to divert chemical substances and/or precursors from the time of production.

c) Non-intrusive control

Control organs should adopt measures for immediate execution, through simple procedures easily complied with, so as not to disrupt licit trade activities.

d) Reliable control:

Data that the control organ generates and collects from users must be kept confidential, in accordance with each country's current legislation.

## Chapter II

### Components of the Administrative Control of Chemical Substances and Precursors

#### 1) Regulatory framework:

##### a) Supranational norms:

The following are some of the multilateral treaties on illicit drug trafficking that involve chemical substances and precursors to some extent:

- **Single Convention on Narcotics (1961) amended by the Protocol of 1972.**

Establishes the International Narcotics Control Board (INCB), and covers the control of various narcotic substances, among them opium and its derivatives.

- **Convention on Psychotropic Substances (1971).**

Establishes the control of drugs not included in previous treaties (such as hallucinogens, amphetamines, barbiturates, non-barbiturate sedatives, and tranquilizers).

It has provisions against the improper use or diversion of substances intended for therapeutic purposes.

- **United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).**

Develops especially the investigation and criminalization of the offenses of illicit traffic in narcotic drugs and psychotropic substances, based on the classifications and other provisions concerning them in the conventions of 1961 and 1971.

Article 10.a regulates prior notification to the importing country of the export of a controlled substance through the "PEN Online" system.

At the Hemispheric level, we can mention the following agreements:

- **Hemispheric Plan of Action on Drugs, 2011-2015**

Recognized by the CICAD member states as a reference guide for the implementation of national projects and programs designed to give effect to the Hemispheric Drug Strategy.

Among its main objectives is that of promoting various actions to adopt or strengthen control measures to prevent the diversion of chemical substances to illicit activities; of pharmaceutical products with

psychotropic properties; and of pharmaceutical products used in the illicit production of amphetamine-type stimulants.

- **CICAD's Model Regulations for the Control of Chemical Substances Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances**

“The purpose of these Model Regulations is to monitor and control the manufacture, preparation, transformation, storage, import, export, marketing, transportation, possession, or other type of national or international operation, act, or transaction involving chemical substances, as well as to prevent and to punish diversion of chemical substances that can be used in or intended directly or indirectly for the illicit manufacturing, preparation or extraction of narcotic drugs or psychotropic substances.”

In recent years both the **INCB** and **CICAD**, and other international organizations, have expressed concern about the unrestricted circulation of new substances with psychotropic and narcotic effects that are not included in the current lists, such as “bath salts.” They are also concerned about the chemical substances that are not drug precursors but are used to make precursor substances (pre-precursors), which also are not included in the control lists.

b) Domestic norms

Following are the general aspects that we feel should be included in each country's domestic legislation to ensure effective control of chemical substances and/or precursors.

These characteristics are not limited, imperative, or exhaustive. The member states will take into account their particular legislative and institutional structure when deciding whether to adapt or modify it.

- It should be clear, precise, and detailed, contemplating at least the following aspects:
  - ✓ Definition of the control organ and establishment of its duties, authority, and structure.
  - ✓ Establishment of continuous permanent control in the entire country, including foreign trade operations that involve controlled substances.
  - ✓ Specification of activities subject to control and monitoring, identifying their scope.
  - ✓ A precise list of the chemical substances and/or precursors subject to control. There should be a regulatory mechanism for timely updating of the list.

- ✓ Definition of users' obligations, and the deadlines for compliance with them.
- ✓ Definition of administrative infractions.
- ✓ Establishment of the types and scale of penalties, and the periods of applicability.
- It should be reviewed and updated periodically to take into account new methods of diversion or other illicit activities.
- It should contain safeguards to protect the identity of persons who provide information that leads to the detection of diversion and related acts. It should also safeguard the identity of officials of the control organ in charge of processing that information.

In addition, it should ensure the confidentiality of the reports issued or received by the control organ where necessary.

## 2) Scope of control

The control is applicable to all activities involving chemical substances and/or precursors to prevent their diversion to illicit drug production.

Each country should determine which substances are covered and the degree of control of each. It is desirable to include all items specified in Lists I and II of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,<sup>1</sup> and any other substance that although not on the lists is produced in or enters the country and is used for the specified illicit activity, or assists in binational and/or regional control strategies.

Controlled activities will include production, use, consumption, manipulation, transport, storage, import, and export, among others. However, as noted above, it is necessary to define by law the scope of control (for example, if it will include household users).

If there are exceptions to the control of certain substances (for example, those intended for household use), measures must be provided to prevent them from being used for the illicit manufacture of drugs.

It is also necessary to control activities by unregistered users, which could lead to a criminal offense.

## 3) Promotion of knowledge

### a) Research

Research makes it possible to get information needed to solve various types of problems and make decisions based on an analytical process.

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<sup>1</sup>According to current legislation.



One of the most pressing current needs is for studies and research on chemical substances and/or precursors that will generate accurate information on which to base better decisions.

For example, there is a need for updated information on such aspects as: the types of chemical substances and/or precursors that are used in the illicit manufacture of drugs, the amounts and degree of concentration used, the geographical location where they are made, the routes for trafficking in chemical substances and/or precursors, their routes for entry into the country, and the principal drugs that are manufactured, marketed, and/or used in the country, among others.

b) Exchange

In addition to the exchange of data, it is desirable to promote the exchange of experiences, best practices, lessons learned, strategies, and knowledge. To this end, it is necessary to take part in forums, seminars, and workshops.

c) Specialization

It is necessary to generate specialized knowledge on various aspects of administrative control. Agreements could be signed with academic institutions, professional groups, and other entities.

4) Promotion of cooperation

a) International cooperation

It is desirable to establish and maintain agreements for collaboration and cooperation with institutions in neighboring countries relating to the control of chemical substances and/or precursors. This will facilitate the exchange of information, cross-border research, controlled deliveries, and cooperation at all levels in multinational cases.

It is also vital to have interaction and exchange with international organizations such as the INCB, CICAD, and UNODC, as well as international control and investigative institutions such as INTERPOL, EUROPOL, AMERIPOL.

b) Domestic cooperation

As noted above, cooperation with the various institutions is essential for effective control of chemical substances and precursors.

However, it is also necessary to establish mechanisms of collaboration and cooperation with regional, municipal, or local governments, as established in the political division of each country. These mechanisms can make the control more effective with specific measures, and provide information.

c) Cooperation with the private sector

The private sector's participation is indispensable for the success of the administrative control that we propose.

This cooperation will make it possible to refine the legal mechanisms and procedures established, satisfying all parties involved. Similarly, it will be possible to enlist the required support on subjects ranging from training of officials of the control organ in productive processes and the exchange of experiences, to the generation of mechanisms for information on suspicious operations.

For this purpose, it is desirable to review the following documentation:

- "Guidelines for a Voluntary Code of Practice for the Chemical Industry," issued by the INCB.
- "Guide for Better Coordination between the Public and Private Sectors for Control of Chemical Substances," issued by CICAD.

## Chapter III

### The Control Organ

#### 1) Characteristics

##### a) Institutional viability:

It should be a solid institution of national standing that is capable of generating relations for interagency cooperation with the public and private sectors.

##### b) Empowerment:

The control organ should be located in the government structure at a sufficiently high level so that it can exercise authority and enjoy enough autonomy to complete its assigned work without any interference.

##### c) Budget:

It should have a sufficient budget to permit its proper functioning with the appropriate size staff and the equipment and logistics needed.

The sum established should also cover research activities, and ongoing training of staff and the national authorities. There should also be funds for programs to disseminate the work of control and inspections.

##### d) Centralized information:

There should be technical and institutional tools and mechanisms for access to information from other entities (public or private) that could be useful.

#### 2) Human resources:

a) The control organ's areas should have enough personnel to perform their functions properly, taking into consideration, inter alia, the extent of the control, the geography of the country, and the number of users.

b) Professionals in various specialized fields should be recruited, including chemists, industrial engineers, IT specialists, lawyers, and others.

c) Staff must be selected with special care. It is desirable to have a monitoring program to prevent possible conflicts of interest.

d) In-service training programs should be provided for the professionals and the work force.

It is recommended that the training include the following subjects:

- ✓ Manipulation of chemical substances and/or precursors

- ✓ Production processes
- ✓ Suspicious transactions
- ✓ Control methods
- ✓ Highway control
- ✓ Maritime control
- ✓ Container inspection
- ✓ Verification and identification of substances
- ✓ Preservation of the scene of intervention, objects, instruments, and evidence
- ✓ Use and handling of personal protective equipment
- ✓ Use and handling of equipment for identification of controlled substances

We recommend taking into account the document “Comprehensive Training on Issues Relating to Chemical Substances,” issued by CICAD.

- e) Personnel should be given personal protective equipment, instruments, and logistical material adequate for carrying out their assigned duties.
- f) It is desirable that the personnel be given adequate and competitive remuneration, the insurance coverage specified in law, and additional policies to cover the risks inherent in the duties they perform.
- g) Mechanisms should be established to protect the confidentiality of information to which the personnel have access, even after they stop working for the control organ. The legislative framework will be amended to reflect this.

### 3) Internal structure:

It is recommended that the control organ have at least the following different areas:

#### a) Register area

It is advisable to implement it with a computer program that is reliable, solid, secure, and online, so as to permit entry and maintenance of substantive information for data analysis, and preparation of profiles of suspicious operations, or control strategies.

It should also permit centralized storage and custody of user data, monthly reports, authorizations for foreign trade, and waybills, etc.

The register will be the basis for the control and inspection strategy.

#### b) Control and inspection area:

This area should be composed of personnel from various disciplines, trained in the control of diversion of chemical substances and/or precursors, who will carry out their duties based on protocols that include audits or inspections, as well as specific operations.

c) Data analysis area

It is essential to have a unit responsible for analyzing the legal demand for substances and correlating data from different sources to generate alerts of possible cases of diversion.

4) Equipment

There must be a computer platform with high levels of security and protection; with capacity for storing autonomous data; fully protected against viruses, unauthorized access, and cyber attacks.

There needs to be non-intrusive inspection equipment (scanner) and electronic identification, to facilitate the tasks of inspection and detection of substances.

In addition, it is necessary to have:

- Sufficient personal protective equipment (PPE) for all personnel.
- Radio and telecommunication equipment for the operatives.
- Appropriate and operational means of transport for the personnel, and for carrying out controls on roads, rivers, lakes, or the sea.

## Chapter IV

### Processes for the Administrative Control of Chemical Substances and/or Precursors

#### 1) Register process

##### a) Prior authorization for starting activities

- The user should present, as a minimum, the following information:
  - ✓ Specific technical basis to justify the need for chemical substances and/or precursors.
  - ✓ Details of their production and/or commercial processes.
  - ✓ Details of their installed capacity, including storage places.
  - ✓ Security measures taken.
  - ✓ Quantity and concentration of chemical substances and/or precursors used.
- The authorization must be issued before activities begin. A compulsory prior requirement is the conduct of a technical inspection to verify the following aspects, among others:
  - ✓ Type of operations to be conducted with chemical substances and/or precursors.
  - ✓ Chemical substances and/or precursors that will be used for the activities.
  - ✓ Quantities and concentrations of the chemical substances and/or precursors needed to carry out the activities.
  - ✓ Place or places where the activities will be done, including storage.
  - ✓ Specifications and technical information on the processes that will be carried out with the chemical substances and/or precursors.
  - ✓ Other pertinent information.

The document "Pre-Registration Inspection for Chemical Handlers: Questions Checklist," issued by CICAD, provides useful information for this process.

##### b) Authorizations for foreign trade

Users that conduct foreign trade operations must request authorization to import or export goods subject to control.

In the case of an import, the authorization must be issued before the shipment. That way the control organ will have advance information on the

place of arrival, means of transport, and quantity involved in the operation (as well as the importer's data).

For this purpose, it is strongly recommended to use the pre-export notification system (PEN online) developed by the Council of UNODC/INCB. This will enable the member states that export chemical substances and/or precursors to give authorities of the importing country details of the export transaction, and provide the capacity to generate alerts to stop suspicious shipments. The system facilitates complete electronic response of acknowledgement and notifies the exporting country of the authorization for the import. An electronic copy is automatically sent to the INCB.

c) Register of domestic operations

After users are inscribed in the register, they must present periodic reports to the authorities on the operations or processes that they carry out, including the balances, depletion, and other necessary information so the control organ can form a clear idea of what happened to the substances. This information is essential for analysis of the substances' movement.

These reports should be submitted on the Internet through a secure online system. This will permit immediate follow-up of any suspicious situation that may arise.

2) Inspection process

a) Inspection of the companies (users)

This is the basic task of the administrative control organ, and it must establish an inspection strategy based on the level of risk of the companies, frequency, and timeliness. Inspection is based on information from the periodic reports and any other source to identify possible inconsistencies, and conducts a technical, administrative, and financial review on site to confirm or rule out the possibility of any attempt at diversion. This task requires highly specialized personnel trained specifically for carrying out the inspection goals. There also need to be internal control mechanisms to supervise the inspectors, who are frequently tempted by corruption.

The control organ must make an in-depth examination of the processes involving controlled chemical substances and precursors, as well as the user's financial activity and assets, to determine whether they are technically and legally in line with what is authorized by the regulations in force.

The inspections can be scheduled, random, or quick.

Generally they are necessary when there is evidence of technical and/or economic-financial contradictions or inconsistencies; they make it possible to determine the user's responsibility.

The inspections can include audits of processes, bookkeeping, finances, management, and assets, among others.

They should be conducted by a multidisciplinary team, and can be the basis for an administrative penalty or the start of a criminal investigation.

b) Control of transport

In most cases, chemical substances and/or precursors are transported overland or by air. However, depending on the country's geography, they may be transported by river, lake, or sea.

Transport control should permit the control organ to have positive identification of the means used, the drivers and/or persons responsible for the transport, and the routes used. It should identify the chemical substances and/or precursors involved, the quantities transported, and gather all information necessary to verify compliance with the applicable administrative procedures. Otherwise, a criminal proceeding will begin.

Some countries have established "mandatory routes" for this transport, as well as monitoring mechanisms (such as the use of global positioning systems—GPS).

In the case of transport by river, lake, or sea, organs such as the navy and the harbormaster, etc. may be involved.

c) Storage control

Its purpose is to verify the ownership and final destination of chemical substances and/or precursors warehoused in a specific location that may or may not belong to the user. This will also check on compliance with the administrative procedures implemented.

The control should generally be exercised by combined units of the police, customs agents, and personnel of the control organ.

3) Control of compliance with obligations

Failure to comply with administrative obligations should be penalized.

The following penalties may be established:

- Application of fines
- Suspension and/or revocation of registration
- Forfeiture
- Restriction of movement
- Seizure
- Confiscation

Their application can be gradual, depending on factors such as the gravity of the infraction and recurrence, among others. However, provision should be



made for sanctions even in the cases of delay in implementing recommendations of the control organ.

Moreover, it would be desirable to establish the application of preliminary or precautionary measures (such as restriction of movement) while penalty proceedings are in process.