

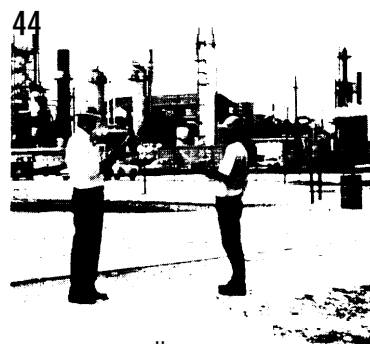
# Overview and Findings

# 1

**T**he Chemical Weapons Convention (CWC), which is expected to enter into force in early 1995, differs from previous arms-control treaties in the magnitude of its effects on private industry, including extensive reporting requirements and onsite inspections of commercial chemical plants. While the CWC will have a direct impact on chemical manufacturers, it will also affect a wide variety of firms that process or consume chemical products. Treaty implementation will involve a delicate balance between the need for intrusive verification to ensure that the participating states are complying with the regime and the desire to minimize any negative consequences for legitimate industrial activities.

Major U.S. chemical companies support the CWC and believe the goal of eliminating chemical weapons warrants accepting additional regulatory burdens. They are concerned, however, that compliance costs may be significantly higher than government officials assume and that the treaty's reporting and inspection requirements could open the door to industrial espionage, harming the international competitiveness of one of the strongest U.S. industrial sectors. Other treaty proponents respond that implementation will not pose undue burdens and that the objective of a chemical weapons-free world is worth some investment and sacrifice on the part of industry.

Congress will need to address these issues in the CWC implementing legislation, which will convert the CWC's provisions into domestic law and codify the procedural and substantive rights and obligations of commercial industry in complying with the treaty. This background paper examines the implications of the CWC for U.S. industry, focusing on industrial compliance with the treaty's declaration and reporting requirements and the protection of trade secrets. These issues are examined with respect to the extent to which they are covered in the treaty text itself or must be included in the implementing legislation.



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The paper also examines some ways to ensure that CWC verification is both effective and consistent with the basic protections in the U.S. Constitution.

### FINDINGS

1. Many U.S. chemical manufacturers, processors, and consumers will have at least some declaration and/or inspection obligations under the treaty. The U.S. Government is ultimately responsible for the treaty compliance of all the companies located on its territory, including foreign-owned branches and subsidiaries. Because of the difficulty of identifying and notifying smaller firms that may have treaty obligations, effective implementation of the CWC will require an extensive program of industry education and outreach.
2. Data needed for CWC verification will differ, both quantitatively and qualitatively, from that collected for management and regulatory purposes, and hence will require some augmentation of existing corporate reporting systems. Although the precise reporting obligations are still being worked out, the need to report production data within a shorter timeframe than is typical of domestic reporting may require the development of new accounting subroutines that improve the speed of data collection and analysis. While CWC reporting requirements will only marginally increase the paperwork burden on larger firms, they will be proportionately more onerous for smaller companies.
3. Because the first reporting deadlines are fast approaching, industry will need to proceed rapidly to establish appropriate



*United Nations Special Commission inspector in Iraq tests a 500 kilogram botifilled with mustard agent.*

mechanisms for tracking the production, processing, and use of treaty-controlled chemicals. Each State Party to the CWC must provide an initial declaration only 30 days after the treaty enters into force, which could be as early as January 1995. After the initial declaration, annual reports on production of treaty-controlled chemicals will be due 90 days after the end of each calendar year.

4. Routine onsite inspections of commercial chemical plants should largely preclude the need for challenge inspections at such facilities, since governments will be unlikely to “waste” a challenge inspection on a declared site. Challenge inspections at chemical plants may still occur, however, if persistent suspicions of noncompliance cannot be resolved through routine inspections. U.S. defense contractors will need to balance the fairly low probability of a challenge inspection at any given plant against the costly preparation needed to minimize the loss of proprietary or national-security information.
5. The chemical industry’s primary concern about onsite inspections is the potential for compromise of trade secrets, which are often vital to a firm’s competitive edge. CWC inspections will be carried out by multinational teams including inspectors from U.S. political adversaries and economic competitors, who may be tempted to collect collateral information. The extent to which onsite inspections result in a significant loss of proprietary data will depend on a number of factors, including how frequently a site is inspected; the inspectors’ prior knowledge, experience, and intent to engage in industrial espionage; and the existence of a party willing to pay handsomely for the stolen information. Given the many other means of conducting industrial espionage, however, CWC inspections may only marginally increase the threat.
6. Although the threat of industrial espionage may arise during CWC inspections,

it can be managed with effective planning and preparation. Chemical companies have a number of effective means at their disposal to protect trade secrets, such as shrouding sensitive equipment. The CWC also provides for advance notice of inspections and limits on their duration, and allows States Parties to negotiate facility agreements specifying the terms and scope of the inspections. Nevertheless, effective preparation will require careful planning and action on the part of inspected facilities. The U.S. Government could help chemical companies prepare for treaty implementation by assisting them in their assessment of which sensitive technologies need to be protected, proposing cost-effective solutions, and testing out procedures with mock inspections of commercial plants.

7. Legal challenges to the CWC could result in significant delays in treaty implementation that could seriously embarrass the U.S. Government. Unless questions over the constitutionality of onsite inspections are clearly resolved, chemical companies may seek judicial relief in an attempt to keep foreign inspectors out of their facilities. Solutions to these constitutional problems will have to be laid out in the implementing legislation.
8. The implementing legislation will need to include a mechanism to protect proprietary business information. Under such a provision, information that companies designate as confidential would be shielded from unauthorized disclosure. The chemical industry also wants to clarify the current trade-secret exemption to the Freedom of Information Act so that sensitive data submitted to the U.S. Government under the CWC are not released to competing companies or the public.
9. The chemical industry seeks a nonburdensome administrative process for the arbitration and payment of just claims arising from CWC implementation. Indus-

#### 4 I The Chemical Weapons Convention: Effects on the U.S. Chemical Industry

try may wish to hold the U.S. Government liable for compensating economic damage to American companies resulting from abuses committed by international inspectors, but the government would have to accept this liability voluntarily.

10. In-process monitoring and sampling systems installed in chemical plants for purposes of CWC verification might be vulnerable to tampering and deception. Nevertheless, the limited use of such systems in conjunction with onsite inspections could help reduce the intrusiveness needed to verify the nonproduction of chemical-warfare agents.
11. Harmonization of U.S. export controls with those mandated by the CWC could

eventually result in some liberalization of trade with States Parties that are currently subject to strict export controls. This reform, although unlikely to be fully implemented for several years, would give the U.S. chemical industry a strong incentive to support the treaty.

12. Overall, OTA's analysis suggests that extensive preparation **on** the part of U.S. industry will be needed to minimize the burdens of CWC compliance. Close cooperation between the executive branch and the chemical industry will be essential for the smooth implementation of the treaty provisions.