

Country Profile regarding the National Implementation of the Chemical Weapons Convention

Sweden

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Introduction

Sweden ratified the Chemical Weapons Convention (CWC) on 17 June 1993.¹ In order to make a speedy ratification possible, the ratification bill contained only a proposal of the legislation needed to implement the CWC. The bill on ratification was approved by Parliament on 7 June 1993.

1988 Sweden made an official declaration that it does not possess and will not produce any chemical weapons (CW).² Thus, the obligations under the CWC will mainly refer to Article VI i.e., non-prohibited activities under the CWC. Sweden's industry will of course be affected by the CWC.³ A research laboratory belonging to the Swedish National Defence Research Establishment (FOA)⁴ will be appointed the single small-scale facility. FOA belongs to the Ministry of Defence, thus, the Government does not need to stipulate any additional clauses for the declaration of FOA's activities.⁵

In Sweden it is necessary to incorporate an international treaty or convention into national law before it can come into force. This is possible through an act approved by the Parliament.⁶ An international convention can be incorporated into national law either as a single legislative act⁷ or as amendments to already existing acts. Sweden choose the latter way. It may seem complicated for the Parliament to always amend new provisions to various acts, instead of approving one single implementing act. However,

¹ Sweden became the fourth ratification State.

² CD/PV.481, 1988.

³ The Inspectorate has done a first survey where potential companies had to submit whether they are involved with chemicals under the CWC. No thresholds were required, only to respond yes or no to a questionnaire. 203 companies were identified in this first step. A second survey has also been done to identify thresholds and more exact information. A collocation of the information has been presented by the Chemicals Inspectorate to the Government (Kemikalieinspektionen, diarienummer 360-744-95). Of the 203 companies Schedule 1 chemicals are used by one company and also by the National Defence Research Establishment (FOA), the Swedish Defence Material Administration (Försvarets Materielverk (FMV)) and the Commander in Chief for the National Defence (ÖB/Försvaret). FOA is designated the single small-scale facility. The other three companies/authorities are only using or producing Schedule 1 chemicals for a quantity not more than 10 kg per year. Schedule 2 chemicals are used by 29 companies. Under these companies two plant sites consume annually more than 10 tonnes of Schedule 2 chemicals and will receive international inspections. Schedule 3 chemicals are used by 174 companies. Mainly these companies import the chemicals or import/export these chemicals included in a chemical product. The production of Schedule 3 chemicals (technical quality) occurs at a few companies. 'Capable' companies which are affected by the CWC are 38. 33 of them concern the production of unscheduled DOC and 5 concern unscheduled DOC including P, S or F chemicals.

⁴ Försvarets forskningsanstalt.

⁵ Regeringens proposition 1993/94: 120, Governments bill (proposal) regarding the admission by Sweden to the CWC; 9. Dec. 1993 (Lagstiftning med anledning av Sveriges tillträde till Förenta nationernas konvention mot kemiska vapen), at p. 26.

⁶ Dualistic system; compared with a monistic system.

⁷ *see* for example Norway, Act No. 10 of 6 May 1994.

Sweden's approach in implementing international treaties is to not having repetitions and contradictions in various acts. Then it is also easier for the industry to apply the rules which concern them since the provisions already affecting them before and the new provisions regarding the implementation of the CWC are found in known acts. Regarding the implementation of the CWC in some cases the existing legislation already covered the obligations under the Convention, in other cases changes and amendments were necessary.

The Government bill on implementing legislation was presented to the Parliament on the 9 December 1993. Amendments to affected acts are as follows: the Act on Items which could be used for Mass Destruction (Dual-Use Act),⁸ the Act on War Material,⁹ the Penal Code,¹⁰ the Act on Immunities and Privileges,¹¹ and also the Ordinance on Dual-Use Products¹² and the Ordinance on War Material¹³ which both concern declarations and export controls. These already existing acts were amended by new provisions. They were promulgated the 24 March 1994. A totally new act was promulgated at the same time, the Act on Inspections.¹⁴ The Government has to take a decision on when the amendments of the acts and the Act on Inspections will enter into force. A pre-condition is that the CWC has entered into force and then the Swedish implementing legislation will probably enter into force at the same time.¹⁵ However, the amendments of the Ordinances on Dual-Use Products and War Material already entered into force on 1 July 1994.

Assistance on the interpretation of Swedish legislation is given in the Government bills on proposals to new legislation. In these proposals the Government, submissions and transmissions to public authorities give their opinion on new legislation and how it should be interpreted.¹⁶ This preparatory work is required by Swedish law for the interpretation of a new act. The Government's bill for the national legislation caused by the CWC gives guidelines how to analyse and interpret the various acts.¹⁷

Other acts which are involved in the implementation of the CWC are the Act on Chemical Products,¹⁸ the Act on Protection of Confidential Business Information,¹⁹ Customs Administration Act,²⁰ the Act on the Transport of Dangerous goods²¹ and the

⁸ The name of the Act is changed to Act on Strategic Products (Dual-Use Products) (Lag (1991:341) om strategiska produkter). Amendments up to SFS 1994:2061; Amendments concerning the CWC is SFS 1994:121. Following I will always use the name Act on Strategic Products or Dual-Use Act and implying the latest amendment i.e., SFS 1994:2061. SFS always implies the Official Gazette.

⁹ Lag (1992:1300) om krigsmateriel; amendments up to SFS 1994:122. CWC related provisions are in 1994:122.

¹⁰ Brottsbalken; Lag om ändring i brottsbalken, SFS 1994:119, which also include the CWC provisions.

¹¹ Lag (1976:661) om immunitet och privilegier i vissa fall; amendments up to SFS 1994:2089, amendment concerning the CWC is SFS 1994:120

¹² Förordning (1991:343) om strategiska produkter; the Ordinance has also changed its name. amendments up to SFS 1994:2060. Amendments related to the CWC were promulgated the 26. May 1994 (SFS 1994:535).

¹³ Förordning (1992:1303) om krigsmateriel; amendments up to SFS 1994:534. Amendments related to the CWC were promulgated 26. May 1994, (SFS 1994:534).

¹⁴ Lag (1994:118) om inspektioner enligt Förenta nationernas konvention om förbud mot kemiska vapen.

¹⁵ Government bill, prop. 1993/94:120, at p. 60.

¹⁶ comparable with German 'Kommentare zum Gesetz'.

¹⁷ Government bill, prop. 1993/94:120.

¹⁸ Lag (1995:426) om kemiska produkter; amendments up to SFS 1994:1778.

¹⁹ Lag (1990:409) om skydd för företagshemligheter.

²⁰ Tulllag, SFS:1960:418

²¹ Lag (1982:821) om transport av farligt gods.

Act on Penalties for Run Goods.²² Amendments to these acts regarding the implementation of the CWC have not been presented to the Parliament since the provisions already covered the obligations under the CWC.

Main provisions

General aspects

Sweden does not possess chemical weapons and will therefore mainly be concerned with provisions governing the chemical industry i.e., CWC Article VI, and possible challenge inspections under Article IX.

Article VII in the CWC requires national implementation. Each State Party has to prohibit all natural and legal persons under its jurisdiction and control from undertaking any activity prohibited under the CWC, including enacting penal legislation with respect to such activity. Each State Party also has to install a national authority which will act as the point of liaison in relation to the OPCW. All States Parties have to declare their activities which fall under the CWC i.e., CWPF, CWDF, CWSF, old and abandoned CW, Schedule 1, 2, 3 and 'other'²³ chemicals. Verification of these declarations will for example occur through on-site inspections. Confidential business information (CBI) is to be protected.

The Swedish implementing legislation does not always use the same terminology and definitions as in the CWC. But the interpretation of the legislation is to correspond with the Convention.²⁴

There are no provisions in the Swedish legislation about what would happen if old CW are found on Swedish ground.

The National Authority

According to the Governments bill, there is no need for specific legislation to meet the CWC's requirements on establishing a National Authority.²⁵ The function as the National Authority and point of liaison with the OPCW can be solved within the frames of the state administration through provisions in ordinances. A formal decision on how Sweden will structure and undertake the day-to-day work of the National Authority has not yet been taken. However, the Ministry of Foreign Affairs will be designated as the National Authority. It will act as an umbrella organisation and work in close co-operation with other authorities in implementing the CWC. The Ministry of Foreign Affairs will be responsible for the contacts with the OPCW. Assignments on the national level will be designated to authorities which today already are affected by the CWC. The most important ones are the War Material Inspectorate²⁶ due to chemicals regarded as war material i.e., Schedule 1 chemicals, the Chemicals Inspectorate²⁷

²² Lag (1960:418) om straff vid varusmuggling.

²³ unscheduled DOC and PSF chemicals.

²⁴ Government bill, prop. 1993/94:120, at p. 57, for example, the definition of CW corresponds with the CWC.

²⁵ Prop. 1993/94:120 at p. 54-55.

²⁶ Krigsmaterielinspektionen (KmI).

²⁷ Kemikalieinspektionen.

regarding chemicals used for civil matters i.e., Schedule 2, 3 and ‘other’²⁸ chemicals and the National Defence.²⁹ The Chemicals Inspectorate is designated the role as the organ for collecting declarations and supervising activities in the industry which are covered by the Convention.

Collection of information

The acts regulating the collection of information are the Act on Strategic Products³⁰ and the Act on War Material³¹ with their respective Ordinances.³² According to the Ordinance on Strategic Products the information regarding Schedules 2, 3 and other chemicals is to be collected by the Chemicals Inspectorate.³³ According to the Ordinance on War Material the declarations for Schedule 1 chemicals are to be handed in to the War Material Inspectorate.³⁴ However, due to a Government decision of 2 June 1994 the Chemicals Inspectorate is to take necessary steps required by the ratification of the CWC and its EIF. After an agreement with the War Material Inspectorate the Chemicals Inspectorate is collecting all the required declarations, both for Schedule 1 and Schedules 2, 3 and other chemicals. The Chemicals Inspectorate has presented a statistic compilation of the information from the chemical industry to the Government by the 1 June 1995. The questionnaires for declarations have been worked out in co-operation with some affected facilities and manufacturer associations. Consultation has also taken place with the Delegation for the Companies’ Information Submission³⁵ and FOA.

The Act on Strategic Products

The Act on Strategic Products (Dual-Use Act) presents declaration obligations in Sections 6A-6C, which concern Schedules 2, 3 and other chemicals.³⁶ The Act is applicable to chemical products and equipment which could be used for the production of CW (chemical precursors).³⁷ These chemical products under the Section 1 (4) are not permitted to be imported to Sweden without license/permission. The Government may provide exemption regarding the licence requirement for certain products or for the import from specific countries.³⁸

In the extent to and in accordance with the Government’s directions i.e., the Ordinance on Strategic Products, there is an obligation to give declarations to the Government or the authority which the Government designates, for anyone who: (a)

²⁸ PSF and DOC chemicals.

²⁹ *see* Prop. 1993/94:120 at p. 54.

³⁰ This is the former Act on Items which could be used for Mass Destruction. Lag (1991:341) om strategiska produkter, amendments up to SFS 1994:2061; amendments regarding CWC: SFS 1994:121.

³¹ Lag (1992:1300) om krigsmateriel, amendments up to SFS1994:122 which also included CWC amendments.

³² Förordning (1994:2060) om strategiska produkter, in force since 1. Jan. 1995, at the same time the Ordinance on items which could be used for mass destruction stopped being valid. The substance of both Ordinances are the same. It’s only the name that is changed. Amendments regarding the CWC are in SFS 1994:535. The other Ordinance is: Förordning (1992:1303) om krigsmateriel; amendments up to SFS 1994:534 which includes the CWC amendments.

³³ SFS 1994:2060 § 19 (§ 10 in SFS 1994:535).

³⁴ SFS 1992:1303 § 22a in SFS 1994:534.

³⁵ Företagens uppgiftslämnardelegation (FUD).

³⁶ Lag (1991:341) om strategiska produkter, §§ 6a-6c. Last amendment in SFS 1994:2061

³⁷ Act on Strategic Products § 1(4) and (5).

³⁸ *ibid.* § 6a; Provisions on exports are in Section 3.

produces, prepares, consumes/uses, imports or exports chemical products under Section 1 (4), or (b) during the last three years has produced, prepared, consumed/used, imported or exported such products, or (c) produces discrete organic chemicals (DOC).³⁹ The declaration is to include information about activities during the last calendar year, the activities planned for the forthcoming calendar year and changes in the activities which are planned for the on going calendar year.⁴⁰ The time frames are given in the Ordinance.

Anyone who has made a declaration under Section 6 (b) has to submit information and documents which may be necessary for the verification of the declarations. Following a request by the Government or the authority appointed by the Government to receive declarations, the company or person making the declarations has to submit the necessary information. For this purpose representatives from the Government or the authority must have access to areas, premises and plants in order to verify the declarations. This may involve on-site investigations and the taking of samples. If necessary the police may give assistance in order to that the Government or the authority may obtain access to the plant for verification measures.⁴¹ Thus, the Act on Strategic Products provides a legal basis for inspection to verify whether the declarations submitted by a facility are correct.

The ‘authority’ in the legislation text will probably be the National Authority i.e., the Ministry of Foreign Affairs and the Chemicals Inspectorate. According to the Government bill the Government has to give guidelines regarding which facilities are covered by the declaration obligations and which information that has to be submitted. The guidelines should also include information regarding to whom and within which time periods the declarations have to be handed in. The Government Ordinance on Strategic Products provides this guidance.

The Ordinance on Strategic Products

The Ordinance provides detailed information concerning the declaration obligations for Schedule 2, 3 and other chemicals. According to the Ordinance anyone who commercially: (a) produces, processes, consumes/uses, imports or exports substances which are listed in Annex 6 Section 1 (which corresponds with Schedule 2 in the CWC); (b) during the last three calendar years has produced, processed, consumed/used, imported or exported these substances; (c) or, produces, processes, consumes/uses, imports or exports substances under Annex 6 Section 2 (which corresponds with Schedule 3 in the CWC); (d) during the last calendar year has produced, processed, consumed/used, imported or exported these substances; (e) or through synthesis produces more than 10 tonnes of non-listed discrete organic chemicals (DOC) in Annex 6 or more than 10 tonnes a non-listed DOC containing phosphorus, sulphur or fluorine (PSF), has to submit an initial and annual declaration to the Chemicals Inspectorate.⁴²

Interesting to notice is that there are no thresholds for Schedules 2 and 3 chemicals regarding to the declaration obligations and that the thresholds regarding the

³⁹ *ibid.* § 6b (1)-(3).

⁴⁰ *ibid.* § 6b subparagraph 2 (1)-(3).

⁴¹ Act on Dual-Use Products § 6c.

⁴² Ordinance on Strategic Products § 19. These provisions are also valid for equally composed chemical products, mixtures, formulations or others which include any of the substances in Annex 6. The term produce also implies an intermediate, co-product, by-product or impurity. Section 19 subparagraphs 2-4 in the Ordinance.

unscheduled DOC and PSF-chemicals are ten times lower than those required by the CWC.⁴³ Second, the Ordinance states that the declaration obligation is only for those who commercially produce, process and so forth. A question that could arise is whether labs and institutes only involved in research activities also are included in the declaration obligation under the Swedish legislation.

Sections 20-24 provide the information which has to be included in the declarations from the various undertakings. Section 20 provides the time limits for initial and annual declarations. The declarations are to be submitted: (a) not later than the 15 January annually regarding activities for the passed calendar year, (b) no later than the 15 September annually regarding activities planned for the next year, and (c) no later than 30 days before an 'unanticipated activity' starts.⁴⁴ The initial declaration regarding Schedule 2, 3 and other chemicals are to be submitted no later than 15 February 1995.⁴⁵ Section 21 concerns the name and address of the facility and how many plant sites are within the facility, each plant site's full name and location, owner and how many plants are within the plant site and the main activities of the plant sites. Section 22-24 states the information requirements for the initial and annual declarations. The Chemicals Inspectorate may provide further detailed directions concerning the application of Sections 19-24.⁴⁶ If someone neglects to fulfil its declaration obligation within the time frames, the Government or the authority appointed by the Government may under pain of a fine prescribe the person to fulfil its obligation.⁴⁷

The Act on War Material

CW, i.e., chemicals under Schedule 1 of the CWC, fall within the definition of war material covered by the Act of War Material. Regarding to this Act production means any kind of creation of war material. It is prohibited to produce war materials without a licence. The Government may issue guidelines for the exemption of this licence requirement for a yearly production of medical or pharmaceutical products or for research of a total quantity of most 100 g chemical products which are classified as war material.⁴⁸ Anyone who has a licence has to submit, on faith and honour, a declaration to a certain authority (the National Authority) concerning the activities for which the licence allows.⁴⁹ Upon request a licensee has to submit necessary information and documents for the verification of the declarations. The authority has to be granted access to the concerned plants.⁵⁰ The licensee has to notify the Government or the authority appointed by the Government if any anticipated changes are planned for the present calendar year concerning its activities in regard to the licence for the production of chemical products⁵¹

Sweden possesses 4 companies handling Schedule 1 chemicals.⁵² These facilities are working with Schedule 1 chemicals in research, for protective medical or

⁴³ see Verification Annex (VA) of the CWC Part IX under A 1 (a)(b); more than 200 tonnes of unscheduled DOC and 30 tonnes for unscheduled DOC containing PSF.

⁴⁴ For PSF and DOC chemicals the declarations must be submitted annually the 15 January regarding activities for the passed calendar year and the 15 February regarding initial declaration.

⁴⁵ Section 20 subparagraph 1 (3) and subparagraph 2 (2).

⁴⁶ Section 25 subparagraph 3.

⁴⁷ Ordinance on Strategic Products, Section 26 compared with the Act on Dual-Use Products, Section 15.

⁴⁸ Act on War Material, Section 3.

⁴⁹ *ibid.* Section 19.

⁵⁰ *ibid.* Section 20.

⁵¹ *ibid.* Section 21.

⁵² Except for one company they are public undertakings.

pharmaceutical purposes. Only one of these facilities produce Schedule 1 chemicals, i.e., the National Defence Research Establishment (FOA). This laboratory is also appointed as the single small-scale facility.⁵³ The licence provisions in the Act on War Material are not applicable to FOA.⁵⁴

The Ordinance on War Material

The Ordinance relates to detailed provisions on Schedule 1 chemicals. The declarations by the chemical industry are to be submitted to the War Material Inspectorate.⁵⁵ However, after an agreement between the Chemicals Inspectorate and the War Material Inspectorate, the Chemicals Inspectorate is designated as the collector of the initial declarations concerning Schedules 1, 2, 3 and other chemicals. For future declarations the War Material Inspectorate will prepare the Schedule 1 declarations.

Anyone who (a) produces, processes, consumes, acquires, disposes or stockpiles substances contained in the Annex Section C (which corresponds with the Schedule 1 chemicals under the CWC), and (b) anyone who during the last calendar year produced, processed, consumed, acquired, disposed or stockpiled those substances has to submit a declaration to the Inspectorate.⁵⁶ The declaration obligation does not involve anyone who on a yearly basis produces not more than 100 g of these chemical products for medical, pharmaceutical or research aims.⁵⁷

Section 22 (b) proclaims the time frames for when the initial and annual declarations have to be submitted. The declarations are to be submitted: (a) no later than 15 January annually regarding the passed calendar year's activities, (b) no later than 15 September annually regarding the next calendar year's activities, (c) no later than 210 days before a new activity starts (initial declaration), and (d) the 15 October 1994 (regarding Sections 22 c (1) and 22 d (a)(2)(5)) and 15 February 1995 (regarding the other provisions in Sections 22 c and 22 d (a)) for the first initial declarations.⁵⁸ Section 22 (c) provides information such as the name, address, exact location of the facility, owner, activities and so on which has to be included in the declaration. Section 22 (d) specifies which certain information that has to be contained in the initial and annual declarations.

Verification - on-site inspections

Under the Swedish Constitution obligations interfering with personal and economic affairs of private subjects is to be controlled by law.⁵⁹ Therefore a complete new act on Inspections was issued, since an inspection will interfere with rights of individuals.

The Government has to take decisions needed for the conduct of the international inspections on a case-by-case basis.⁶⁰ The Act on Inspections does not make a distinction between a routine or challenge inspection. There is no specific procedure for

⁵³ Government bill, prop. 1993/94:120, at p. 21.

⁵⁴ This is an exemption from the licence requirement, only applicable to public authorities not involved in business activities; Government bill, prop. 1993/94:120, at p. 21.

⁵⁵ Ordinance on War Material, Section 22 a.

⁵⁶ *ibid*; this is also valid for equally composed chemical products, mixtures, formulations or others which are contained in the Annex Section C. Produce also means an intermediate, co-product, by-product or impurity.

⁵⁷ *ibid*. Section 22 a (3).

⁵⁸ For the 15 October: Sections 22 c (1) and 22 d (a) (2)(5) and for 15 February: the other provisions in Sections 22 c and 22 d (a).

⁵⁹ RF kap. 8, The Swedish Constitution, chapter 8.

⁶⁰ Act on Inspections (SFS 1994:118) Section 2.

challenge inspections. The anticipated procedure under the CWC requires that decisions can be adopted and necessary arrangements are taken within a short time limit at a top political level. But at the same time one has to remember that challenge inspections will not take place very frequently. Sweden choose to create a working group within the Government which should be able to take the necessary decisions in the matter of a challenge inspection.⁶¹

In order to facilitate international inspections under the CWC, the Government will designate a governmental authority for each inspection to assist the inspection team and take decisions related to the conduct of the inspection, for example, the measures which may be taken in connection with an inspection.⁶²

An inspection may not ordinarily include access to premises which constitute a private home.⁶³ But in the case of a challenge inspection which specifically involves suspicions against a private home, it would be possible to inspect it within the provisions of the criminal legal system. In such cases the challenge inspection would in all probability entail the suspicion of a breach of national law.⁶⁴ Questions which concern the rights of a private individual will always be referred to the Government, if the individual so requests.⁶⁵

Prior to an inspection, be it routine or challenge, entities which may be affected by such an inspection are to be given an opportunity to express their views and to ensure their co-operation, if this can be achieved within the time frames under the CWC.⁶⁶ Even though co-operation with the inspected facility is preferred, an inspection can be conducted without the co-operation and despite active opposition from management and staff.⁶⁷ Thus, this opportunity to express views need not be granted if there is a risk that it may seriously hinder the implementation of the inspection or if there are other specific reasons for forgoing the expression of such views. If there is a co-operation problem the Government or the appointed authority can request police assistance.⁶⁸ The police authority has to provide the assistance required to implement the Government decisions for inspections.⁶⁹

An inspection, be it a routine or challenge, may include:

‘(1) the granting of access to an international inspection team accompanied by national escorts to an area, building, factory or any other facility under Swedish jurisdiction;

(2) the stopping and inspection of goods traffic from the facility which is subject to the inspection;

(3) the taking of samples from property which is subject to the inspection; and

(4) the permission for the inspection team to bring in and use measuring equipment and other technical equipment to collect and record information.

As a rule the inspection may not include access to private homes.⁷⁰

In the application of the Act on Inspections special note is to be taken of the need to protect information which is of importance for national security or which is confidential

⁶¹ Government bill, prop. 1993/94:120 at p. 55.

⁶² *ibid.*

⁶³ *ibid.* Section 4 last paragraph.

⁶⁴ Penal Code, chapter 22 Section 6; Brottsbalken 22:6.

⁶⁵ *ibid.* Section 5.

⁶⁶ Act on Inspection, Section 3.

⁶⁷ *ibid.*

⁶⁸ Dual-Use Act, Section 6 c.

⁶⁹ Act on Inspections, Section 5 (2)

⁷⁰ *ibid.*

or secret for a company.⁷¹ In the context of the act this means that the protection of secret information is provided both to the Government's decisions regarding an inspection and during the accomplishment of the inspection.⁷² Sweden has also an act which underlines the importance of protecting CBI in general, namely the Act on the protection of confidential business information.⁷³ It contains provisions about business espionage, penalties, fines, compensation etc.

Facility Agreements

A facility agreement (FA) gives details concerning the access to an inspected facility. The Swedish legislation does not provide explicit provisions concerning the conclusion of FA. One reason is probably that Sweden does not possess so many facilities which require FA under the CWC. Sweden has only a few Schedule 1 facilities.⁷⁴ It possesses only two Schedule 2 facilities which require facility agreements under the CWC declaration and verification thresholds.⁷⁵ For Schedule 3 and other chemical facilities it is not required to conclude a FA unless requested by the State Party.⁷⁶ According to the Ministry of Foreign Affairs the conclusion of a FA only involves the State Party Sweden and the OPCW (and not an individual), then no specific legislation has to be issued for the regulation of the rights and obligations in a FA. However, a FA affects a facility owner during a future inspection. The Act on Inspections gives the inspectors very broad rights during an inspection. One of the reasons why the conclusion of a FA is not mentioned in the act is that an inspection will require the Government to take various decisions during the inspection. Decisions regarding the extent of access to the inspected facility will be taken during the inspection.⁷⁷ Thus, the scope of the Act on Inspection is so wide that it indirectly covers the conclusion of FA.

Status of international inspectors and the role of national inspectors

According to the Act on Immunities and Privileges, the provisions on immunities and privileges under the CWC are incorporated to Swedish law by a reference to the CWC.⁷⁸ Immunities and privileges are available for the OPCW (as an international organisation) and the State Parties' representatives in the OPCW, persons in charge at or commissioned by/with the OPCW and observers during inspections.⁷⁹

During an inspection the authority appointed by the Government to attend the inspection may decide on detailed issues which regulate the Government's decisions to an inspection in order to execute the Government's decision. (This implies the taking of decisions on how the inspection is to be accomplished in details.) However, such matters have to be referred to the Government, which has to take decisions, if the international inspection team or if a private individual whose rights are affected, so requests. On their own initiative the national inspectors may have to refer a question

⁷¹ *ibid.* Section 6.

⁷² Government bill, prop. 1993/94:120, at p. 57.

⁷³ Lag (1990:409) om skydd för företagshemligheter.

⁷⁴ See footnote number 3.

⁷⁵ *ibid.*

⁷⁶ CWC VA Part VIII B 19 and Part IX B 16.

⁷⁷ Government bill, at p. 55.

⁷⁸ Lag (1976:661) om immunitet och privilegier i vissa fall with the CWC amendments SFS 1994:120.

⁷⁹ *ibid.* Annex at point 44.

which is of special importance to the Government. An example would be if the question concerns the relationship between Sweden and an other State.⁸⁰

Export controls

The legal basis for export controls is the Customs Administration Act,⁸¹ the Act on War Material, the Act on Strategic Products, the Act on Chemical Products and the Ordinance concerning Embargo on certain Exports.⁸²

The provisions which regulate export controls, are in the Acts on War Material and Strategic Products. There is a general prohibition of export of Schedule 1 chemicals in the Act on War Material.⁸³ Exemption may be provided for export of the chemical under Schedule 1 if it concerns research, medical or pharmaceutical aims.⁸⁴ According to the Act on Strategic Products Schedules 2 and 3 chemicals are not allowed to be exported without a licence.⁸⁵ The end-use certificate of an export must be submitted, both for Schedule 1 and Schedules 2 and 3.⁸⁶ The Government is the authority to take decisions concerning the issuing of export licences.⁸⁷

Penal Sanctions

According to the CWC all States Parties have to prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction and control from undertaking any activity prohibited to a State Party under the CWC, including enacting penal legislation with respect to such activity. The State Party must also prohibit in any place under its control any activity prohibited to a State Party under the CWC and extend its penal legislation to any prohibited activity undertaken anywhere by natural persons, possessing its nationality.⁸⁸

What is prohibited for a State Party is also prohibited for individuals.⁸⁹ According to the Penal Code⁹⁰ anyone who: (a) develops, produces or in an other way acquires, stockpiles or keeps or transfers, directly or indirectly, CW to someone, (b) uses CW, (c) participates in military preparations for the use of CW, or (d) uses substances for riot control as a method of warfare will be sentenced for prohibited connection with CW to imprisonment at most four years. If the crime is heinous the sentence will be imprisonment for ten years or for a lifetime. At the consideration whether the crime is heinous, one must consider all the facts in every individual case, e.g., if the act was meant to contribute the development, production or proliferation of CW or if these weapons are used against humanity.⁹¹

⁸⁰ *ibid.* and also Governemnts bill, prop 1993/94:120 at p. 56.

⁸¹ Tullag, SFS 1960:418.

⁸² SFS 1986:

⁸³ War Material Act, Section 6.

⁸⁴ Government bill, prop. 1993/04:120, at p. 23-24, decisions are to taken by the Government.

⁸⁵ Act on Strategic Products, Section 3.

⁸⁶ *ibid.* Government bill, prop. 1993/94:120, for Schedule 1: p. 24; Schedule 2: p. 32-33; Schedule 3: p. 36.

⁸⁷ Government bill, prop. 1993/94:129, at p.30-31.

⁸⁸ CWC Article VII (1).

⁸⁹ Government bill, prop. 1993/94:120, at p.57.

⁹⁰ Chapter 22 Section 6.

⁹¹ Penal Code (BrB) 22: 6 a.

According to the second chapter of the Penal Code any crime which is committed in Sweden will be judged under Swedish law at a Swedish court. Crimes which are committed abroad can under special circumstances be judged under Swedish law.⁹² Crimes which are committed abroad will be judged according the Swedish law and at a Swedish court if the crime is an illicit connection with CW.⁹³ The requirement of the extension of Swedish jurisdiction is met through the reference to the prohibited connection with CW.⁹⁴

Administrative regulations

The legislation on the national level is promulgated. But the practical implementation on the national level still requires work. As mentioned above the co-ordination of national implementation resides within the Ministry of Foreign Affairs. A small working group assists this provisional NA. It consists of individuals from the Ministry of Foreign Affairs, Ministry of Defence, the National Defence Research Establishment, the Military Headquarters and the Chemicals Inspectorate (which all are public authorities), who will work together in CWC related matters. The Custom and chemical industry association have a permanent invitation to participate and co-operate with the working group. Other ministries and governmental offices are called into the working group when needed. When the CWC enters into force this group can assess inspections done in Sweden, suggest actions to be taken to improve the process on the Swedish side and analyse and draw conclusions from inspections performed in other states members to the CWC.

The group will also have an active role during inspections. When Sweden is notified of a future inspection the working group will promptly be assembled. Depending on the type of inspection and inspection object the group will be supplemented with representatives from other governmental offices and representatives from the inspected site. The group will prepare the decisions to be taken by the Government and function as a support to the national escort team.⁹⁵ In the initial stages of an inspection the working group will be responsible for the initiation and co-ordination of the practical and administrative preparations.

To manage inspections under the CWC Sweden is developing 'Inspection Manuals'. They will for example describe the time frames for the inspections, the sequence of the different actions to be taken after notification, lists of personnel, point of entries (POEs), information about transport to declared sites, lodging, communication and working premises for the inspection team and national escort and the responsibilities of the offices involved.

Conclusion

Sweden's approach to the implementation of the CWC was to review existing acts and ordinances. The implementing legislation is a combination of enacted amendments to already existing legislation and the creation of a new act. The language of and

⁹² Penal Code (BrB) 2:1 and 2.

⁹³ *ibid.* Section 3.

⁹⁴ Government bill, prop. 1993/94:120 at p. 41.

⁹⁵ Government bill, prop. 1993/94:120 under chapter 5. 4. (especially p. 50) and also Runn, Per, Swedish Legislation and Preparations for Declarations and Inspections, at p. 3, Seminar on NI of the CWC, The Hague, 30. Sept. 1994.

definitions in the national legislation do not always correspond with CWC. However, the national legislation is to be interpreted to correspond with the CWC.

Sweden was an early ratifier of the CWC and this implies that Sweden had a lot of time for the setting up of the National Authority and for implementing the necessary legislation. The Swedish legal system accepts that the State ratifies an international convention before the structure and approving of implementing legislation is finished.

Sweden will not create a new administrative body to work as the National Authority. The Ministry of Foreign Affairs will formally be appointed and be the point of liaison with the OPCW. The Ministry will act as an umbrella organisation and work closely in co-operation with other Governmental Departments and authorities in implementing the CWC. The Ministry of Foreign Affairs has the power to delegate the collecting of information to already existing authorities, i.e., the Chemicals Inspectorate.

The legislation concerning the scheduled chemicals under the CWC are divided into military and civilian purposes. Schedule 1 chemicals are dealt with under the Act on War Material and the responsible authority is the War Material Inspectorate. Schedule 2, 3 and other chemicals are dealt with under the Act on Strategic Products and the responsible authority is the Chemicals Inspectorate. After a successful questionnaire round the Chemicals Inspectorate has presented a report to the Government concerning all companies affected by the CWC. The report does not include the distinction between facilities, plant and plant sites which is required by the CWC's declaration obligations.

The Act on Inspections does not produce a distinction in its provisions regarding the procedure for challenge inspections and routine inspections.

The legislation introduces national inspectors/escort teams to support future inspections. These inspectors are allowed to verify the declarations on a national basis.

The legislation does not provide any explicit provisions for the conclusion of FA. Reasons for this may be that: (a) The Act on Inspections is broad in scope. It gives the inspectors a wide freedom of action and it covers, indirectly, the conclusion of FA. (b) Sweden has a medium sized chemical industry which falls under the Article VI of the CWC. It possesses few facilities which require the conclusion of FA under the CWC.

Up to date there is an amendment which has to be done in the legislation before the CWC enters into force. The PrepCom for the OPCW requires in its latest draft of the Declaration Handbook (April 1995) concerning declaration forms that all facilities producing Schedule 2, 3 and other chemicals have to declare the product types by using the Harmonized System (HS) Code and the main activities (for other chemicals, if applicable) by using the Technical Secretariat (TS) Code. These declaration requirements are easily accomplished by amending the Ordinance on Strategic Products.