

Issue Brief

Congress, Administration Disable Poison Gas Ban Inspections

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● Contact:
Amy E. Smithson
Marisa Uchin

The Stimson Center
11 Dupont Circle, NW
Ninth Floor
Washington, DC 20036

tel: 202-223-5956
fax: 202-238-9604

e-mail:
asmithson@stimson.org

**Some parts of the
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—*Senator Pete
Domenici, 22 May 1998*

At the outset of this year, the Clinton Administration threatened military action if Iraqi leader Saddam Hussein did not allow United Nations inspectors free and unfettered access to sites thought to be harboring the remnants of Iraq’s weapons of mass destruction programs. Members of Congress have also called for strong actions against an Iraq that inspectors assert still possesses stocks of chemical and biological weapons. Why, then, have the Clinton Administration and Congress crippled the ability of international inspectors to detect violations of a new international ban on poison gas?

The 1997 Chemical Weapons Convention (CWC) authorizes routine and challenge inspections to monitor compliance with the treaty’s prohibitions on the development, production, stockpiling, and use of chemical weapons. Among other activities, inspectors may collect and analyze samples to clarify concerns that may arise during the course of an on-site inspection. Challenge inspections and sampling are among the strongest monitoring tools at the disposal of the CWC’s inspectorate, the Technical Secretariat, which is located in The Hague. Challenge inspections and sampling will be used sparingly, but could be decisive in ascertaining whether a country is violating the CWC.

The CWC entered into force on 29 April 1997. Already, 110 countries have joined the treaty, including Russia, China, Iran, India, and Pakistan. More than 55 additional countries have signed the CWC but have yet to ratify it. China and India are among several states that adamantly denied possessing a chemical weapons capability, but have opened their chemical weapons programs to the scrutiny of inspectors since the CWC’s activation. Inspectors are verifying the destruction of chemical arsenals and weapons production facilities. Over 100 weapons-related facilities in these and other countries have already been inspected.

Despite these positive developments, Washington is on the verge of instituting several measures—nicknamed by the *Minneapolis Star-Tribune* as the “Saddam Hussein copycat provisions”—that would severely weaken the CWC’s verification regime. One measure would allow the President to refuse a challenge inspection on the grounds that it “may pose a threat” to U.S. security interests, thereby giving other nations license to follow suit. Another specifies that no samples can leave U.S. territory for analysis and therefore sets a precedent that will undercut the inspectors’ ability to analyze samples thoroughly for evidence of illicit chemical weapons production.

A third measure narrows the number of U.S. industry facilities that declare activities involving mixtures or solutions that contain proliferation-risk chemicals. Should other nations emulate this example, the number of industry facilities abroad that are declared and subsequently subject to routine inspection would be considerably reduced. None of these measures were requested by the U.S. chemical industry, which helped negotiate and field test the CWC’s verification measures and strongly supported U.S. ratification of the CWC.

Two of these debilitating measures originated when Senate members worked with Clinton Administration staffers to draft the CWC’s implementing legislation, S. 610.¹ As Senator Pete Domenici (R-New Mexico) has noted, “It makes no sense for the Administration to have negotiated legislation that renders the Convention impotent.”² The Senate passed this bill on 23 May 1997. On 12 November 1997, the House of Representatives approved similar language in H.R. 2709 by voice vote. However, the House attached the CWC’s implementing legislation to the Iran Missile Proliferation Sanctions Act. By a 90 to 4 vote, the Senate approved the combined legislation on May 22nd. The slightly changed legislation passed the House of Representatives on 9 June 1998 by an equally impressive margin—392 to 22. The vote margin in both houses of Congress demonstrates an ability to override a possible veto by President Bill Clinton.

The positive aspect of this long-awaited implementing legislation is that it triggers the promulgation of regulations that will enable the United States to fulfill its obligations under the CWC to declare industry facilities that produce, consume, import, or export proliferation-risk chemicals above threshold quantities. Even though the United States has opened all of its chemical weapons storage, destruction, and former weapons production sites to inspection, it will remain in violation of the CWC until industry declarations are submitted. The final regulations governing U.S. industry declarations and inspections should be into effect early in 1999.

For an update on the status of CWC declarations and inspections, see “CWC Implementation at a Glance” at: www.stimson.org/cwc

While it is imperative that the United States comply fully with the CWC, the significant negative aspects of this implementing legislation must not be overlooked. Unless Congress swiftly passes language to correct the exemptions described in detail below, other countries of proliferation

¹ The national security exemption for a challenge inspection is in Section 307 and Section 237, respectively, of S. 610 and H.R. 2709. The redefinition of the concentration or percentage of a proliferation-risk chemical in a mixture that requires declaration and possible inspection is in Section 252(a)(2) of H.R. 2709 and Section 402(a)(2) of S. 610. The measure prohibiting sample analysis outside of U.S. territory was first stated as condition number 18 in S.Exec.Res. 75, the CWC Resolution of Ratification, which the Senate passed by a 74 to 26 vote on 24 April 1997. This measure was restated in Section 304(f)(1) of S. 610 and in Section 234(f) of H.R. 2709.

² Remarks of Senator Pete Domenici, *Congressional Record* (22 May 1998): S5389.

concern are likely to pattern their behavior after America's, greatly reducing the ability of inspectors to uncover the "smoking gun" of noncompliance.

The CWC's Challenge Inspection Provisions

The history of the CWC's challenge inspection provisions dates back to the Reagan Administration. As Senator Jeff Bingaman (D-New Mexico) recalls, "During the early days of negotiating the [CWC], members of President Reagan's team insisted that all countries must allow challenge inspections to occur at any time in any place. They did so in order to ensure that this very difficult treaty could have some real teeth to it."³

The purpose of challenge inspections is to enable inspectors to ferret out suspected covert chemical weapons activities at non-declared facilities.

The United States, like any other country that ratifies the CWC, is under a legally binding obligation to accept challenge inspections.

According to the CWC, each participating state "shall permit the Technical Secretariat to conduct [an] on-site challenge inspection" "anywhere without delay" at "any facility or location in [its] territory or in any other place under [its] jurisdiction or control."⁴ The treaty further stipulates that each country has "the right and the obligation to make every reasonable effort to demonstrate its compliance with the Convention and, to this end, to enable the inspection team to fulfill its mandate."⁵ The CWC directs

governments not to abuse the right to request challenge inspections and lays out the penalties for any state launching a frivolous inspection.⁶

The CWC enumerates how challenge inspections are to be conducted, including the right of a challenged state to protect sensitive or proprietary information during an inspection.⁷ Using "managed access" procedures, host officials at a challenged site can log off computers, shroud sensitive equipment and stores of goods, and restrict the amount of access that inspectors are given in particularly sensitive areas. The Pentagon, the intelligence community, and the U.S. chemical

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—*Senator Joseph Biden, Jr.*
22 May 1998

³ Remarks of Senator Jeff Bingaman, *Congressional Record* (22 May 1998): S5382. The U.S. challenge inspection proposal is contained in United Nations, Conference on Disarmament, *Draft Text of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction*, Document CD/500 (Geneva: 1984): 7–8, 10–1.

⁴ Chemical Weapons Convention, Article IX, paragraphs 8 and 10.

⁵ Chemical Weapons Convention, Article XI, paragraph 11.

⁶ Chemical Weapons Convention, Article XI, paragraphs 9, 22, and 23.

⁷ Chemical Weapons Convention, Verification Annex, Part X, Section C.

For a figure of a challenge
inspection timeline,
[Click Here](#)

industry thoroughly vetted and approved the CWC's managed access procedures. Thus, the CWC balances the need to give inspectors enough access to determine whether a challenged site is engaged in prohibited activity against the need to enable the facility under inspection to safeguard legitimate commercial proprietary information and materials that are unrelated to the CWC.

The National Security Exemption—Much Ado About Nothing?

Some have argued the national security exemption is simply boilerplate language that will protect U.S. interests in the event that frivolous challenges are requested. Or, they contend that this exemption is harmless because it will never be activated. Both of these contentions are false.

The national security exemption directly contradicts the United States' treaty obligation to accept a challenge inspection at any U.S. location. Two other important points should be kept in mind. First, as Senator Joseph Biden, Jr. (D-Delaware) has noted, "Even if the President never exercises this authority, the mere inclusion of this provision in the legislation will encourage other countries to deny inspections on national security grounds. If we should enact the so-called 'national security exception,' we can be sure that China, Iran, and other countries will seize upon the precedent we set and use it to undermine the effectiveness of the verification regime."⁸ Second, as Senator Domenici observes, "If there is no intention to use it, then including this provision merely opens the door for other nations to follow our lead and diminishes our capacity to catch cheaters."⁹

The U.S. precedent, whether dormant or not, invites replication. As a result, the CWC's inspectors will be severely handicapped in their ability to catch cheaters. The CWC's chief inspector, Jose M. Bustani, told the *New York Times* that restrictions on inspections would "seriously undermine the implementation of this [C]onvention."¹⁰

“During the early days of negotiating the [CWC], members of President Reagan’s team insisted that all countries must allow challenge inspections to occur at any time in any place. They did so in order to ensure that this very difficult treaty could have some real teeth to it.”
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The CWC's Procedures for Sampling and Analysis

To begin with, it will be rare that inspectors encounter circumstances, especially during a routine inspection, that will require a sample to be taken. When sampling is necessary, the CWC specifies appropriate procedures.¹¹ For example, the CWC gives host officials the right to approve how and where any sample is collected, allowing sensitive, proprietary information to be safeguarded.

⁸ Remarks of Senator Joseph Biden, Jr., *Congressional Record* (22 May 1998): S5378.

⁹ Remarks of Senator Domenici, *Congressional Record* (22 May 1998): S5389.

¹⁰ Steven Lee Myers, "Senate Backs Bill Limiting Chemical Arms Ban," *New York Times* (23 May 1998): A3.

¹¹ Verification Annex, Part II, paragraphs 52 thru 58.

The CWC's inspectors will carry portable equipment to take samples, prepare them for analysis, and process and analyze them. The main pieces of on-site analytical equipment are a gas chromatograph/mass spectrometer (GC/MS) and an infrared spectrometer, which break down the structures of chemicals so that they can be identified.¹² Both pieces of equipment are widely used in laboratories around the world.

The infrared spectrometer and the GC/MS that the CWC's inspectors will use have been "dumbed down" so that even intrusive inspections will not compromise sensitive business information. For instance, the GC/MS will conduct a "blind" spectral analysis, screening samples and giving a simple "yes" or "no" answer as to whether the sample contains chemical(s) on the CWC's Schedules of controlled chemicals. The inspectors will get no details beyond that "yes" or "no"—an approach that will help safeguard proprietary data during routine inspections at industry facilities.

However, during a challenge inspection, samples may have to be taken of unknown toxic chemicals. As Senator Bingaman points out, the restrictions on the inspectors' equipment "could quite feasibly lead to ambiguities in analysis. It could require that a sample receive additional examination."¹³ If ambiguities remain, it will be crucial for the inspectors to retain the ability to forward a sample to the Technical Secretariat's designated laboratories for thorough structural analysis that can actually identify the chemical(s) in the sample. Further analysis will clarify whether a "yes" sample contained a precursor on Schedules 2 or 3 or an actual chemical agent. Laboratory analysis will also reveal whether a "no" sample contained a Scheduled chemical that was not yet in the Technical Secretariat's GC/MS database.

When ambiguities remain after on-site analysis, the inspectors will send the sample to three of the Technical Secretariat's designated laboratories. The Technical Secretariat certifies laboratories through a series of proficiency tests. The only U.S. laboratory in the Technical Secretariat's network of certified laboratories is the Army's laboratory at Aberdeen, Maryland.

A sample sent for off-site analysis will be divided in the presence of host officials—one quarter of the sample will be retained by the inspected state and the other three quarters will be taken under strict chain of custody to the Technical Secretariat's laboratory in The Hague. The Technical Secretariat will divide its sample into three parts and send them to approved labs for analysis. The Technical Secretariat will continually be sending its designated labs various types of samples to test their performance. **All samples are blind, so a designated laboratory has no way of knowing whether it has received a real inspection sample or a test.** Access to a sample from an actual inspection will be highly restricted. Only a very few specifically selected people in the Technical Secretariat's laboratory—individuals that have received previous clearance by the inspected country—will know the origin of a sample. Also, the results of the analysis will not be contained in any of the Technical Secretariat's reports if the inspected state deems those results to be highly confidential. These procedures are designed to shield sensitive national security or business data while allowing for thorough and effective compliance monitoring.

¹² The infrared spectrometer will be employed when a sample contains a cleaner compound, not involving mixtures of chemicals. The GC/MS can both separate and identify the different chemicals in a mixture.

¹³ Remarks of Senator Bingaman, *Congressional Record* (22 May 1998): S5382.

False Solutions for the Sampling Analysis Exemption

Some have suggested that the United States can thwart or diminish a negative international reaction to the sampling analysis exemption by purchasing one or more mobile laboratories and donating them to the CWC's inspectorate. According to this view, a mobile lab developed by the Department of Defense would be used for analysis of samples here in the United States as well as in countries of proliferation concern. This approach is unlikely to work.

The Technical Secretariat has the authority to make small modifications to the list of equipment, but the inspectorate can only use equipment that is approved by the Conference of States Parties, which at this point consists of over 100 countries. A mobile laboratory is not on the currently approved list of equipment, nor is such a laboratory likely to be approved for use in the near- or long-term future—even if one were donated. The 41-member Executive Council will have to give initial approval to the addition of a major new piece of analytical equipment, such as a mobile laboratory. Final decisions will be taken by the Conference of States Parties. Numerous countries were ill at ease about having the inspectors carry modern analytical equipment and insisted on dumbing down such equipment. These countries are likely to object strenuously to a proposal that the Technical Secretariat field a sophisticated, U.S.-equipped mobile laboratory.

The analysis of U.S. samples from such a laboratory will not be recognized internationally because the Defense Department's mobile laboratory does not have accreditation from the Technical Secretariat. Moreover, other governments are likely to question the impartiality of U.S. analytical results of a U.S. sample. U.S. authorities would surely question test results in the event that a suspected cheater conducted sample analysis in its own laboratories. Conversely, if the Technical Secretariat were to ship the mobile laboratory to another CWC member state during an inspection, that country would have the right to refuse use of the laboratory because it is not approved equipment. Thus, a mobile laboratory is a false solution, both for sample analysis here and abroad in countries of proliferation concern.

“Insistence upon U.S.-based analysis of U.S. samples...opens a huge loophole for countries that may violate this [C]onvention....I dread the stain upon our collective conscience if a future violator of this treaty should ever make use of the exemption we are carving out, and then use those illegal chemical weapons against U.S. forces or innocent civilians.”

—*Senator Joseph Biden, Jr.*
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Senator Biden has characterized the sampling exemption as one that “opens a huge loophole for countries that may violate this [C]onvention....I dread the stain upon our collective conscience if a future violator of this treaty should ever make use of the exemption we are carving out, and then use those illegal chemical weapons against U.S. forces or innocent civilians.”¹⁴ Samples can provide the strongest evidence of an illicit chemical weapons program, and this exemption can prevent inspectors from truly determining what is going on in countries of proliferation concern.

¹⁴ Remarks of Senator Biden, *Congressional Record* (22 May 1998): S5378.

The CWC's Provisions for Routine Inspections

Under the CWC, routine inspections are to be conducted at declared military and industry facilities in a manner that causes the least possible inconvenience to the inspected state and disturbance to the host facility. The purpose of routine inspections is first and foremost to ascertain that the activities taking place are consistent with data declarations, but inspectors are also empowered to ascertain whether chemical agents are being produced on site and whether controlled chemicals are being diverted for chemical agent production. While on site the inspection team may review documentation supporting the declaration, visually observe declared areas of the facility, interview facility personnel, and request that photographs and samples be taken. Inspectors have the right of “unimpeded access” and can select items for inspection, but host officials can object to any request that the inspectors make, shield proprietary information that is not related to the purposes of the inspection, and offer other access that demonstrates treaty compliance.¹⁵

The frequency of routine inspections will be greatest at facilities where the twelve types of chemical warfare agents listed on the CWC's Schedule 1 are present. Participating states are to declare all chemical weapons production facilities, storage bunkers, and destruction facilities, and the CWC's inspectors are to verify the destruction of offensive chemical weapons capabilities according to the time line shown in Table 1.

Table 1: CWC Timeframe for Chemical Weapons Destruction.

Percentage of Stockpile Destroyed	Year After Entry Into Force
Planning and Testing	1-2
1	3
20	5
45	7
100	10

CWC inspectors will also routinely monitor industrial plants that manufacture and process chemicals for commercial products (e.g., pesticides, pharmaceuticals) that could be diverted to make chemical weapons. Commercial facilities that work with chemicals that could pose a proliferation threat are therefore subject to routine inspection, with the chemicals listed on the CWC's Schedule 2 being deemed a higher proliferation risk than those on Schedule 3. The declaration and inspection thresholds are shown in Table 2. All Schedule 2 facilities will receive initial inspections, with the frequency of subsequent routine inspections determined by the nature of the facility. The inspectorate will randomly select no more than twenty Schedule 3 facilities in each country for routine inspection every year. According to the CWC, no Schedule 2 or 3 commercial facility can receive more than two routine inspections annually, although inspections may be less frequent.¹⁶

Given the huge number of commercial chemical plants worldwide, CWC inspectors will be unable to check frequently upon every facility capable making chemical weapons. To do so would

¹⁵ Chemical Weapons Convention, Verification Annex, Part II, Section E, paragraphs 45–51.

¹⁶ Chemical Weapons Convention, Verification Annex, Part VII, paragraph 22, and Part VIII, paragraph 15.

require extensive resources to mount an overwhelming number of routine inspections. Rather, the CWC's strategy is to place inspectors routinely at the facilities with the highest proliferation risk and randomly at other industry sites. The CWC's challenge inspection provisions are designed to buttress this routine inspection strategy.

Narrowing the Scope of Routine Inspections

The U.S. implementing legislation redefines a term in such a way that fewer U.S. Schedule 3 commercial facilities will have to declare their activities and therefore be subject to inspection. The term in question is known as "low concentration" of a chemical mixture or solution.

Table 2: Thresholds for Annual Data Declarations and Routine Inspections.

Type of Facility	Type of Activity to be Reported for Previous Calendar Year and Anticipated for Next Calendar Year	Annual Production Threshold for Reporting	Threshold for Inspections
Schedule 1	Production, processing, consumption, acquisition, import and export data	<ul style="list-style-type: none"> ● 100g 	<ul style="list-style-type: none"> ● 100g
Schedule 2	Production, processing, consumption, import and export data	<ul style="list-style-type: none"> ● 1kg benzilate ● 100kg (Amiton, PFIB) ● 1 metric ton for other Schedule 2 chemicals 	<ul style="list-style-type: none"> ● 10kg benzilate ● 1 metric ton (Amiton, PFIB) ● 10 metric tons for other Schedule 2 chemicals
Schedule 3	Production, import and export data	<ul style="list-style-type: none"> ● 30 metric tons 	<ul style="list-style-type: none"> ● 200 metric tons
Other chemical production facilities	Production data for previous calendar year only	<ul style="list-style-type: none"> ● 30 metric tons for discrete organic chemicals containing phosphorous, sulfur, or flourine 	<ul style="list-style-type: none"> ● 200 metric tons

In most cases, commercial products are made by combining several chemicals together. If a significant percentage of a Schedule 3 chemical is present in a mixture, then it is possible for that chemical to be recovered and diverted for clandestine chemical weapons production.¹⁷ For this reason, the CWC requires that commercial facilities include in their initial and annual declarations the above threshold production of mixtures with a low concentration of Schedule 3 chemicals.¹⁸ The Schedule 3 declaration threshold is set at 30 tons per year, and CWC members have concurred that thirty percent **or less of** a Schedule 3 chemical in a mixture constitutes a low concentration.

¹⁷ Note that while reverse engineering of a chemical mixture is possible, it can be difficult to achieve and is not the most direct route to proliferation of chemical weapons. Aspiring proliferators would no doubt prefer to obtain precursor chemicals without having to go to the time and expense to extract them from chemical mixtures. Subjecting facilities that produce, import, and export Schedule 3 chemical mixtures to routine inspection increases the risk of detection should cheaters attempt to use this avenue.

¹⁸ Chemical Weapons Convention, Verification Annex, Part VIII, paragraphs 3 and 5.

Representatives of the U.S. chemical industry and U.S. government officials informally agreed with other governments and the Technical Secretariat that this approach was suitable, but the implementing legislation elevates the low concentration definition to eighty percent. By any reasonable assessment, eighty percent is a high concentration in a chemical mix. This attempt to increase profoundly the low concentration percentage will result in the declaration of fewer U.S. commercial facilities.

“The provision in the U.S. implementing legislation protects those who want to cheat on this treaty.”

—*Senator Pete Domenici*
22 May 1998

On the one hand, it is indeed tempting to consider measures that would lessen the declaration and inspection burden on the U.S. chemical industry. However, policy makers in Washington should base their decision on the views of the U.S. chemical industry and the likely implications of such restrictions on the ability to monitor treaty compliance.

Led by the Chemical Manufacturers Association, the U.S. chemical industry has played a laudable, constructive role in designing the CWC’s verification regime. The industry was a stalwart supporter of the CWC’s ratification, repeatedly describing the treaty’s reporting and inspection burdens as “reasonable and acceptable.” See Box 1 for more detail. The U.S. chemical industry worked closely with Congress and the Clinton Administration to ensure the reasonable interpretation of the treaty in the United States. However, the chemical industry *did not* ask Congress or the Administration to slip measures into the implementing legislation to reduce the monitoring of U.S. industry facilities. Since industry did not ask for these protections, Senator Domenici has concluded that “The provisions in the U.S. implementing legislation protect those who want to cheat on this treaty.”¹⁹

Experience in Iraq and the former Soviet Union has shown a pattern wherein governments use commercial industry as a facade for the proliferation of weapons of mass destruction.²⁰ The routine presence of inspectors at a broad range of commercial facilities overseas will give U.S. intelligence authorities a clearer picture of the chemical activities taking place, particularly in countries of proliferation concern.

Narrowing the scope of routine inspections does not serve U.S. security interests. When other countries follow the U.S. precedent and declare fewer industrial facilities working with low concentrations of proliferation-risk chemicals, the CWC’s inspectors will not gain routine access to as many industry facilities overseas. The bottom line, according to Senator Domenici, is that “We

¹⁹ Remarks of Senator Domenici, *Congressional Record* (22 May 1998): S5389.

²⁰ Salmon Pak, Al Manal, Al Hakam were three of the purportedly commercial facilities that Iraq at the center of Iraq’s biological weapons program. In the 1970s, the USSR created an extensive civilian research organization, known as Biopreparat, to mask its biological weapons programs. For more on the Iraqi situation, see Raymond A. Zilinskas, “Iraq’s Biological Weapons; The Past as Future?” *Journal of the American Medical Association* 278, no. 5 (6 August 1997): 418–24. For the latest assertions about the extent of Russia’s biological weapons program, which has yet to be opened to outside inspection, see Tim Weiner, “Defector Claims Soviets Had Chemical Warfare Plan,” *New York Times* (25 February 1998): A1; and Richard Preston, “Annals of Warfare: The Bioweaponers,” *New Yorker* (9 March 1998): 52–65.

thereby increase the likelihood that proliferators will use industrial facilities to mask chemical weapons activities, averting detection.”²¹

Box 1: Industry’s Views on the CWC.

**Chemical Manufacturers Association
Chemical Weapons Convention
Fact Sheet***

- The CWC primarily affects producers of certain chemicals—all businesses that use, process or consume chemicals are not affected by the treaty. The industry successfully negotiated thresholds and exemptions that mean small businesses are not unduly burdened by the CWC. The costs associated with CWC are reasonable and manageable.
- Some 2,000 facilities throughout the United States are likely to have CWC obligations. Less than 200 facilities will be subject to on-site inspections. Producers of “discrete organic chemicals” will only be required to fill out a one page declaration form. Field tests of the draft declaration system by chemical companies have indicated few problems in meeting their reporting obligations. The CWC reporting burden is considerably less than required under existing U.S. environmental programs.
- The industry provided important input in the development of the on-site inspection procedures. Routine inspections of chemical facilities can quickly and efficiently verify compliance with the Convention, with little or no disruption in production activities. A number of chemical companies volunteered their facilities in order to test the on-site inspection procedures under the CWC. In short, the industry tested the CWC systems, found the problem areas, and corrected them.
- Commercial interests will be best protected if the U.S. implementing legislation is adopted quickly....Quick action on the legislation is also required to assure that the United States can take a leadership role in implementing the Convention worldwide.

*This box presents excerpts from the Chemical Manufacturers Association Fact Sheet. The full text can be found at: www.cmahq.com/news1.html#topOfPage.

The Long-Term Consequences of the U.S. Restrictions and Exemptions

In capitols around the globe, government officials have been quick to note the implications of the exemptions and restrictions in the U.S. implementing legislation, particularly of the sampling analysis and the national security exemptions. While friends of the CWC see the potential of these provisions to undercut crucial aspects of the treaty’s verification protocol, other countries are contemplating how to take exploit these exemptions for their own purposes. According to Senator Domenici, “these restrictions provide a great deal more latitude within which a rogue nation can maneuver to hide a chemical weapons program.”²² Two other countries, for example, have already told Bustani, the head of the CWC’s inspectorate, that they will duplicate the exemption prohibiting sample analysis abroad.²³

²¹ Remarks of Senator Domenici, *Congressional Record* (22 May 1998): S5389.

²² Remarks of Senator Domenici, *Congressional Record* (22 May 1998) S5389.

²³ Myers, “Senate Backs Bill Limiting Chemical Arms Ban,” A3.

Some governments will copy the U.S. exemptions because they will not tolerate the creation of a different and less intrusive standard of verification for America while their countries are held to the more rigorous standards established in the treaty. Others will skillfully use the U.S. exemptions to shield banned chemical weapons activities. **The U.S. government, having established these precedents, will have little recourse if Russia, China, Iran, or other countries cite national security concerns to deflect a challenge inspection or block inspectors from sending a sample abroad for further analysis.**

Prompt Corrective Action Required

Should the United States persist in trying to pick and choose which treaty provisions it will adhere to, Washington will be in a poor position to demand strict compliance by other states.²⁴ In the words of Senator Domenici, “the U.S. cannot hold other countries to standards that we ourselves are not willing to meet.”²⁵ Therefore, Congress needs to pass corrective language promptly to ensure that the United States preserves the integrity of the CWC’s verification regime.

“It makes no sense for the Administration to have negotiated legislation that renders the Convention impotent.”

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22 May 1998

Congress would be extremely ill-advised to undermine the CWC’s legally binding obligation to accept challenge inspections. Accordingly, Congress needs to expunge the national security exemption from the implementing legislation. The corrective language could emphasize the U.S. government’s ability to use managed access procedures to safeguard national security or proprietary data in the event a sensitive U.S. facility is challenged. Also, the treaty already contains a withdrawal clause that would allow the United States to abrogate the CWC if any development jeopardizes supreme U.S. national interests.²⁶

In order to deter cheating at industry facilities, a broad swath of chemical industry facilities needs to be subject to routine inspections. Therefore, Congress should define a low concentration as thirty percent of a chemical mixture. This corrective language will put the CWC’s inspectors in a stronger position to monitor chemical industry facilities overseas that could be used to mask illicit chemical weapons production.

Mindful that inspectors will rarely encounter circumstances in the United States that would cause them to request sampling, Congress can also articulate its concerns about sampling without setting a damaging precedent. To do this, Congress needs to revise the sampling language so that it underscores the treaty’s protections for safeguarding sensitive and proprietary data during sample collection and analysis without prohibiting independent sample analysis when needed.

²⁴ Senator Bingaman is one of those who has recognized that these exemptions “undermine the effectiveness of [the CWC] and also undermine our credibility in trying to urge other states to comply with the treaty.” Remarks of Senator Bingaman, *Congressional Record* (22 May 1998): S5382.

²⁵ Remarks of Senator Domenici, *Congressional Record* (22 May 1998): S5389.

²⁶ Chemical Weapons Convention, Article XVI.

U.S. national security interests will be best served by the full and effective monitoring of the CWC's prohibitions. Congress and the Clinton Administration cannot lead the fight against chemical weapons proliferation by undermining the CWC's crucial monitoring provisions.