



INTERNATIONAL NARCOTICS CONTROL BOARD

Guidelines for a voluntary code of practice for the chemical industry



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NOTE OF THE PRESIDENT

Precursor chemicals play a vital role in the processing and manufacture of illicit drugs. The Board has long been aware of their significance and works untiringly in assisting Governments to prevent diversion of these chemicals. However, in contrast to the harmful substances they are used to create, these same chemicals are extremely important in our daily lives as they provide the building blocks for innumerable commodities on which the modern world relies. The Board acknowledges the crucial function of the chemical industry in the advancement of our societies; in the same manner, it recognizes the threat chemicals pose when falling into criminal hands.

It is this duality of licit and illicit applications for precursor chemicals that confronts Governments with the serious and difficult responsibility to exercise appropriate control over their use. Such measures must ensure unimpeded supply to meet the legitimate trade requirements, while at the same time, they must prevent access for illicit drug producers. It was with this challenge in mind that the Board decided to provide assistance to Governments in establishing mechanisms to monitor and regulate commerce in the chemical substances which are recognised as frequently used in the manufacture of illicit drugs.

Some of the most successful results in drug control emanate from voluntary compliance and cooperation. Furthermore, the Board has observed that voluntary cooperative agreements between Governments and the chemical industry are solid foundations on which to construct precursor chemical controls. It has been shown that these agreements have provided sufficient flexibility to accommodate commercial trade yet still deliver an adequate level of regulation to prevent diversion of precursor chemicals to the illicit market.

With a view to providing a concrete contribution to facilitate this approach in chemical control, the Board convened an expert advisory panel which reflected the experiences of both government and industry in this area. This panel was tasked with the development of a tool that would guide and assist Governments in designing their own voluntary controls in cooperation with the chemical industry. By drawing on the experiences and lessons learned through the implementation of such policies in several regions, I believe the panel has identified the key elements necessary to ensure the effectiveness and adequacy with any such agreements.

The combined result of the recommendations from the expert advisors and extensive consultations with many Governments are the Guidelines for a Voluntary Code of Practice for the Chemical Industry, that I am today proud to present. I am confident that the tested and practical design principles recommended in this document will provide a sound basis upon which Governments can formulate effective voluntary agreements with their respective chemical industries which can be tailored to address their specific and particular concerns and needs.

Therefore, I invite Governments to utilise this resource to address the control of the precursor chemical trade in their country and, in this context, trust that the Guidelines for a Voluntary Code of Practice for the Chemical Industry will prove to be a valuable tool in establishing such control.



Hamid Ghodse
President

International Narcotics Control Board

30 April 2009

Preface

Diversion from licit trade is the most common source of the precursors and other materials used for the manufacture of illicit drugs. Supplementing mandatory controls by introducing a voluntary code of practice for the chemical industry provides Governments with an appropriate, flexible, rapid and adequate means of dealing with this ever-changing problem. A code of practice complements existing laws and permits faster responses than legislation can provide. Monitoring systems allow rapid and flexible responses to novel phenomena and emerging trends in illicit drug markets. Measures taken within the framework of a code of practice can be tailored to address specific issues and may need to be applied only temporarily. Intragovernmental cooperation is of critical importance in ensuring successful outcomes from a voluntary code of practice.

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I. Introduction

1. Voluntary and close cooperation with various sectors of the chemical industry is an important element of effective chemical control. States parties to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988¹ are required, pursuant to paragraph 9(a), to establish and maintain a system to monitor international trade in substances in Table I and Table II in order to facilitate the identification of suspicious transactions. The Chemical Action Task Force, the International Narcotics Control Board (in its guidelines for use by national authorities in preventing the diversion of precursors² and essential chemicals), the Economic and Social Council (in its resolutions 1992/29, 1996/29, 1999/31 and 2001/14) and the Commission on Narcotic Drugs (in its resolutions 41/1 and 43/8) have consistently emphasized the need for and value of voluntary cooperation between governments and legitimate industries to supplement mandatory controls. In the measures to control precursors adopted by the General Assembly at its twentieth special session (resolution S-20/4B), in 1988, States were urged to establish or strengthen cooperation with the chemical industry, for example through the establishment of guidelines or a code of conduct, in order to intensify efforts aimed at controlling such substances. Accordingly, the Board decided to convene a meeting of its advisory expert group³ to draft guidelines that could be used by Governments to cooperate with industry in controlling precursor chemicals. Consultations with a number of Governments were conducted, and the resulting comments are reflected in the guidelines below.

2. Preventing chemicals used in the illicit manufacture of narcotic drugs and psychotropic substances from being diverted from legitimate commerce to illicit drug manufacture is an essential component of a comprehensive strategy for drug control and drug abuse prevention. Efforts in this regard, however, must take into consideration the licit uses of such chemicals and must not impede the supply of chemicals to legitimate users. Article 12 of the 1988 Convention establishes the broad framework for the international control of the chemicals most frequently used

¹United Nations, *Treaty Series*, vol. 1582, No. 27627.

²The term “precursor” is used to indicate any of the substances listed in Table I or II of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, except where the context requires a different expression. Such substances are often described as precursors or essential chemicals, depending on their principal chemical properties. The 1988 Convention uses the expression “substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances”. It has become common practice, however, to refer to all such substances simply as “precursors”; although that term is not technically correct, the Board has decided to use it in its reports for the sake of convenience. The term “materials” in this context includes all equipment and apparatus utilized in the illicit manufacture of narcotic drugs and psychotropic substances.

³The advisory expert group consists of individual experts appointed by the Board to provide advice with regard to the 1988 Convention.

in illicit drug manufacture. National legislation, regulations and policies provide for the implementation of the provisions of the 1988 Convention and form the basis of provisions underlying chemical control programmes in individual countries. National authorities are responsible for supplementing international requirements according to their respective needs. The Pre-Export Notification Online (PEN Online) system has proved to be an effective tool in assisting Governments in monitoring international licit movements of precursor chemicals.

3. The guidelines below provide guidance to national authorities that have implemented mandatory controls but wish to establish a broader-based and more comprehensive approach to chemical control in order to respond rapidly and flexibly to changes in local and regional illicit drug manufacturing activities. The text is intended to assist authorities in the development of a code of practice with the national chemical industry as a supplement to existing national legislation in line with the spirit of article 12 of the 1988 Convention. Such cooperative and voluntary efforts with the industrial sector are a key component of effective national and regional chemical control programmes and offer an effective means of monitoring precursor chemicals without impeding access by legitimate users. Measures such as a code of practice help authorities to identify suspicious orders and ultimately to track and apprehend traffickers involved in the diversion of precursors and the illicit manufacture of controlled drugs. Partnerships of this nature between Government authorities and the chemical industry will also enhance compliance with mandatory controls and help to establish a result-oriented approach to chemical control.

II. Guidelines for a Voluntary Code of Practice for the Chemical Industry

4. A voluntary code of practice is a partnership between government and industry based on shared goals and responsibilities. The code relies on mutual trust and respect and delivers considerable benefit to both parties. It draws on the expertise of both parties and thus brings to bear the skills of each to ensure that the required control measures are achieved. The code may be introduced in a flexible manner to meet local needs, taking the form of a memorandum of understanding, agreement, contract or code of practice adopted or approved by one or more major industry associations so as to maintain the spirit of goodwill and cooperation underlying the arrangement. It aims to promote a proactive attitude on the part of industry to act above and beyond legal duties to assist government in illicit drug control. The code benefits companies in that the measures do not impede legitimate trade and offer an opportunity for harmonization across all sectors of the industry.

A. Preparation

5. In the development of a code of practice, it is important to keep in mind the voluntary nature of the agreement that is being formalized between the participants. The generation of goodwill and cooperation by all parties should be cultivated as from the inception of the development process and should be actively maintained throughout the life of the code.

6. The Government authority responsible for the development and subsequent implementation and maintenance of the code (hereinafter “the Department”) should seek to identify all other Government authorities and industry bodies that should be involved in the drafting process.

7. Specific mandated responsibilities would vary between different jurisdictions depending on the individual Government structure. A number of agencies are likely to be involved directly or indirectly with the functioning of a code, such as divisions of law enforcement agencies responsible for drug control, the competent national authority, the ministry of trade or commerce, other regulatory authorities and other relevant agencies. Such early involvement by all agencies will help Governments to identify any regulatory inconsistencies between agencies and to better assess the resources needed to implement and support the code.

8. The code should be promoted as a partnership between government and the chemical industry. As with any partnership, both parties to the

agreement need to negotiate their respective responsibilities. Negotiations conducted such that participants are afforded an equal voice in the drafting of the terms of the relationship will generate an agreement that accommodates the goals and responsibilities of both parties. Such collaboration will also instil a culture of ownership of the agreement and hence increase its effectiveness. In actuality, the experience and sophistication of industry participants will vary, so it is likely that the Department may need to take the lead role, particularly during the early phases, in guiding the development of the code.

9. Involvement of the chemical supply and allied industries (e.g. sales, storage and transport) in the early stages of development of the code is important in ensuring that the content of the code provides them with a framework that delivers results but at the same time does not impose any unnecessary burden. It is an important premise as well that the code should not supersede the obligations of participant companies under existing national laws and regulations.

10. A fundamental principle that must be reflected in the code is the guarantee that information provided to the Department by any company will remain confidential. Industry participants must be assured that details of their business operations will not be made public. Failure to provide such assurances would seriously undermine industry confidence and, hence, the adoption and effectiveness of the agreement. It should also be made clear to participants that they may be called upon to provide evidence in legal proceedings to support the prosecution of offences involving precursor diversion (e.g. identification of persons, vehicles, production of company records and documents).

11. In areas where trade associations or other bodies representing the interests of each sector involved in the chemical supply chain are active, such bodies will provide the best path for communication between the chemical industry and the Department. Depending on the nature of the industry in each country, it may be necessary to engage with a number of different industry representative bodies. This will help to ensure comprehensive coverage of companies involved in international or domestic trade in chemicals and also specific industries that are the end-users of precursor materials at high risk of diversion to illicit drug manufacture.

12. There is much benefit in such measures being developed as part of the existing national drug control strategy. A public recognition programme acknowledging the concept of corporate citizenship or other benefits may act as an incentive for participation by larger companies that are mindful of their public image. The opportunity to ensure fairness in competitive trading for smaller companies that “do the right thing” in exercising voluntary control over precursor chemicals and equipment sales is an additional benefit. Any reservations about possible financial disadvantages of participating in a code of practice are overcome through the likely elimination of unregulated sales. A system that

incorporates both incentives and trust is likely to lead to high levels of participation in all sectors of the industry.

13. It is important that the adoption of the code is seen as a positive contribution to society. It should be made clear to companies that, with their active participation in the code, they become partners in controlling these chemicals rather than being the targets of control. Broad acceptance of the code will also help to allay the concern that a company might be placed at a commercial disadvantage if it complies with the code. Peer group solidarity will contribute significantly to the number of companies adopting the code.

B. Implementation

14. It is important that a full partnership be established between government and the industry in pursuing the objectives of the code of practice. It would be useful for the Department to assume a coordination role during the preparation and implementation of the code. The Government, through the Department, should promote via appropriate channels of communication a spirit of cooperation, goodwill and mutual benefit upon which the code will depend.

1. Role and responsibilities of the Government

15. The efficiency and effectiveness of the code can be significantly strengthened by naming personnel (Department Focal Point) to handle all communications between the Department and the industry. This unit should be suitably resourced to conduct follow-up activities related to chemical diversion. The Department should provide a dedicated telephone number, fax number and after-hour contact details to facilitate communication. The Department Focal Point will be responsible for seeking out, receiving and processing information from the industry on suspicious activities. The Department Focal Point will be responsible for providing advice and feedback on investigations to code participants. The Department Focal Point will communicate and coordinate activities with other relevant Government agencies.

16. The Department could initiate coordination meetings of all appropriate stakeholder groups during the initial development phase of the code. Consideration should also be given to formalizing a mechanism for updating and maintaining the code in order to address changing trends in illicit drug manufacturing activities. The inclusion of new chemicals or equipment in revisions to the code may have unintended consequences for certain areas of the chemical industry. Means need to be developed whereby such effects can be identified and assessed prior to any adverse impact on code participants or their clients.

17. The Department may advise the industry on what is required of it and the reasons why such actions are proposed. Similarly, the Department will need to be receptive to advice from the industry on the practicality of measures pertaining to good business practices. This dialogue should be conducted between the Department and representatives of chemical manufacturers, exporters, importers, sellers (including intermediaries) and end-users of the precursor chemicals.

18. The Department will provide the list of chemicals to be covered by the code. As a minimum standard, the schedule of chemicals should contain those precursor substances included in Tables I and II of the 1988 Convention. The code should also contain any other chemicals, materials and equipment of concern, including, as appropriate, chemicals, materials and equipment included in the limited international special surveillance list and those covered by regional model legislation or regulation and similar guides, as updated. Depending on the prevailing regional requirements, additional equipment may be included under the code (tablet presses, pressure reaction vessels etc.).

19. The Department may wish to introduce a multilevel schedule of substances in the code, with the categories being determined in respect of their risk and utility. The Department may also recommend different activities to accompany any such categorization of chemicals under the code. This would not be limited only to chemicals that are considered suspicious but could include a set of high-risk, watched chemicals that have automatic notification protocols associated with any transactions or enquiries.

20. The end-user declaration concept is a central pillar of an effective voluntary code of practice and has been shown to be an extremely effective tool in identifying diversion of chemicals. The declaration serves to record details of clients and their intended use of chemicals monitored under the code. Model templates for this and other documents may be provided. The Department should assist the company in the development of processes and protocols for the completion, secure storage and ready retrieval of end-user declarations. As it is likely that such declarations will be relied upon by law enforcement authorities to support prosecution of precursor diversion offences, ensuring their integrity and availability on demand will form a key element of code compliance.

21. In cases where a company may stock any quantity of precursor chemical products that are vulnerable to diversion and have a high value on the illicit market, the Department may advise and assist the company in performing a security audit.

22. While a key responsibility of the Department will be the provision of training to companies adopting the code, the Department may also wish to consider extending such instruction or education to include the development of a broad awareness-raising programme during the preparation phase. This would serve to publicize the purpose and benefits of

the code outside the immediate sphere of the chemical supply chain in the wider forum of chemical-consuming industries. Such a programme could take the form of information brochures, targeted advertising in industry publications and open meetings designed to attract a diverse range of industry representatives with a view to broad dissemination of information and building of awareness about the code.

23. The Department may provide assistance with tailor-made training programmes for companies to inform staff of their responsibilities and prepare them to perform the functions required under the code. Such training should include guidance and advice on how to identify suspicious activity (see annex) and outline how information on such activity should be reported to the Department. The extent of training requirements may be expected to vary significantly between companies. Target groups would not be limited to sellers of chemicals and would need to accommodate many sectors of the industry, e.g. end-users, transporters, scientific equipment and glassware manufacturers and sellers, tablet press distributors and any other sector associated with the handling of materials and equipment utilized in illicit drug manufacture.

24. A structured process for periodic assessment and review by all parties to the code should be agreed upon. This will permit evaluation of the effectiveness of the code and also allow any necessary modification or fine-tuning to reflect developments or changing circumstances.

25. The Department should regularly provide code participants with information on the various methods of chemical diversion used, drawing on communications with appropriate national and international authorities.

26. The Department should be strongly urged to ensure the availability to code participants of appropriate feedback on outcomes of information provided on suspicious activity.

27. The Department will need to ensure that it has the capacity to respond to information from industry sources in a timely manner so as not to impede the legitimate operations of the business. It must always remain mindful that participation in the code is voluntary and that the success of the code relies on mutual respect and cooperation between the Department and companies. If the Department fails to adequately respond to information provided by the industry on suspicious activity, thereby causing unnecessary inconvenience to the business flow, the partnership will be seen to be imbalanced and industry cooperation may diminish or be withdrawn.

2. Role and responsibilities of chemical industry participants

28. The success of a voluntary code of practice is dependent on the commitment of companies at the highest level.

29. To effectively implement a code of practice, a company will need to allocate adequate resources. Implementation of a code may have an impact on training, security, information technology, transportation and infrastructure areas of a company.

30. The allocation of staff having the appropriate authority to oversee the tasks foreseen under the code is critical. Staff should possess the authority necessary to take decisions regarding diversion prevention activities on behalf of the company. This position would serve as the Precursor Focal Point for all communications between the company and the Department.

31. The Precursor Focal Point appointed by the company will be the primary point of communication between the company and the Department for all matters regarding chemical diversion. The Precursor Focal Point will collect and assess information from within the company on possible suspicious activities; and it will liaise with trade associations or other bodies representing the chemical industry. Upon receipt of an order or enquiry for a chemical covered by the code of practice, the company would follow the procedure developed for reporting to or otherwise notifying the Precursor Focal Point. The Precursor Focal Point could then determine the appropriate course of action to be followed.

32. As part of the code implementation process, the company will need to review the systems, procedures and documentation utilized in order to determine how best to prevent chemical diversion.

33. The “know-your-client” principle should be applied when developing the company’s policy for implementing the code. This requires that the sale of precursor chemicals and equipment be limited to only those clients regarded as bona fide in that they are involved in legitimate activity that requires the chemicals and are known to handle them in a lawful and responsible manner.

34. The end-user declaration should always be linked with other internal company documentation associated with and generated by a sale of precursor chemicals. To enable retrieval at the request of the Department or other Government agency, the declaration and associated documents should be securely stored for a reasonable, appropriate period of time.

35. To reduce the risk of diversion, the number of staff authorized to have direct access to precursor chemical materials should be kept at a minimum. In developing the company’s implementation plan, provision should be made for conducting a security assessment of staff members whose regular duties will involve direct contact with precursor chemicals or will provide an opportunity to divert precursor chemicals.

36. Companies involved in the sale or consumption of precursor chemicals will need to ensure that appropriate secure facilities are available

for storing precursor chemicals. Companies may request assistance from the Department in developing a suitable security strategy.

37. Companies should be strongly encouraged to conduct frequent inventory audits for all precursor chemicals in their possession. Similarly, processes should be established for the secure disposal of unwanted or contaminated chemicals, and any products or preparations containing precursor chemicals in a recoverable form.

3. Further considerations

38. The end-user declaration records the details of any client attempting to purchase a chemical covered by the code. The information gathered in the declaration must include:

(a) The identity of the purchaser, evidenced by presentation of a legal, photograph-bearing document (e.g. driving licence, passport);

(b) Details of the company purported to be purchasing the chemicals, including the address of premises, telephone, fax, website, trading name and any company registration, if applicable;

(c) Details on the intended commercial use of the chemical;

(d) Specific identifying details of the material purchased (e.g. batch number);

(e) Details of the financial transaction (e.g. number of bank account, credit card, cheque).

39. Where a company's operating processes are computerized, a system of flags or similar automated recognition features may provide a convenient means whereby precursor inventory stock items can be readily and reliably identified. It is important that all chemical nomenclatures (e.g. Chemical Abstracts Service registry number, trade names, product codes and other identifiers) are suitably cross-referenced for each precursor chemical listed in the code.

40. Cash sales or orders placed by telephone or other remote means by anyone other than a recognized representative of an established account-holding client company, irrespective of the degree of compliance with the end-user declaration, are to be strongly discouraged. Any attempt to place such an order should be reported immediately to the Precursor Focal Point, who will then contact the Department to relay any available details of the event.

41. The Department will determine whether any additional action should be taken by a company with respect to the end-user declaration; this would be dependent on defined circumstances surrounding any sale (see annex). When the Precursor Focal Point has some suspicion regarding a

transaction, the Department may request that a copy of the end-user declaration be transmitted to it and that the transaction be halted for a predetermined period while preliminary investigations are conducted.

42. Provision of additional infrastructure such as alarm systems or closed-circuit television monitoring may be appropriate. Similarly, a two-person, cross-checked handling and access protocol may be considered.

43. The International Narcotics Control Board stands prepared to assist Governments in identifying precursor chemicals (in addition to those scheduled in Tables I and II of the 1988 Convention and the limited international special surveillance list) that may be the subject of diversion to illicit manufacture in particular regions. The Board would appreciate feedback from Governments on how the present guidelines could be revised or improved based on their experiences with their codes of practice.

Annex

Risk assessment: examples of indicators of "suspicious" activity

Government and industry are joint partners in the implementation and operation of a voluntary code of practice. While the risk assessment of individual shipments and sales will normally be carried out at the company level, the identification of national trends and patterns by the Government authority responsible for development and implementation of the code will rely extensively on the aggregate information provided by the industry.

To determine the bona fides of a potential client, the company must receive from the client certain information. This information is to establish the identity of the individual or business entity and also to determine the end use of the chemical being purchased. As a means of gathering this information, an end-user declaration should be developed to record detailed information on the identity of the person or company attempting to purchase the substance or equipment, the financial details of the transaction, the intended use of the material and specific details describing the product or products purchased.

Provision of end-user declaration information does not guarantee that a transaction is not suspicious. Operators should use their business knowledge and experience to evaluate the validity of a transaction. Similarly, computer systems alone should not be relied upon as the only indicator of suspect activity.

A key element in preparing company staff to work under a code of practice is the provision of guidelines indicating potential suspicious activity on the part of prospective or established clients. The following indicators of suspicious activity, once observed, should be reported to the Precursor Focal Point:

- The client or the business entity that the person claims to represent is unknown to the company.
- The client has no established business record with other chemical supply companies. (This may be determined through communication with an industry association.)
- The client is not willing to open an account and be subjected to credit scrutiny or other company policy procedures associated with new accounts
- The client is not able to provide reference documentation from banks or financial institutions to establish the legitimacy and longevity of the business entity.
- The client wishes to conduct transactions only on a cash basis.
- The business entity that the client claims to represent has only recently been established. It is not registered, listed in the telephone directory or associated with a Web-page identity.

- The documentation presented is not of a credible standard (e.g. on letter-head). No business card or company photo identification credentials have been presented.
- The client does not appear to have a sound knowledge of the industry for which the precursor chemicals are purportedly to be purchased.
- The client claims to be acting as an agent or intermediary for another party.
- The client seems unfamiliar with standard business practices and the time associated with the delivery of the consignment, or there is an undue sense of urgency.
- The client is unduly nervous or behaving in a manner causing suspicion.
- The mode of approach is irregular, for example, personal visits are unannounced, mobile telephone contacts only are provided, first names only are provided.
- The client wishes to take personal delivery of the consignment.
- The consignment is to be delivered to non-business premises, a residential address or a public place.
- The client has offered to pay a price well in excess of the regular price that the chemical usually sells for.
- The chemical ordered is inconsistent with the nature of the business that the client claims to represent.
- The chemical ordered is not in keeping with the intended use as stated in the end-user declaration.
- The list of chemicals ordered contains more than one precursor chemical from the list of materials monitored under the national code.
- The order is for an established client whose delivery instructions are different from previous established patterns (e.g. the consignment is directed to a specific person not known to the company).
- There is a request for unusual or misleading labelling or packaging so as to disguise the true nature of the chemical content.

Indicators of suspicious behaviour should not be limited to those listed above. Company employees should be instructed to report immediately and directly to the company Precursor Focal Point any reservations they may have regarding any potential client or order pertaining to precursor chemicals.

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