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Implementation of the international drug control treaties: International Narcotics Control Board**Conference room paper submitted by the International Narcotics Control Board, titled: “Illicit Drug Manufacturing Equipment and Article 13 of the 1988 Convention: Awareness-raising and guidance document for policy makers”******Summary*

This document provides various options, measures, approaches and tools with a view to guide international policy efforts and action aimed at preventing the diversion of equipment essential for illicit drug manufacture, enhancing the operational use of article 13 of the 1988 Convention, and cooperating to that end.

The document is based on information and good practices gathered as part of a series of expert meetings convened by INCB, and on analogies with options to address the proliferation of non-scheduled chemicals and designer precursors. Governments may consider the guidance provided, tailored to their national circumstances and within the framework of their domestic legislation.

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*** This document has not been edited.



I. Introduction and evolution

1. The clandestine manufacture of narcotic drugs and psychotropic substances, new psychoactive substances and precursors is not possible without the input of chemicals, materials and equipment. While the control of chemicals has long been a focus of authorities worldwide, pursuant to the provisions in article 12 of the 1988 Convention, much less attention has been given to equipment and materials and article 13 of that Convention, which provides a basis for international action and cooperation in such efforts.

2. In recent years, INCB has been drawing attention to article 13 of the 1988 Convention as a complementary tool in addressing illicit drug manufacture. In the thematic chapter of its 2019 Precursors Annual Report,¹ INCB highlighted the need for awareness-raising and addressing the matter at the global level.

3. The Commission on Narcotic Drugs (CND), during its sixty-second session in March 2019 adopted resolution 62/4 that calls on Governments to increase the operational use of article 13 and take appropriate measures to prevent trade in and the diversion of equipment for illicit drug manufacture. It also encouraged INCB to develop guidelines to prevent and investigate cases of diversion of equipment for illicit drug manufacture in the context of article 13. These guidelines were launched at the sixty-third session of the Commission, in March 2020, and are available to the competent national authorities on the INCB's secure website in all six United Nations languages.²

II. Possible options, measures and approaches

4. Similar to some of the initiatives implemented for addressing the use of chemicals in illicit drug manufacture, equipment-related initiatives could include action at national or international levels and may be voluntary or mandatory in nature. While the preferred course of action would be a harmonized international approach, different country situations may necessitate different approaches. For example, there will be different needs depending on whether a country has industry manufacturing certain equipment, whether it is importing such equipment for legitimate use, or whether there is a focus on refurbishing second-hand equipment.

5. Each Government would therefore need to assess their national situation in terms of extent, and risk of diversion and use of materials and equipment. These assessments would result in the design or selection of the most appropriate national measures matching the country's international responsibilities in a globalized world.

6. Most often it is not a single measure but rather a combination of a few measures that would complement each other in preventing the diversion of materials and equipment for illicit drug manufacture. Defining the equipment that should be monitored, regulated or otherwise focused on, presents another challenge.

7. The following sections summarize the options, measures and approaches at a broad policy level. More practical guidance is contained in the Equipment guidelines referred to above.

A. Options at the international level

8. Article 13 of the 1988 Convention calls on State parties to "take such measures as they deem appropriate to prevent trade in and the diversion of materials and

¹ www.incb.org/documents/PRECURSORS/TECHNICAL_REPORTS/2019/EN/Report_Breakdown/09_Article_13_of_the_1988_Convention_as_a_complementary_tool_in_addressing_illicit_drug_manufacture.pdf.

² www.incb.org/incb/en/precursors/materials-and-equipment.html.

equipment for illicit production or manufacture of narcotic drugs and psychotropic substances and shall cooperate to this end”.

9. Article 13 therefore provides a mandate for Governments to prevent trade in and diversion of materials and equipment for illicit production or manufacture of drugs. Similarly, article 3 of the Convention provides a framework for national efforts to counter and establish as criminal offences under each country’s domestic law the manufacture, transport or distribution of equipment when it is to be used for illicit purposes.³ These provisions relate not only to equipment used for illicit laboratories within a party’s territory, but also to materials and equipment that are smuggled out of or exported from the party’s territory to other countries and used in illicit laboratories in those countries (see also paragraph 13.3 of the Commentary).

10. The application of article 13 together with article 3 of the 1988 Convention may therefore be an effective tool for Governments.

B. Options at the national level

11. As in the case of monitoring of chemicals and considering their wide legitimate uses, Governments face similar challenges when it comes to finding a balanced approach to prevent the diversion of equipment into illicit channels while ensuring its availability for legitimate purposes.

12. Governments are encouraged to take the following options into consideration on the basis of national legislation.

1. Voluntary cooperation with the private sector (public-private partnerships)

13. Cooperation with the private sector has been proven to be successful with regard to substances included in Table I and Table II of the 1988 Convention as well as for non-scheduled substances. The “*know your client*” principle could be applied to equipment as well as for identifying and reporting suspicious orders. The existing industry guidelines, including those prepared by INCB for cooperation with the chemical industry,⁴ together with the other INCB available resources,^{5,6} can be applied to the equipment industry as well.

14. To engage the relevant equipment industry partners in the process, it is important to know the nature and extent of the legitimate industries and operators that supply, adapt or trade in equipment of possible interest to traffickers. Therefore, Governments are encouraged to identify and map their potential stakeholders from the private sector (e.g., manufacturers, importers/exporters, wholesalers, distributors/logistic partners, refurbishers, branch organizations and any operators involved in custom-made equipment and second-hand distribution), and work with chambers of commerce. The existence of specialized equipment-related (trade) association(s) should also be determined as it could facilitate the task. While mapping the relevant equipment industry partners, the internet (“clear web”) could serve as a useful reference point, as several postings related to equipment can be found on the various e-commerce platforms.

³ These provisions are extended to the possession of materials or equipment (subparagraph (c), clause (ii) of article 3, paragraph 1). Article 3, paragraph 1, subparagraph (a), clause (v) and subparagraph (c) clause (iv) further extend the provisions for establishing as criminal offences, respectively, to the organization, management or financing of any of these offences, and to participation in, association or conspiracy to commit, attempts to commit, and facilitating the commission of any of the offences established in accordance with article 3.

⁴ Guidelines for a Voluntary Code of Practice for the Chemical Industry, 2009 (with 2013 Addendum).

⁵ Practical notes for implementing the International Narcotics Control Board guidelines for a voluntary code of practice for the chemical industry, 2015.

⁶ Quick Guide – Development and implementation of a Voluntary Code of Practice for the chemical industry formalized through a memorandum of understanding between government and the private sector, 2015.

15. Beyond identifying legitimate industry stakeholders, it may also be useful to determine the extent to which equipment from these industries is misused, domestically as well as internationally. International backtracking investigations and cross-border exchange of their results are critical to obtain the necessary inputs for domestic action. To further enhance backtracking investigations and source determination, Governments and industry might cooperate and consider mechanisms to reduce the ease with which equipment identifiers and labels can be altered or removed.

16. Well-established public-private partnerships will also help to promote more widely various awareness-raising and sensitization tools, such as the international monitoring list of equipment used in the illicit manufacture of drugs (see section 3 below).

2. Regulation of domestic and/or international trade in equipment

17. A regulatory approach could serve to reduce any unnecessary domestic and/or international movement of equipment of potential interest to traffickers without hindering or adding unnecessary administrative burden on its legitimate use. Such an approach would have to define what equipment would be covered by the regulations and the requirements applicable to the transactions involving it. A mapping of potential stakeholders as suggested in paragraph 14 and a review of the international trade in essential equipment, could provide an indication to the specific items and the activities that may be considered for regulation (e.g., international trade and/or domestic controls).

18. Governments are encouraged to develop relevant administrative or criminal penalties to support the regulation of the equipment in question. The development of unique tariff codes for selected equipment (described in section 4 below) will help in implementing such regulations as they relate to international trade.

3. International monitoring list of equipment used in the illicit manufacture of drugs (IMLE)

19. Monitoring of equipment can be more effective by focusing on certain items. Similar to the limited international special surveillance list (ISSL) of non-scheduled substances, which was created to address the need for flexible approaches, an international monitoring list of equipment (IMLE) could include certain items of equipment of international relevance and for which substantial evidence exists of their use in the illicit manufacture of narcotic drugs, psychotropic substances and precursors/their intermediates.

20. A first edition of IMLE has been disseminated to Governments by INCB and has also been made available on INCB's secure website. It will be maintained and updated, as necessary. The list could be further promoted by competent authorities through the public-private partnerships and thus contribute to preventing the equipment from being diverted into illicit channels.

4. Harmonized System (HS) classification

21. A minimum tool to effectively monitor trade in equipment and act on licit but suspicious, or misdeclared, shipments is the use of Harmonized System (HS) codes, based on the classification system established by the World Customs Organization (WCO). However, currently, most essential equipment does not have unique HS codes but is covered under larger groups of related items. This makes the monitoring of these items challenging. INCB has initiated discussions with the World Customs Organization (WCO) in order to introduce new unique subheadings for selected equipment. Interested Governments should consider supporting this process.

22. While new HS classifications (new codes or subheadings) at the international level will be a medium-term exercise given the review cycle of the WCO, Governments are encouraged to expedite establishing national codes using the

applicable international six-digit code and adding additional two or four digits to reflect their national requirements, where possible.

5. Examples of approaches at the national level

23. The INCB website section, “Material and Equipment”,⁷ provides a repository of existing national approaches and best practices in relation to the implementation of article 13 of the 1988 Convention. The list is not exhaustive and is being updated as additional information is made available to INCB.⁸ All Governments are encouraged to share additional approaches and best practices to help to enlarge the repository and increase its operational usefulness.

C. Options for international cooperation

1. Exchange of intelligence and actionable information and tools

24. The exchange of intelligence and actionable information related to specialized equipment used in the illicit production or manufacture of drugs is an important element to prevent such items from being used in illicit drug manufacture. It relates to law enforcement authorities sharing intelligence with a view to identifying links between cases, building cases (including non-criminal cases) and preventing future cases involving equipment using similar modus operandi. The Board is already promoting this for precursor chemicals through Project Prism and Project Cohesion, and with the help of the Precursors Incident Communication System (PICS) which has extended this work to include equipment-related cases as well. The provisions of article 13 provide a basis for investigation of such cases and joint operations.⁹

25. In terms of international cooperation, the use of INCB’s Precursors Incident Communication System (PICS) platform for the exchange of intelligence and information about equipment incidents is further encouraged. In addition, interested Governments, regional and international organizations may cooperate to further develop a searchable global database on seizures of key items of equipment, such as tableting machines. They should also cooperate to advance the development of technology such as image banks and image recognition tools.

26. Governments are encouraged to enhance cross-border cooperation on equipment-related incidents, including by informing their counterparts in transit and destination countries about suspicious outbound shipments containing such equipment, so that the authorities there can anticipate and take action on incoming shipments. In some cases, national legislation in destination countries may enable authorities to engage in enforcement action. The repository of national approaches, available to Government officials at the INCB website is intended to inform such action.

2. Need for specialized training

27. Specialized training and awareness raising for law enforcement officers might be necessary to ensure that they can correctly identify suspicious items encountered during drug-related operational activities. Where possible, equipment-related awareness-raising and capacity-building should be incorporated in existing training courses, such as those on clandestine laboratory investigations. Several such training opportunities exist.

⁷ www.incb.org/incb/en/precursors/materials-and-equipment.html.

⁸ It currently includes information provided by Australia, Canada, Germany, Mexico, and the United States of America. It will be updated as new information becomes available.

⁹ Commentary on the 1988 Convention Article 13; para. 13.11.