



**STANDING COMMITTEE ON
CHEMICALS & FERTILIZERS
(2009-10)**

FIFTEENTH LOK SABHA

MINISTRY OF CHEMICALS AND FERTILIZERS
(DEPARTMENT OF CHEMICALS AND PETROCHEMICALS)

THE CHEMICAL WEAPONS CONVENTION (AMENDMENT) BILL, 2010

NINTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

June, 2010/ Jyaistha 1932, (Saka)

NINTH REPORT**STANDING COMMITTEE ON
CHEMICALS AND FERTILIZERS
(2009-10)****(FIFTEENTH LOK SABHA)****MINISTRY OF CHEMICALS AND FERTILIZERS
(DEPARTMENT OF CHEMICALS AND PETROCHEMICALS)****THE CHEMICAL WEAPONS CONVENTION (AMENDMENT)
BILL, 2010**

Presented to Hon'ble Speaker Lok Sabha on 2 July, 2010

Presented to Lok Sabha 03 August, 2010

Laid in Rajya on 03 August, 2010

**LOK SABHA SECRETARIAT
NEW DELHI**

June, 2010/ Jyaistha 1932, (Saka)

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INTRODUCTION

I, the Chairman, Standing Committee on Chemicals and Fertilizers (2009-10) having been authorised by the Committee to present the Report on their behalf present this NINTH REPORT on The Chemical Weapons Convention (Amendment) Bill, 2010 of the Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) for the year 2009-10.

2. The Chemical Weapons Convention(Amendment) Bill, 2010 was introduced in Rajya Sabha on 16 April 2010 and referred to the Committee by the Speaker, Lok Sabha in consultation with the Chairman Rajya Sabha on 23 April 2010 for examination and report within two months.

3. The Committee elicited written information and took evidence of the representatives of the Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) and other Departments and Ministries on the salient features of Bill at their sitting held on 26 May 2010.

4. The Committee considered and adopted the Report at their sitting held on 16 June 2010.

5. The Committee express their thanks to the Officers of the Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) and other Departments for furnishing the material and other information, which they desired in connection with the examination of The Chemical Weapons Convention (Amendment) Bill, 2010 for giving evidence before the Committee.

6. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi;
16 June, 2010
26 Jyaistha, 1932 (Saka)
Chemicals and Fertilizers.

GOPINATH MUNDE
Chairman,
Standing Committee on

**COMPOSITION OF THE STANDING COMMITTEE ON CHEMICALS & FERTILIZERS
(2009-10)**

\$ Shri Gopinath Munde - Chairman	
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&16	Shri Tapas Paul
**17	Shri Udayanraje Bhonsle
18 to 21	Vacant
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24	Dr. C.P. Thakur
25	Shri Brijlal Khabri
26	Shri A.A. Jinnah
27	Shri Raj Mohinder Singh Majitha
28	Shri Biswajit Daimary
**29	Prof. Anil Kumar Sahani
***30	Shrimati Naznin Faruque
# 31	Vacant

* *Consequent upon nomination to the Committee on Information Technology*

Shri Tufani Saroj, MP (LS) ceased to be Member of the Committee w.e.f. 13.10.2009.

Vacancy arisen due to demise of Shri Mahendra Sahni, MP (RS) w.e.f. 6 November 2009.

& *Nominated w.e.f. 11.01.2010.*

** *Nominated w.e.f. 26.02.2010.*

*** *Nominated w.e.f. 26.04.2010.*

\$ *Nominated w.e.f. 07.05.2010.*

SECRETARIAT

- | | | | |
|----|----------------------|---|----------------------|
| 1. | Shri N.K. Sapra | - | Additional Secretary |
| 2. | Shri Ashok Sarin | - | Joint Secretary |
| 3. | Shri C.S. Joon | - | Director |
| 4. | Smt Archana Pathania | - | Under Secretary |

REPORT

Chemical Weapons Convention (CWC) is a universal non-discriminatory, multilateral, Disarmament Treaty, which bans the development, production, acquisition, transfer, use and stockpile of all chemical weapons. The Treaty puts all the State Parties on an equal footing. Countries that produce and use chemicals which can be conveniently converted into chemical weapons have to be open and transparent about the use of the Scheduled Chemicals. The Convention entered into force on the 29 April 1997. India is an early ratifying country to this Treaty. As on 29 April 2010, there are 188 Member States who are parties to this Convention. The Convention is being implemented by the Organization for the Prohibition of Chemical Weapons (OPCW) established in the Hague, the Netherlands.

2. India is a member State of the Chemical Weapons Convention (CWC). To discharge the obligations under the Convention, each country is required to adopt necessary legislation to implement its obligations under the Convention. Accordingly, CWC Act was passed by the Parliament of India in August 2000 to take necessary measures to implement the obligation. This Act was brought into force with effect from 1 July 2005 except its sections 18 and 39. Section 18 relates to provision of registration of persons engaged in production etc. of toxic chemicals or precursors listed in any of the Schedules 1 to 3 in Chemical Weapons Convention. Section 39 has penal provisions for failure to register.

Salient Features of Chemical Weapons Convention Act

3. (i) The CWC Act has been promulgated to give force of law to the CWC to which India is a signatory.
- (ii) The Act is in force w.e.f. 1 July 2005, while holding in abeyance the aspects of compulsory registration as envisaged in the Act (Section 18) and the provision relating to punishment for not registering (Section 39).
- (iii) The CWC Act consists of 7 chapters and 56 sections encompassing various provisions for implementation of CWC.

- (iv) The Act extends to the whole of India and applies to -
- (a) Citizens of India outside India, and
 - (b) Associates, branches or subsidiaries outside India of companies or bodies corporate, registered or incorporated in India.
- (v) As national implementation measure and in order to fulfil its obligations under the Convention, each State party has to designate or establish a National Authority (NA) to serve as the national focal point for effective liaison with the Organization and other State parties. In India the National Authority has already been established under the Cabinet Secretariat. The functions of the NA CWC are overseen by a Steering Committee constituted under Section 11 of the CWC Act, 2000. The composition of the Steering Committee is as follows:-
- | | | | |
|-------|--|---|------------------|
| i. | Cabinet Secretary | - | Chairperson |
| ii. | Secretary, Ministry of Defence | - | Member |
| iii. | Secretary, Deptt. of Chemicals & Petrochemicals | - | Member |
| iv. | Foreign Secretary | - | Member |
| v. | Secretary, Defence Research & Development Organization | - | Member |
| vi. | Secretary, Department of Revenue | - | Member |
| vii. | Secretary, Department of Commerce | - | Member |
| viii. | Chairperson, NA CWC | - | Member Secretary |
- (vi) NA is empowered by the Act (Section 7) to call for any information/ declaration from the industry as also to conduct inspections for the purposes of the Act. NA has also the power to issue directions (Section 10) for closure, prohibition or regulation of any company engaged in production of chemicals covered by the convention.
- (vii) Section 9 of the CWC Act, 2000 confers power upon the Central Government to appoint enforcement officers for the purposes of the said Act.”

Chemical Weapons Convention (Amendment) Bill, 2010

4. The Chemical Weapons Convention (Amendment) Bill, 2010 was introduced in Rajya Sabha on 16 April 2010. Hon'ble Chairman, Rajya Sabha had desired that the Amendment Bill may be referred to Standing Committee on Chemicals and Fertilizers for examination and Report within two months . Accordingly, Hon'ble Speaker, Lok Sabha referred the Bill to the Standing Committee on Chemicals and Fertilizers on 23

April 2010. According to the Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals), the Objects and Reasons for bringing up this Amendment Bill are as under:-

“The Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction was signed on behalf of the Government of India at Paris on the 14th day of January, 1993. The Chemical Weapons Convention Act, 2000 was enacted to give effect to the said Convention and to provide for matters connected therewith or incidental thereto.

(ii) Sub-section(1) of section 9 of the Chemical Weapons Convention Act, 2000 confers power upon the Central Government to appoint such of the officers of the National Authority, as it thinks fit, to be enforcement officers for the purposes of the said Act. It is proposed to amend the said sub-section (1) of section 9 to widen its scope and confer upon the Central Government the power also to appoint any of its officers as enforcement officers under the said Act.

(iii) Section 16 of the said Act contains provisions for restriction on transfer of any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals to the said Convention. It provides that no person shall, three years after the 29th day of April, 1997, transfer to or receive from any person, who is not a citizen of a State Party, any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals. It is proposed to amend the said section to provide that no person shall transfer to, or receive from, a State which is not a Party to the Convention, any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals.

(iv) The provisions of the aforesaid Act, except sections 18 and 39, were brought into force on the 1 July 2005. Section 18 of the aforesaid Act relates to the provisions of registration of person engaged in the production, processing, acquisition, consumption, transfer, import, export or use of any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention or, engaged in the production of any Discrete Organic Chemical including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine and section 39 of the aforesaid Act relates to the punishment for infringement of section 18. The existing provisions of section 18 do not specify any threshold limit for registration of chemicals covered under the said Convention. In order to bring the said section 18 of the Act in alignment with the said Convention and for proper implementation of the said Act, it is proposed to amend the said section, *inter alia*, to provide that -

- (a) the scope of sub- sections (1) and (2) shall be subject to such exemption and threshold as may be prescribed by the rules made by the Central Government;
- (b) the grant of a certification of the registration under sub-section(4) of the said section shall be subject to such terms and condition as may be specified by rules made by the Central Government;

(c) every person to whom the certificate of registration is granted shall furnish to the Central Government periodically or as and when required under sub-section (6) such information, declaration and return as may be prescribed by the rules made by the Central Government.

(v) Section 42 of the said Act provides for the punishment for contravention in relation to transfer to Toxic Chemicals, etc., listed in Schedule 2 in the Annex on Chemicals. It provides that whoever, in contravention of any provision of this Act, transfers to or receives from any person who is not a citizen of a State party any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals to the Convention, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees. In the light of the amendment proposed in section 16, it is proposed to make necessary consequential amendments in section 42.

(vi) It is also proposed to make consequential amendments in section 56 of the said Act which empowers the Central Government to make rules.”

5. The Committee have examined the Amendment Bill in detail and deliberations on various provisions of the Bill are discussed in succeeding paras of the Report. The Committee desire that the Bill may be passed after carrying out changes suggested in the recommendations of the Committee.

Clause by clause analysis of ‘The Chemical Weapons Convention (Amendment) Bill, 2010.

I. Appointment of Enforcement officers – Amendment to Section 9.

6. The aforesaid amendment envisage that in the Chemical Weapons Convention Act, 2000 (hereinafter referred to as the Principal Act) Section 9, in sub-section(1) after the words “National Authority” the words “or the Central Government” shall be inserted.

7. Explaining the position in this regard, the Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) have stated as under:

“Sub-section (1) of section 9 of the Chemical Weapons Convention Act, 2000 confers power upon the Central Government to appoint such of the officers of the

National Authority, as it thinks fit, to be enforcement officers for the purposes of the said Act. It is proposed to amend the said sub-section (1) of section 9 to widen its scope and confer upon the Central Government the power also to appoint any of its officers as enforcement officers under the said Act."

8. At the instance of the Committee, the Department of Chemicals and Petrochemicals have further clarified the proposal for this amendment as under:-

"The CWC Act (Section 9) provides for appointment of enforcement officers for the purposes of the Act and to facilitate implementation of the CWC. This includes various activities including undertaking visits to chemical industry plant sites to ensure that activities consistent with the provision of CWC Act are being undertaken. Under the existing provision of CWC Act (Section 9(i)), officers of the National Authority only can be appointed as enforcement officers. The National Authority has a very small set up in New Delhi without an all India presence, and has a very limited number of officers to work as enforcement officers, whereas the chemical industry of relevance to CWC is located in various parts of the country. In the last Annual Declaration submitted to OPCW in March 2010, 582 Plant Sites have been declared. For proper enforcement of provisions of the CWC Act, enforcement officers are required in different parts of the country where chemical industry is located."

9. On being asked to indicate the Departments/ Organizations and the categories of officers who are proposed to be nominated as enforcement officers and how it would be ensured that officials having requisite technical qualifications are nominated, the Department in their reply submitted as under:-

"Officers from various Departments of Government of India with relevant expertise such as those from Department of Revenue, Ministry of Small, Medium Enterprises, Department of Chemicals and Petrochemicals, etc. will be considered for being appointed as enforcement officers. Appropriate rules will be framed to govern their appointment and to lay down the procedures and role to be played by such enforcement officers. They will be imparted appropriate training and guidance to enable them to discharge their duties properly."

10. In this connection, the Ministry of Finance (Department of Revenue) in a written Memorandum submitted as under:-

"As regards enforcement at the border posts or the ports/ airports, it may be noted that the officers of customs are fully authorized to deal with any violation of CWC Act in terms of Section 111(d) of the Customs Act, 1962 in case of imports and Section 113(d) in case of exports. Thus, there is no need to appoint

additional Enforcement Officers for the purpose of CWC Act 2000 at the ports/ international border posts.

Further, it is suggested that 'Local Limits' relating to State Governments [Section 9(2) refers] may be clarified to exclude customs notified ports, airports, Inland Container Depots, Container Freight Stations, Land Customs Stations, etc. wherever Customs Officers are positioned since the Customs Officer acts as 'Enforcement Officer' in such jurisdiction and to avoid duplicity of authority."

11. As regards the technical training required to upgrade the skills of Central Government Officers at par with OPCW, the Department of Chemicals and Petrochemicals has stated that they would, in coordination with National Authority for CWC, impart training to the enforcement officers on obligations under CWC, its implementation and compliance.

II. Prohibition and Regulation of Chemical Weapons and Toxic Chemicals - Amendment to Section 16.

12. For Section 16 of the principal Act, the following section shall be substituted, namely:-

"No person shall transfer to, or receive from, a State which is not a party to the Convention, any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals to the Convention."

13. The Department of Chemicals and Petrochemicals have stated in this regard as under:-

"Section 16 of the said Act contains provisions for restriction on transfer of any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals to the said Convention. It provides that no person shall, three years after the 29th day of April, 1997, transfer to or receive from any person, who is not a citizen of a State Party, any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals. It is proposed to amend the said section to provide that no person shall transfer to, or receive from, a State which is not a Party to the Convention, any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals."

14. On being asked to state as to why a need has been felt for proposing this amendment, the Department of Chemicals and Petrochemicals have clarified as under:-

"The proposed amendment will harmonize the Act with the provisions of the Convention and ensure that the Schedule 2 chemicals in terms of provisions of

Chemical Weapons Convention shall only be transferred to or received from State Parties.”

15. During evidence the Secretary, Department of Chemicals and Petrochemicals explained the position further as under:-

“The law is that we cannot transfer any Schedule II chemical to a non-State party. Each member State is required to have a national law binding on the individuals, companies within its own territory to the provisions of the law. This law binds our citizens. Any entity defined in the law can transfer to or receive from party to the convention. That is what we have done.

With the amendment proposed, Section 16 reads “No person shall transfer to or receive from a State party which is not a party.” That means it is a blanket restriction. That means making a transfer to a State which is not a party to the convention punishable. That is what is done. Within that State there are various entities. We are not concerned with that. This will make us compliant with the CWC. We cannot, therefore, make a decision there.”

III. Registration of persons – Amendment to Section 18

16. The Department have indicated that in section 18 of the principal Act –

- (a) In sub-section (1), in the opening portion, for the words “Every person who is”, the words “Subject to such exemptions and thresholds as may be prescribed, every person who is” shall be substituted;
- (b) In sub-section (2), in the opening portion, for the words “No person, who after the commencement of this Act”, the words “Subject to such exemptions and thresholds as may be prescribed, no person, who after the coming into force of this section” shall be substituted;
- (c) In sub-section (4), after the words “a certificate of registration”, the words “subject to such terms and conditions as may be prescribed” shall be inserted;
- (d) In sub-section (5), the following sub-section shall be inserted, namely:-
“(6) Every person, to whom a certificate of registration is granted under sub-section (4), shall furnish to the Central Government periodically, or, as and when required, such information, declaration or return as may be prescribed.”

17. The reasons attributed for this amendment by the Department are given below:-

“The provisions of the aforesaid Act, except sections 18 and 39, were brought into force on the 1st July, 2005. Section 18 of the aforesaid Act relates to the provisions of registration of person engaged in the production, processing, acquisition, consumption, transfer, import, export or use of any Toxic Chemical or Precursor listed in any of the Schedules 1 to 3 in the Annex on Chemicals to the Convention or, engaged in the production of any Discrete Organic Chemical including Discrete Organic Chemicals containing elements of phosphorous, sulphur or fluorine and section 39 of the aforesaid Act relates to the punishment for infringement of section 18. The existing provisions of section 18 do not specify any threshold limit for registration of chemicals covered under the said

Convention. In order to bring the said section 18 of the Act in alignment with the said Convention and for proper implementation of the said Act, it is proposed to amend the said section, *inter-alia*, to provide that –

- (a) The scope of sub-sections (1) and (2) shall be subject to such exemption and threshold as may be prescribed by the rules made by the Central Government;
- (b) the grant of a certification of the registration under sub-section (4) of the said section shall be subject to such terms and conditions as may be specified by rules made by the Central Government;
- (c) every person to whom the certificate of registration is granted shall furnish to the Central Government periodically or as and when required under sub-section (6) such information, declaration and return as may be prescribed by the rules made by the Central Government.

18. The Department of Chemicals and Petrochemicals have added in written reply as under: -

“The proposed amendment will align the section with the provisions of the Convention and make registration mandatory only for units which get covered in terms of the threshold limits prescribed by the CWC. Also, submission of declarations will be explicitly mandated. This will facilitate smooth implementation of the CWC.”

19. The Department of Chemicals and Petrochemicals has also informed the Committee that the provisions of Section 39 of the Act which relates to punishment for infringement of Section 18 are also being brought into force. Explaining in this regard they have stated as under:-

“In terms of the Section 18 of the CWC Act which is presently under abeyance, no threshold limits for registration have been prescribed which implies that all chemical facilities engaged in the production of chemicals covered by CWC have to get registered. As this is not consistent with the provisions of CWC, this section was not implemented earlier.”

20. During the course of examination of the Bill, the Committee had called for the views on the Bill from some of the stakeholders. One of the stakeholders, i.e. Indian Chemical Council responded on proposed Amendment Bill, 2010, wherein they have *inter-alia* stated as under:-

“Chemical industry recommends a two step approach, i.e. registration of such facilities should be treated separately as the first step from the actual declarations of the site activities while declarations be elicited from only those industries that have activities above the declaration thresholds.

No declaration thresholds were mentioned in the CWC Act 2000. However, with the advent of time and as more industry declarations have been forthcoming, it would be useful to incorporate even now the declaration thresholds in the CWC (Amendment) Bill, 2010 making it consistent with the provisions of the Convention.

There are prescribed threshold below which there are no obligations to declare. In fact, chemical industry has been concerned regarding the open-ended section which does not include the thresholds incorporated in the Convention. It is understood that as Convention forms part of the CWC Act 2000, therefore, all that is included in the Convention is an integral part of the CWC Act, 2000.”

IV. Consequential Amendments in Section 42 of the Principal Act

21. In Section 42 of the principal Act for the words “any person who is not a citizen of a State Party”, the words “a State which is not a State Party” shall be substituted.

22. In this regard, the Department in their explanatory note stated as under:-

“Section 42 of the said Act provides for the punishment for contravention in relation to transfer of Toxic Chemicals, etc., listed in Schedule 2 in the Annex on Chemicals. It provides that whoever, in contravention of any provision of this Act, transfers to or receives from any person who is not a citizen of a State party any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals to the Convention, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to term of life and shall also be liable to fine which may extend to one lakh rupees. In the light of the amendment proposed in section 16, it is proposed to make necessary consequential amendments in section 42.”

V. Amendment in Section 56 of the Principal Act,

23. In sub-section (2), for clause (C), the following clause shall be substituted, namely:-

“(C) the exemptions and thresholds under sub-sections (1) and (2) of section 13, the form of application, the particulars to be contained in the application form, the form of certificate of registration, the manner of making application, the amount of fee payable, the procedure to be followed in granting or cancelling certificate of registration under sub-section (3) of section 13, the terms and conditions for granting a certificate of registration under sub-section (4) of section 13, the period for which a renewed certificate of registration may be issued and the amount of fee payable therefore under sub-section (5) of section 13 and information, declaration or return to be furnished under sub-section (6) of that section.

VI. General

24. Explaining the benefits of the amendments to the intended groups, the Department of Chemicals and Petrochemicals have stated that these amendments will align the provisions of CWC Act with the provisions of the Chemical Weapons Convention and will enable the country to fulfil its obligations under CWC and will also ensure that toxic chemicals are not produced in the country for the purposes which are prohibited under the Convention.

25. The Committee desired to know whether other member countries of CWC have enacted the similar legislations for implementation of CWC treaty. Responding thereto, the Department of Chemicals and Petrochemicals stated as under:-

“As per information available at the website of Organization for Prohibition of Chemical Weapons (OPCW), 83 State Parties have enacted legislation covering all key areas of the Convention.”

26. During evidence, the Committee desired to know whether the Bill contains enough provisions which would ensure adequate national security taking into consideration the threat perception facing our country. In response the Secretary of the Department of Chemicals and Petrochemicals stated during evidence as under:-

“No country as per the International Treaty can have chemical weapons after the relevant date. The relevant date is 29 April, 1997. They cannot have it. They have to declare and destroy it. Now, if somebody hides it, has not declared it and later on uses it, and if that country is a member-State, then obviously there is a lot of violation involved here and OPCW, the entire world community and all the member-States of the OPCW have to decide as to how to deal with that situation.

It is not a question of then only one State because then everybody gets affected and involved in it. That is where, if such non-compliance comes to the notice or there is actual use or a threat of use of chemical weapons, then the international community has to deal with it, and ultimately if OPCW, which is the policy making organ, its Executive Council and the Conference of Parties are unable to resolve or redress that matter, then, a reference has to be made to the UN Security Council and they will have to deal with that. The UN Security Council has to deal with that problem. That is how the Convention is structured.”

27. Elaborating in this regard, he stated as under:-

“Myanmar is not a member-State. It has signed the Chemical Weapons Convention. But assuming, Myanmar as a country, does something which is violative of this Convention, then it is to be seen. Now the Convention provides, as I said in Article X of the Convention, for assistance and protection. The entire OPCW will immediately come to the aid of a member-State to provide assistance and protection in a situation where there is actually a threat and actual use of chemical weapons. Then we will immediately approach the OPCW if that is a developing situation and we will get necessary help from the OPCW apart from our own handling of the situation. Therefore, the threat, as of today, does not seem to exist. But there could be a situation in future which we cannot anticipate. In that case, we will have to deal with it according to Article X of the Convention.”

28. He further added as under:-

“As I said, there are these various governmental organizations which are also keeping a track, particularly of our neighbouring countries and other places. If any information of non-compliance comes from any place, it will be given to the National Authority, which is under the Cabinet Secretariat and automatically, action will be taken quickly so that we are able to deal with that situation.”

Observations/ Recommendations

29. The Chemical Weapons Convention Act, 2000 was enacted primarily with the objective of discharging the obligations of the country under Chemical Weapons Convention, a universal non-discriminatory, multilateral, Disarmament Treaty, which bans the development, production, acquisition, transfer, use and stockpile of all chemical weapons. The Chemical Weapons Convention (Amendment) Bill, 2010 was introduced by the Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) in Rajya Sabha on 16 April 2010. The Amendment Bill includes proposal for amendment in provisions of five Sections of the Act, viz. Sections 9 (1), 16, 18, 42 and 56 pertaining to appointment of Central Government officers as 'Enforcement Officer', registration of persons engaged in production, etc. of Schedule 1 to 3 chemicals in terms of the CWC Act, etc. According to the Department of Chemicals and Petrochemicals, these amendments will align the provisions of the CWC Act with the provisions of the Chemical Weapons Convention and will enable the country to fulfil its obligations under CWC and will also ensure that toxic chemicals are not produced in the country for purposes which are prohibited under the Convention.

30. The Committee note that under Section 9 (1) of the Chemical Weapons Convention (CWC) Act, 2000 officers of National Authority, Chemical Weapons Convention only can be appointed as 'Enforcement Officers' to facilitate implementation of CWC Act. Due to limited number of officers of National Authority to work as Enforcement Officers and requirement of their presence in different parts of the country where chemical industry is located, the Government have proposed to amend this sub-section to enable them to appoint any of Central Government officers to work as 'Enforcement Officer' under this Act. While agreeing with the proposed amendment, the Committee hope that the officers with requisite technical qualifications, relevant expertise and proven track record only would be appointed as 'Enforcement Officers' to ensure proper discharge of national obligations under an International Treaty. For the purpose, necessary rules regarding eligibility criteria for Central Government Officers to be nominated as 'Enforcement Officers' should be framed. The Committee strongly recommend that the eligibility criteria so set should lay due emphasis on requisite technical qualifications, relevant experience in the field, unblemished track record and integrity of the Central Government officer to be nominated as 'Enforcement Officer'. It would be appropriate if selected officers under this Section are given suitable training before their appointment as 'Enforcement Officer'.

The Committee have been given to understand that officers of customs are fully authorized to deal with any violation of CWC Act and as such they can work as 'Enforcement Officers' at the ports/ international border posts. The provision regarding inclusion of officers of the Customs to work as Enforcement Officers at the ports/ international border posts should also be incorporated in the Rules to be framed.

31. In order to harmonize the CWC Act with the provisions of the Chemical Weapons Convention and to ensure that Schedule 2 chemicals in terms of provisions of Chemical Weapons Convention shall only be transferred to or received from State Parties, the Government have proposed amendment in Section 16 and consequential amendment in Section 42 pertaining to punishment for contravention in relation to transfer of Schedule 2 Chemicals. It has been asserted by the Ministry that substitution of the word 'person' by 'State Party' has been proposed in order to bring the provisions of the CWC Act, 2000 in conformity with the International Treaty. The Committee, however, feel that to leave no ambiguity, the amended Section 16 may be read as, "No person shall transfer to or receive from a State, which is not a party to the Chemical Weapons Convention or from any person(s) who is/are not citizen(s) of a State Party, any Toxic Chemical or Precursor listed in Schedule 2 in the Annex on Chemicals to the Convention." The Committee also feel that these provisions would help in fixing the responsibility on the concerned State Party of all activities relating to schedule 2 chemicals within their territory and thus help in effective implementation of Chemical Weapons Convention. The Committee hope that the Government of India will ensure that the rules made under these provisions for effective implementation of CWC Act are in conformity with the International Treaty.

32. The Committee have been informed that though the Chemical Weapons Convention Act, 2000 was brought into force with effect from 1 July 2005, Sections 18 and 39 relating to provision of registration of persons engaged in production etc., of toxic chemicals or precursors listed in schedules 1 to 3 in CWC and penal provisions for failure respectively were kept in abeyance till date as large number of units in India operate below declaration threshold for various activities covered under the Chemical Weapons Convention. Section 18 which in its present form makes it mandatory for the entire chemical industry including the units below threshold limits to register themselves, was kept in abeyance. The Committee observe that the Government of India has now proposed to bring Section 18 into force with some amendments. Provisions of Section 39 are also being brought into force. The Committee feel that the proposed amendments are intended for enhancement of scope/ power of Central Government in provisions relating to registration of persons engaged in production, etc. of Schedule 1 to 3 chemicals and information, declaration and return to be furnished by the persons so registered by incorporating the words 'subject to such exemptions and thresholds as may be prescribed'. The Committee observe that this has been supplemented by amendment in Section 56 of the Principal Act relating to powers of Central Government to make rules under this Act. The Committee feel that this amendment will make registration mandatory only for units engaged in activities covered in terms of threshold limits and thus help the domestic chemical industry by making most of the chemical industry units free from the compulsion of registration. In this connection, the Indian Chemical Council have suggested two-step approach i.e. registration of such facilities be treated separately and declarations be elicited from only those having activities above the declaration thresholds. The Committee desire the Department to examine the feasibility of this proposal and if considered appropriate, it may be incorporated in the Bill.

33. The Committee note that no member-State of CWC can have chemical weapons after 29 April 1997 and so far out of 188 member States, 83 State parties have enacted legislation covering all key areas. In this connection, the Committee strongly feel that the threat perceptions (both internal and external) being faced by our country need to be given due consideration before the Act is amended. The Committee, therefore, desire the Department to give a serious thought to incorporating in the proposed Bill suitable provisions for the safety and security of the country and its people in the event of a chemical warfare. The Committee would like to be informed of the action taken in the matter.

New Delhi
16 June 2010
26 Jyaistha 1932, (Saka)

GOPINATH MUNDE
Chairman,
Standing Committee on
Chemicals & Fertilizers

MINUTES
STANDING COMMITTEE ON CHEMICALS & FERTILIZERS
(2009-10)

EIGHTEENTH SITTING
(26.05.2010)

The Committee sat from 1530 hours to 1700 hours.

PRESENT

Dr. C.P. Thakur - **in the chair**

MEMBERS
LOK SABHA

2. Smt. Sushmita Bauri
3. Shri Ganeshrao Nagorao Dudhgaonkar
4. Shri Baidyanath Prasad Mahato
5. Shri Ponnamp Prabhakar
6. Shri Ashok Kumar Rawat
7. Shri Narendra Singh Tomar
8. Shri T.K.S. Elangovan

RAJYA SABHA

9. Shri J.D. Seelam
10. Shri Raghunandan Sharma
11. Shri Brijlal Khabri
12. Shri A.A. Jinnah
13. Shri Raj Mohinder Singh Majitha
14. Prof. Anil Kumar Sahani
15. Shrimati Naznin Faruque

SECRETARIAT

- | | | | |
|----|------------------|---|----------------------|
| 1. | Shri N. K. Sapra | - | Additional Secretary |
| 2. | Shri Ashok Sarin | - | Joint Secretary |
| 3. | Shri C. S. Joon | - | Director |

**I. MINISTRY OF CHEMICALS AND FERTILIZERS
(DEPARTMENT OF CHEMICALS & PETROCHEMICALS)**

Shri Bijoy Chatterjee	Secretary (C&PC)
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II. NATIONAL AUTHORITY, CHEMICAL WEAPONS CONVENTION (CWC)

Dr. G. Narendra Kumar,	Joint Secretary, National Authority, CWC
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III. MINISTRY OF EXTERNAL AFFAIRS

Shri Sandeep Arya	Director (DISA), Ministry of External Affairs
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IV. MINISTRY OF DEFENCE (DRDO)

Dr. Dubey	Joint Director, DRDE
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2. In the absence of the Chairman, the Committee chose another member, Dr. C.P. Thakur, MP under rule 258(3) to act as Chairman for the sitting. The Chairman welcomed the members of the Committee.

3. Thereafter, the officials of the Ministry of Chemicals and Fertilizers (Department of Chemicals & Petrochemicals), and other Ministries/Departments were called and their attention was invited to the provisions contained in Direction 55(1) of the Directions by the Speaker regarding confidentiality of the Committee's proceedings.

4. Then the officials of the Department and others introduced themselves. Thereafter, the Secretary, Department of Chemicals & Petrochemicals briefed the Committee about the subject 'The Chemical Weapons Convention (Amendment) Bill, 2010' and also gave an audio-visual presentation.

5. During evidence, the following issues were discussed:-

- i) Appointment of enforcement officers
- ii) Assistance and Protection of Member States
- iii) Rules relating to 'The Chemicals Weapons Convention Act, 2000'.
- iv) Inspections of Member State Countries.
- v) Declarations by Member State Countries.

6. During the discussion, the Chairman and members of the Committee raised some queries which were replied to by the Secretary, Department of Chemicals & Petrochemicals and other officials.

7. A verbatim record of the proceedings of the sitting has been kept.

The Committee then adjourned.

EXTRACT OF MINUTES

STANDING COMMITTEE ON CHEMICALS & FERTILIZERS (2009-10)

NINETEENTH SITTING (16.06.2010)

The Committee sat from 1100 hours to 1200 hours.

Present

Shri Gopinath Munde - **Chairman**

MEMBERS LOK SABHA

2. Smt. Sushmita Bauri
3. Shri Ganeshrao Nagorao Dudhgaonkar
4. Shri N. Peethambara Kurup
5. Shri Baidyanath Prasad Mahato
6. Shri Ponnam Prabhakar
7. Shri Ashok Kumar Rawat
8. Shri Suresh Kumar Shetkar
9. Shri N. Cheluvarya Swamy

RAJAYA SABHA

10. Shri Raghunandan Sharma
11. Shri Brijlal Khabri
12. Shri A.A. Jinnah
13. Shri Raj Mohinder Singh Majitha
14. Prof. Anil Kumar Sahani
15. Shrimati Naznin Faruque

SECRETARIAT

1. Shri N. K. Sapra - Additional Secretary
2. Shri Ashok Sarin - Joint Secretary
3. Shri C. S. Joon - Director

2. At the outset, on behalf of the Members of the Committee, Shri Raghunandan Sharma welcomed Shri Gopinath Munde as Hon'ble Chairman, Standing Committee on Chemicals and Fertilizers.

3. The Committee, thereafter took up for consideration draft report on 'The Chemical Weapons Convention (Amendment) Bill, 2010' and adopted the same with minor changes. As per the orders of Hon'ble Speaker, Lok Sabha the examination and Report of the aforesaid Bill is to be completed within two months from the date of its referral to the Committee on Chemicals and Fertilizers i.e. 23 April 2010, the Committee, therefore, decided to present the Report to Hon'ble Speaker on 17 June 2010 under Direction 71 A of Directions by the Speaker as the Parliament is not in Session.

4. The Committee authorized the Chairman to make consequential changes, if any, arising of the factual verification of the Draft Report by the Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) and present the same to the Hon'ble Speaker, Lok Sabha.

5. x x x x x

6. x x x x x x

The Committee then adjourned.