

30 January 2020

REPRESENTATIVE NARCISO R. BRAVO, JR.

Chairperson
Committee on Public Order and Safety
Batasang Pambansa Complex
Constitution Hills, Quezon City

Dear **Representative Bravo**:

We are pleased to submit the Department's position on **House Bill No. 928**, entitled:

“An Act Prohibiting the Development, Production, Stockpiling, Use of Chemical Weapons and Providing for Their Destruction and Providing Penalties Therefor and for Other Purposes”

This is without prejudice to the Department's submission of additional inputs.

With my best regards.

Very truly yours,



RAMON M. LOPEZ
Secretary



OFFICE OF THE SECRETARY

DTI Position on

House Bill No. 928

“An Act Prohibiting the Development, Production, Stockpiling, Use of Chemical Weapons and Providing for Their Destruction and Providing Penalties Therefor and for Other Purposes”

The Department acknowledges the intentions of the proposed bill to strengthen the Philippines' existing framework in keeping with its commitments and obligations to the Chemical Weapons Convention (CWC), as a state party.¹

However, there are features that necessitated further enabling legislation or policy in order for the country to fully accede to the CWC, particularly on establishing (i) a national authority; (ii) national implementing frameworks on upholding the prohibition against development, production, stockpiling, retention, maintenance, transfer, and use of chemical weapons; and (iii) strategies regarding the disposal/destruction of chemical weapons, as well as facilities relevant to them.

The DTI notes that the Philippines already enacted measures to address them, as such:

- Executive Order (EO) No. 39, s.2011 designated the Anti-Terrorism Council (ATC) as the Philippine National Authority on Chemical Weapons Convention (PNA-CWC), thereby superseding the ad-hoc committee that previously handled the functions of a national authority in its absence;
- Republic Act (RA) No. 10697, otherwise known as the “*Strategic Trade Management Act*”, provides control measures on the movement of items that are part of the National Strategic Goods List (NSGL), which includes chemical weapons and relevant materials, and creates for the purpose the Strategic Trade Management Office (STMO) under the DTI;² and
- RA 6969, otherwise known as the “*Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990*”, covers the importation, manufacture, handling, storage, transportation, sale, distribution, use, and disposal of all unregulated chemical substances and mixtures, with the Department of

¹ The Philippines signed the CWC on 13 January 1993, and ratified the same on 21 February 1995. The ratification of the CWC signified its automatic adoption into domestic law as per Article II, Section 2 of the 1987 Philippine Constitution: “xxx adopts the generally accepted principles of international law as part of the law of the land xxx”.

Further discussion on the legal treatment of international agreements, customs, and treaties in the context of Philippine laws (doctrine of incorporation vs doctrine of transformation) may be retrieved from: <https://www.bworldonline.com/philippine-treaties-and-the-doctrine-of-incorporation/>

² RA 10697 is the domestic equivalent to the Arms Trade Treaty (ATT). They are similar in scope in that they both exercise control in export, import, transit or transshipment, as well as re-export and reassignment (diversion), with regard to end-use. However, the ATT is only limited to conventional arms, whereas RA 10697 covers everything considered as a “strategic good”.

All the scheduled chemicals under the CWC are already covered by the NSGL. The list is updated annually by the STMO and approved by the National Security Council-Strategic Trade Management Committee.

Environment and Natural Resources (DENR) as the primary implementing agency.³

In view of the foregoing, we forward the following specific inputs vis-à-vis the provisions of the proposed bills, to wit:

HBN 928	DTI Inputs
<p>SEC. 4. Establishment of a Philippine National Authority for the Chemical Weapons Convention. – XXX</p>	<p>The Department notes that the CWC only requires a national authority for purposes of liaison and coordination with the Organisation for the Prohibition of Chemical Weapons (OPCW) and other state parties to the CWC.⁴ Hence, it has no other substantial function than serving as a focal point.</p> <p>Given the above, the DTI recommends for the organizational structure, membership, as well as functions of the proposed bill's PNA-CWC to be reduced into that of a focal point, reflecting the relevant provisions of the CWC and EO 39, s.2011.</p> <p>We further recommend maintaining the ATC as the PNA-CWC, or transferring designation to the National Security Council (NSC) itself or to an NSC subsidiary body.⁵</p> <p>Moreover, the DTI notes that the proposed schedule of chemicals, as well as provisions related to its maintenance and updating, are no longer necessary as such measures are already existing through RA 10697.</p>
<p>SEC. 5. Prohibitions. – XXX</p>	<p>The Department opines that this provision is moot given that such language is already contained in the</p>

³ Disposal methods for chemicals are constrained by RA 8749, otherwise known as the "Clean Air Act", and RA 9275, otherwise known as the "Clean Water Act". Specifically, RA 8749 bans incineration, which is the preferred disposal method for chemical weapons and other chemical warfare agents.

⁴ Article VII, Section 4 of the CWC: "In order to fulfil its obligations under this Convention, each State Party shall designate or establish a National Authority to serve as the national focal point for effectual liaison with the Organization and other States Parties. Each State Party shall notify the Organization of its National Authority at the time that this Convention enters into force for it."

⁵ The ATC is directly under the authority of the National Security Adviser, who heads the NSC.

	<p>CWC and that the latter was duly ratified by the Philippines; therefore, the proposed prohibitions have already entered into force within the domestic legal system of the country similar to that of a national law, by virtue of ratification and the doctrine of incorporation as per the Constitution.</p> <p>Nonetheless, given underlying concerns regarding treaty commitments and plausible withdrawals, the DTI recommends retaining these provisions in the proposed bill so that there would still be an equivalent legal framework effecting the same objectives of the CWC should the Philippines, hypothetically, terminate its participation in the CWC.</p>
SEC. 6. Penalties. – XXX	<p>The Department recommends for the elements of the crime to be clearly defined and the penalties clearly delineated in the minimum, medium, and maximum period.</p>
SEC. 9. Registration. – XXX	<p>The Department opines that this section is also moot and no longer necessary given that there are already existing domestic legislations effecting the same measure, to wit⁶:</p> <ul style="list-style-type: none"> • RA 10697 – handled by DTI-STMO, for items considered as “strategic goods” and under the NSGL;⁷ • RA 6969 – handled by DENR, for industrial chemicals and hazardous waste; • RA 8294 – handled by the Philippine National Police (PNP), for chemicals related to firearms, ammunition, and explosives;

⁶ Given the existing multitude of regulating policies, the Food and Drug Administration (FDA), through FDA Circular No. 2013-015 (dated 20 June 2013), gave up its registration requirements over bulk industrial chemicals used as raw materials in cosmetic products and household products considered as urban hazardous substances, and left such functions to other regulating agencies, as appropriate for the purpose.

⁷ Section 13 of RA 10697: “Any person who engages or intends to engage in the export, import, and re-export of strategic goods or provide related services shall register directly with the STMO”.

	<ul style="list-style-type: none"> • RA 9165 – handled by the Dangerous Drugs Board (DDB)/ Philippine Drug Enforcement Agency (PDEA), for controlled substances and chemicals relating to dangerous drugs.⁸ <p>Moreover, the registration requirement is an “addition” within the Philippine context of applying the CWC domestically, as the CWC per se does not have any language/text that explicitly reflects registration requirements.</p> <p>Therefore, the DTI expresses reservations to the proposed bill’s provisions on registration requirements.</p>
<p>SEC. 13. Additional Penalties under Chapter III. – XXX</p>	<p>The Department opines that this section should be transplanted into the proposed bill’s Section 6. Penalties, to prevent confusion and for ease of reference on the matter of penalties.</p>

The Department reiterates its support to the intentions of the proposed bill with consideration of its inputs. We recommend for the provisions of the proposed bill to be streamlined with cognizance of existing mechanisms, the effectivity of CWC’s ratification, as well as in keeping with the mandate for government to reduce redundancies in law as per RA 11032, otherwise known as the “*Ease of Doing Business and Efficient Government Service Delivery Act of 2018*”.

Finally, we recommend for the solicitation of inputs from the various agencies mentioned.

Rizaprin Chay

Bureau of Trade and Industrial Policy Research

30 January 2020

Ref: BTIPR-012020-203

/erma

⁸ In particular, DDB Board Regulation No. 1, s. 2014.