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FACILITY AGREEMENTS UNDER THE CHEMICAL WEAPONS CONVENTION INSPECTIONS

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The Chemical Weapons Convention (CWC) poses problems of constitutionality, of loss of confidential business information, and even of plant safety. An entirely new and complex worldwide regulatory regime, it nevertheless takes account of the need for certainty in the conduct of industrial production. In particular, the CWC provides for site-specific inspection protocols, called "facility agreements."

Facility agreements are not defined in the CWC, but are to be developed as part of the preparations preceding formal entry into force. In effect, they can be thought of as "inspection contracts" governing facilities subject to systematic and routine inspections. Facility agreements are not part of challenge inspections or for cases of alleged use of chemical weapons.

The most important fact about facility agreements is that they are *not* negotiated between the facility owner or operator and the OPCW. Rather, they are negotiated between the State Party and the OPCW. Where United States facilities, such as chemical weapons production facilities, are owned by the government or are under government contract this is not a problem because the government can negotiate on its own behalf. However, where privately owned facilities in the United States enter into facility agreements, the input of those private entities into the terms of the agreement is not guaranteed by the Convention — then OPCW only interfaces with States Parties, not with private firms.

The second most important fact is that not all facilities subject to routine inspections must have facility agreements in place. Those declaring chemicals on Schedule 2, Schedule 3 or so-called "other chemical production facilities" may enter into facility agreements, but this is at the option of the State Party.

Fortunately for United States businesses, the Administration's proposed implementing legislation provides for this interface to occur. The bill permits the decision of whether to exercise the United States option for a facility agreement at a site where this choice exists to be made by the facility owner or operator. Furthermore, it requires the owner or operator to participate directly in the negotiations between the OPCW and the United States to the extent practicable. Thus, it is fair to conclude that the Administration's implementing legislation grants to facility owners and operators considerable authority to become involved in the inspection process.