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**Commission on Narcotic Drugs****Fifty-third session**

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Item 9 (a) of the provisional agenda\*

**Implementation of the international drug control treaties****Changes in the scope of control of substances****Note by the Secretariat***Summary*

The present document contains information and a recommendation for consideration by the Commission on Narcotic Drugs pursuant to the international drug control treaties.

Pursuant to article 12, paragraph 13, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the Commission is to review periodically the adequacy and propriety of Tables I and II of the Convention. Accordingly, the Commission will have before it, for review, the information transmitted by the International Narcotics Control Board pursuant to article 12, paragraph 4, of the 1988 Convention with regard to the assessment of the substance phenylacetic acid and, for consideration, the recommendation of the Board that phenylacetic acid be transferred from Table II to Table I of the 1988 Convention.

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\* E/CN.7/2010/1.



## **I. Consideration of a notification from the International Narcotics Control Board concerning scheduling under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988**

1. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,<sup>1</sup> in its article 12, paragraph 2, provides as follows:

“If a Party or the Board has information which in its opinion may require the inclusion of a substance in Table I or Table II, it shall notify the Secretary-General and furnish him with the information in support of that notification. The procedure described in paragraphs 2 to 7 of this article shall also apply when a Party or the Board has information justifying the deletion of a substance from Table I or Table II, or the transfer of a substance from one Table to the other.”

2. In 2006, the International Narcotics Control Board carried out a review of phenylacetic acid and concluded that information was available that might require the transfer of the substance from Table II to Table I of the 1988 Convention. On 16 January 2007, the Board transmitted to the Secretary-General a notification containing all the relevant information at its disposal.

3. In accordance with the provisions of article 12, paragraph 3, of the 1988 Convention, the Secretary-General transmitted to all Governments, by a note dated 27 April 2007, the text of the notification, together with all the information submitted by the Board in support of that notification and a questionnaire on phenylacetic acid. On 18 November 2009, the Board transmitted to the Commission on Narcotic Drugs a notification recommending that phenylacetic acid be transferred from Table II to Table I of the 1988 Convention (see annex).

4. In response to that note, as at 1 December 2009, the following 59 States had submitted supplementary information and comments relevant to the possible transfer of phenylacetic acid from Table II to Table I of the 1988 Convention: Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Brunei, Bulgaria, Chile, China, Colombia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, Estonia, Finland, France, Germany, Greece, Guatemala, Hungary, Ireland, Italy, Japan, Kazakhstan, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Myanmar, Netherlands, Niue, Norway, Pakistan, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Syrian Arab Republic, Trinidad and Tobago, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland and United States of America.

## **II. Action to be taken by the Commission on Narcotic Drugs**

5. In view of the supplementary information and comments relevant to the possible transfer of phenylacetic acid received from 59 States pursuant to article 12,

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<sup>1</sup> United Nations, *Treaty Series*, vol. 1582, No. 27627.

paragraph 4, of the 1988 Convention, the Board finds that the utilization of pre-export notifications as described in article 12, paragraph 10 (a), of the 1988 Convention is required to limit the availability of phenylacetic acid to traffickers and subsequently to reduce the quantity of illicitly manufactured amphetamine-type stimulants. The Board therefore recommends that phenylacetic acid be transferred from Table II to Table I of the 1988 Convention.

## Annex

### **Notification dated 18 November 2009 from the President of the International Narcotics Control Board to the Chairperson of the Commission on Narcotic Drugs at its fifty-second session concerning the transfer of phenylacetic acid from Table II to Table I of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988**

1. The President of the International Narcotics Control Board presents his compliments to the Chairperson of the Commission on Narcotic Drugs and has the honour to inform the Chairperson that the Board, in conformity with the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, article 12, paragraphs 4 and 5, has completed its assessment of phenylacetic acid for possible transfer from Table II to Table I of the 1988 Convention.
2. The Board finds that phenylacetic acid continues to be frequently used in the illicit manufacture of amphetamine-type stimulants and that the volume and extent of the illicit manufacture of amphetamine-type stimulants creates serious public health or social problems, so as to warrant international action. In addition, the Board finds that the use of pre-export notifications, as proven during the current voluntary initiatives, is essential to allow shipments of the substance to be tracked internationally and ultimately to prevent diversions of the substance. The Board is therefore recommending that phenylacetic acid be transferred from Table II to Table I of the 1988 Convention.
3. The assessment, findings and recommendations of the Board in respect of the substance are attached hereto and have been prepared for submission to the Commission at its fifty-third session. The information presented has also been published in the reports of the Board for 2006,<sup>a</sup> 2007<sup>b</sup> and 2008<sup>c</sup> on the implementation of article 12 of the 1988 Convention.

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<sup>a</sup> *Precursors and Chemicals Frequently Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances: Report of the International Narcotics Control Board for 2006 on the Implementation of Article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988* (United Nations publication, Sales No. E.07.XI.12).

<sup>b</sup> *Precursors and Chemicals Frequently Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances: Report of the International Narcotics Control Board for 2007 on the Implementation of Article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988* (United Nations publication, Sales No. E.08.XI.4).

<sup>c</sup> *Precursors and Chemicals Frequently Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances: Report of the International Narcotics Control Board for 2008 on the Implementation of Article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988* (United Nations publication, Sales No. E.09.XI.4).

## Appendix

### Assessment and recommendations

#### A. Background

1. In 2006, the Board recognized that tightened controls might be required to prevent the diversion of phenylacetic acid, a critical chemical in the illicit manufacture of amphetamine-type stimulants and one of the original 12 substances scheduled in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, where it is listed in Table II.
2. While the 1988 Convention, in article 12, paragraph 10 (a), makes provision for pre-export notifications to be supplied by Governments of exporting countries to the Governments of importing countries, that provision is mandatory only for the substances in Table I. After holding working meetings with competent authorities of the major exporting, importing and manufacturing countries, the Board recommended that some form of pre-export notification should be introduced for phenylacetic acid.
3. Concerned by the increase in seizures of phenylacetic acid and illicitly manufactured 1-phenyl-2-propanone, the Board decided to review the adequacy and propriety of the current scheduling of phenylacetic acid in the context of Commission on Narcotic Drugs resolution 5 (XXXIV) of 9 May 1991.
4. In 2006, the Board carried out a review of phenylacetic acid, concluded that information was available that might require the transfer of the substance from Table II to Table I and transmitted to the Secretary-General a corresponding notification containing the relevant information at its disposal on 16 January 2007. In accordance with the provisions of article 12, paragraph 3, the Secretary-General invited Governments to submit comments by way of a questionnaire transmitted with that notification. Replies to the questionnaire were forwarded to the Board, which in 2008 carried out a review of the responses and assessed the global support for the rescheduling of phenylacetic acid under the 1988 Convention. In response to a follow-up request from the Board in 2009, supplementary information provided to the Board from Governments further supported initial findings, which endorsed the transfer of phenylacetic acid from Table II to Table I of the 1988 Convention.

#### B. Assessment

5. Article 12, paragraph 4, of the 1988 Convention stipulates those factors which the Board is to consider when assessing a substance for possible control, or transfer between the Tables, as follows:

“If the Board, taking into account the extent, importance and diversity of the licit use of the substance, and the possibility and ease of using alternate substances both for licit purposes and for the illicit manufacture of narcotic drugs or psychotropic substances, finds:

“(a) That the substance is frequently used in the illicit manufacture of a narcotic drug or psychotropic substance;

“(b) That the volume and extent of the illicit manufacture of a narcotic drug or psychotropic substance creates serious public health or social problems, so as to warrant international action, it shall communicate to the Commission an assessment of the substance, including the likely effect of adding the substance to either Table I or Table II on both licit use and illicit manufacture, together with recommendations of monitoring measures, if any, that would be appropriate in the light of its assessment.”

6. Furthermore, article 12, paragraph 2, of the 1988 Convention states that: “If a Party or the Board has information which in its opinion may require the inclusion of a substance in Table I or Table II, it shall notify the Secretary-General and furnish him with the information in support of that notification. The procedure described in paragraphs 2 to 7 of this article shall also apply when a Party or the Board has information justifying the deletion of a substance from Table I or Table II, or the transfer of a substance from one Table to another”.

7. In making its assessment of phenylacetic acid, in accordance with the above-mentioned paragraphs of the 1988 Convention, the Board had at its disposal the information contained in its notification submitted to the Secretary-General, as well as comments and supplementary information received from Governments pursuant to article 12, paragraph 3. Fifty-nine States had responded to the questionnaire sent out by the Secretary-General. The respondents included 5 States that manufactured phenylacetic acid and 12 that exported the substance or were trans-shipment points.

8. In conducting the assessment, the Board has taken the following factors into consideration:

(a) Phenylacetic acid is manufactured and traded in large volumes in all regions of the world;

(b) Phenylacetic acid has a wide variety of licit uses and cannot be easily replaced in commercial processes;

(c) The extensive licit trade patterns of phenylacetic acid enable traffickers to target any country in the world as a potential source of diversion for the substance;

(d) The routes of diversion identified for phenylacetic acid are diverse;

(e) Phenylacetic acid is already under some form of control at the national level in most countries;

(f) The major countries manufacturing and exporting phenylacetic acid are complying with General Assembly resolution S-20/4 B on the control of precursors, and are supplying pre-export notifications to countries that have submitted such a request to the Secretary-General.

## **C. Findings**

9. In view of the above-mentioned factors, the Board finds that:

(a) The importance of phenylacetic acid in illicit manufacture of amphetamine-type stimulants is well established, as it is recognized that it is

frequently used in the illicit manufacture of amphetamine-type stimulants. Similarly, the public health and social problems created by amphetamine-type stimulants remain an issue that warrants international action;

(b) The diversity of the licit trade routes and the large number of countries to which licit trade is carried out offer traffickers the opportunity to divert phenylacetic acid from international trade in any country in the world. The use of pre-export notifications, as proven during the current voluntary initiatives, allows shipments to be tracked internationally and ultimately prevents diversions;

(c) Although the volumes of phenylacetic acid traded internationally are large, the number of operators conducting international trade and the number of individual transactions for the substance are more limited. Therefore, supplying pre-export notifications would not have an adverse effect on industry and licit trade;

(d) Since the major exporting and trans-shipment countries are already supplying pre-export notifications for shipments of the substance, the introduction of pre-export notifications as a treaty obligation would not place an undue burden on national competent authorities;

(e) The transfer of phenylacetic acid from Table II to Table I of the 1988 Convention should not have any adverse effect on the availability of the substance for licit purposes at the national level, as the provisions of article 12, paragraph 10 (a), only concern international trade. Governments are responsible for implementing their own controls at the national level, and those national controls should be structured in a manner that ensures the continuing availability of the substance for licit requirements.

#### **D. Recommendations**

10. The Board finds that the utilization of pre-export notifications as described in article 12, paragraph 10 (a), of the 1988 Convention is required to limit the availability of phenylacetic acid to traffickers and subsequently to reduce the quantity of illicitly manufactured amphetamine-type stimulants. Furthermore, the introduction of pre-export notifications as a treaty requirement for the substance will facilitate licit international trade by expediting the clearance of shipments, without adverse effects on the availability of the substance for licit purposes at the national level. The Board therefore recommends that phenylacetic acid be transferred from Table II to Table I of the 1988 Convention.