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**Rotterdam Convention on the Prior
Informed Consent Procedure for Certain
Hazardous Chemicals and Pesticides in
International Trade
Conference of the Parties
Third meeting
Geneva, 9–13 October 2006
Item 5 (d) of the provisional agenda***

**Implementation of the Convention: report of the Chemical Review
Committee on the work of its second meeting**

Trade restrictions under other multilateral environmental agreements and their relevance to chemicals eligible for listing in Annex III to the Rotterdam Convention

Note by the secretariat

I. Background

1. At its second meeting, the Conference of the Parties to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade considered the issue of trade restrictions under other multilateral agreements and requested the secretariat to prepare a paper for consideration by the Chemical Review Committee at its second meeting on how a substance whose trade was prohibited, severely restricted or managed in some way under other multilateral agreements should be treated under the Rotterdam Convention. The Chemical Review Committee discussed that paper, recommended a number of minor amendments and agreed to forward it for consideration by the Conference of the Parties at its third meeting. The paper, as amended, is annexed to the present note.

II. Possible action by the Conference of the Parties

2. The Conference may wish to consider whether, in considering candidate chemicals for listing in Annex III to the Rotterdam Convention, the Chemical Review Committee should give a lower priority to chemicals which are already included in either the Stockholm Convention on Persistent Organic Pollutants or the Montreal Protocol on Substances that Deplete the Ozone Layer on the basis that those conventions already impose significant controls on trade in such chemicals.

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3. The Committee may also wish to consider whether chemicals being considered for inclusion under the Stockholm Convention or the Montreal Protocol, chemicals already included under those agreements but due to be phased out only over a long period and chemicals subject to other agreements that do not restrict their movement through trade should all be treated as if they were not included in any other convention.

Annex

Trade restrictions under other multilateral environmental agreements and their relevance to chemicals eligible for listing in Annex III to the Rotterdam Convention

Background

1. Annex II to the Rotterdam Convention states that the Chemical Review Committee should take into account whether there is evidence of ongoing international trade in the chemical under consideration. Absence of trade in a chemical does not necessarily preclude its inclusion in the Convention but may be considered as an element in determining whether the chemical should be proposed and the priority that should be given to the chemical. Should a chemical be included in the Rotterdam Convention, Parties will have the ability under the prior informed consent procedure to communicate their national decision on future imports of the chemical and to have that decision respected by exporting parties.

2. At its second meeting, the Conference of the Parties considered the issue of procedures for risk evaluations under other multilateral agreements and requested the secretariat to prepare a paper for consideration by the Chemical Review Committee at its second meeting on how a substance whose trade was prohibited, severely restricted or managed in some way under other multilateral agreements should be treated under the Rotterdam Convention. At its second meeting, the Chemical Review Committee discussed the paper and recommended the inclusion of some additional information for clarification. It agreed to forward the paper to the third meeting of the Conference of the Parties for consideration.

Introduction

3. The present paper has four chapters: chapter I briefly reviews the trade provisions of the other multilateral environmental agreements which include chemicals eligible for listing in Annex III to the Rotterdam Convention; chapter II includes case studies of specific chemicals and considers how the provisions of the individual multilateral environmental agreements apply to them; chapter III reviews the number of chemicals that might be involved, briefly reviews the value of including specific chemicals in the Rotterdam Convention and proposes options for consideration by the Conference of the Parties at its third meeting. Chapter IV sets out possible action by the Conference of the Parties.

I. General trade provisions of relevant multilateral environmental agreements

A. Stockholm Convention on Persistent Organic Pollutants

4. Under article 3, paragraph 2, of the Stockholm Convention, Parties are obliged to ensure that chemicals included in Annex A or B to the Convention are not imported or exported, except for the purpose of environmentally sound disposal or for a use permitted by a specific exemption or in accordance with the provisions of the Annexes. This includes the import of persistent organic pollutants from both Parties and non-Parties. In addition, Parties are required to eliminate the production and use of all intentionally produced persistent organic pollutants. Additionally, article 3, paragraph 2, specifically refers to the requirements of the Rotterdam and Basel conventions, when it provides that exportation of listed chemicals should take into account “any relevant provisions in existing international prior informed consent instruments”. Article 4 of the Stockholm Convention provides for the registration of specific exemptions by Parties. Exemptions may be registered by States for any of the specific exemptions listed in Annex A or Annex B upon becoming a Party.

5. Intentionally produced persistent organic pollutants may only be exported to parties which provide an annual certification which specifies the intended use, indicates that the State is committed to minimizing or preventing releases and, in the case of DDT, that the use will be in accordance with World Health Organization recommendations and guidelines and that locally safe, effective and affordable alternatives are not available.

B. Montreal Protocol on Substances that Deplete the Ozone Layer

6. The use of substances included as controlled substances in the Montreal Protocol is limited within Parties by their agreements to phase-out targets and planned use. Each Party has agreed to a certain level of use of each of the ozone-depleting substances included in the relevant amendments to Article 4 of the Montreal Protocol and their import and export of these substances must be consistent with the agreed target. Trade between Parties in controlled substances is monitored by a licensing and reporting system, as mandated by Article 4 B of the Montreal Protocol. The licensing and reporting system has been developed under the Montreal Amendment to the Montreal Protocol. In November 2005, there were 134 Parties to the Montreal Amendment, of which 103 had established licensing systems. Additionally, 38 States, not Parties to the Amendment have established and implemented licensing systems. Thus, at least 141 countries have implemented licensing systems. During discussions in December 2005, the Conference of the Parties to the Vienna Convention agreed that a review of the effectiveness of the licensing system should be undertaken. A study of the system has been commissioned, and this should be available by mid-September 2006 for discussion at the next Meeting of the Parties to the Montreal Protocol in late October 2006. If available, the study will be presented as an information document to the third meeting of the Conference of the Parties.

7. Article 4 of the Montreal Protocol specifies trade restrictions which apply to the import and export of controlled substances between Parties and non-Parties to the Montreal Protocol. In addition, the Protocol provides for bans on the import of specific products containing certain ozone-depleting substances.

C. International Convention of the International Maritime Organization on the Control of Harmful Antifouling Systems

8. Under the International Convention on the Control of Harmful Antifouling Systems, adopted by the International Maritime Organization (IMO) at its Diplomatic Conference in October 2001, Parties agreed to a prohibition from 1 January 2003 on the application or reapplication to ships of organotin compounds which act as biocides. The Convention is not yet legally binding, and applies only to the use of organotin compounds: there is no control on trade in organotin compounds. The controls are also limited to ships making international voyages, and only those of more than 24 metres in length.

9. The date on which this Convention is to enter into effect has been delayed by the lack of ratifications of the resolution. In all, 25 ratifications are required for entry into force and, as of 31 March 2006, only 16 countries had ratified.

II. Examples of control in trade for specific chemicals

A. Stockholm Convention on Persistent Organic Pollutants

10. There are currently two intentionally produced persistent organic pollutants included in the Stockholm Convention which are not yet included in the Rotterdam Convention (endrin and mirex). The trade restrictions under the Stockholm Convention for these chemicals are set out below.

1. Endrin

11. Although endrin is included in Annex A to the Stockholm Convention as an intentionally produced persistent organic pollutant, there are no specific exemptions identified for either production or use. Parties are therefore only allowed to import or export endrin for environmentally sound disposal, with no trade in endrin permitted between Parties for other uses.

12. Export to non-Parties is permitted only upon the submission of an annual certificate from the importing party. Trade between non-Parties is not controlled by the Stockholm Convention.

2. Mirex

13. Mirex is included in Annex A to the Stockholm Convention as an intentionally produced persistent organic pollutant. Parties are therefore only allowed to import or export mirex for environmentally sound disposal or for a use permitted by a specific exemption. As of the first meeting of the Conference of the Parties, only Australia and China had notified the Secretariat of the need for an exemption. China has registered an exemption for production (of 10–30 tons per year) and use (of 10–30 tons per year), and Australia has registered an exemption for use as a termiticide (no quantity specified).

14. Under these exemptions, Australia would be permitted to import mirex for use, while it appears that there is a balance between production and use in China. It is possible that additional States may apply for exemptions upon becoming Parties in the future, and there may therefore be continuing trade in mirex.

15. Export to non-Parties is permitted only upon the submission of an annual certificate from the importing party. Trade between non-Parties is not controlled by the Stockholm Convention.

B. Montreal Protocol on Substances that Deplete the Ozone Layer

1. Carbon tetrachloride

16. Trade with Parties is controlled by a licensing system, with countries agreeing to import and use restrictions according to their phase-out plans. Phase-out for carbon tetrachloride was 1 January 2000 for countries not operating under Article 5 (developed countries), and 1 January 2010 for those countries operating under Article 5 (developing countries). Levels were to be reduced to 85 per cent of previous levels for Article 5 countries by 1 January 2005. The import of carbon tetrachloride from a non-Party and the export of carbon tetrachloride to a non-Party are prohibited under Article 4 of the Montreal Protocol. Trade between non-Parties is not controlled under the Montreal Protocol. As carbon tetrachloride is close to being phased out, it may be presumed that global trade in the substance is limited.

2. Methyl bromide

17. Trade in methyl bromide is controlled in a manner similar to that of carbon tetrachloride, with trade permitted between Parties under a licensing system, and trade not permitted with non-Parties. Trade between non-Parties is not controlled under the Montreal Protocol.

18. There are a large number of so-called “critical-use” exemptions that are applicable to methyl bromide, while phase-out dates have been delayed on a number of occasions. Methyl bromide is still moving in trade. This trade is, however, controlled and monitored by the licensing system in place under the Protocol.

C. IMO International Convention on the Control of Harmful Antifouling Systems: tributyl tin

19. The Convention only covers a particular use of the substance, with no controls on the movement of tributyl tin compounds in trade. Tributyl tin compounds are still moving in trade.

III. Potential scope of chemicals and benefits of inclusion in the Rotterdam Convention.

A. Stockholm Convention on Persistent Organic Pollutants

20. Currently, the Stockholm Convention includes 10 intentionally produced persistent organic pollutants, of which eight are already included in the Rotterdam Convention. As for the two which are not included (mirex and endrin), it is expected that there is either no or very limited international trade

between Parties to the Stockholm Convention, or between Parties and non-Parties to the Stockholm Convention. The limitations under the Stockholm Convention on trade from Parties to both Parties and non-Parties would provide significant control of the movement of both endrin and mirex.

21. As of November 2005, there were 114 Parties to the Stockholm Convention and 100 Parties to the Rotterdam Convention. Of these countries, 75 are Parties to both conventions, with 25 being Parties to the Rotterdam Convention but not the Stockholm Convention and 39 Parties to the Stockholm Convention but not the Rotterdam Convention. Those countries which are Parties to the Rotterdam Convention but not to the Stockholm Convention would gain protection against the unwanted import of mirex and endrin from non-Parties to the Stockholm Convention should those chemicals be included in Annex III to the Rotterdam Convention. It should be noted that for both mirex and endrin, there is very limited evidence of any international trade, and therefore this protection may be minimal.

22. In the future, chemicals may be included in the Stockholm Convention following a review of a risk profile prepared by an expert committee – in the present instance, the Persistent Organic Pollutant Review Committee – and forwarded to the Conference of the Parties of the Stockholm Convention for a decision. The process for elimination of the persistent organic pollutant, once included, would then be negotiated at the level of the Conference of the Parties. This process includes the development and finalization of a risk profile, followed by the development of a risk management strategy.

23. The inclusion of the chemical in the Convention, along with the supporting documentation, would need to be agreed to by the Conference of the Parties and it may therefore be expected that this would result in a delay in inclusion. For some chemicals, a phase-out period may also be identified, which may be lengthy. It could be expected that, for some substances, there may be significant trade during the process of inclusion in the Stockholm Convention and for some time thereafter. Should either newly included chemicals or candidate chemicals for Stockholm be proposed for inclusion in the Rotterdam Convention, this would provide a mechanism for countries to control imports of these chemicals through the prior informed consent procedure under the Rotterdam Convention during the period prior to the application of controls under the Stockholm Convention.

24. A number of the chemicals discussed by the Persistent Organic Pollutant Review Committee at its first meeting, including pentabromodiphenyl ether, perfluorooctane sulphonate (PFOS) and chlordecone, are not yet included in the Rotterdam Convention. It is therefore proposed that, should the requirements of the Rotterdam Convention be met, candidate chemicals for the Stockholm Convention should be considered for inclusion, as this has the potential to provide countries with an opportunity to limit imports of these chemicals under the prior informed consent procedure of the Rotterdam Convention even before the controls applicable under the Stockholm Convention enter into force.

B. Montreal Protocol on Substances that Deplete the Ozone Layer

25. The Montreal Protocol includes a large number of chemicals, some of which are presented as classes or groups such as chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs) and halons, but which have many individual chemicals within the groups. Currently only two substances (methyl bromide and carbon tetrachloride) have come forward to the Chemical Review Committee for consideration, although single notifications have been received for other chemicals included in the Montreal Protocol, including fully halogenated CFCs, CFC-11, freon-12, chloropentafluoroethane, dichlorotetrafluoroethane and bromochlorodifluoromethane. There is potential, therefore, for a large number of proposals for chemicals included in the Protocol to come before the Chemical Review Committee in the future.

26. As of November 2005, there were 189 Parties to the Montreal Protocol, compared to 100 Parties to the Rotterdam Convention, with all Rotterdam Convention Parties also being Parties to the Montreal Protocol. As noted above, the Montreal Protocol monitors and licenses trade between Parties, and controls trade between Parties and non-Parties. The controls provided under the Montreal Protocol are more extensive than the enforcement of national decisions regarding importation which apply under the Rotterdam Convention. There would appear to be little added benefit to Parties to the Rotterdam Convention from including substances already included in the Montreal Protocol in the Rotterdam Convention.

27. The inclusion of new substances in the Montreal Protocol would involve the consideration of the effects of the chemical initially by the Scientific Assessment Panel, followed by consideration of the feasibility of reduction or elimination of the chemical by the Technology and Assessment Panel. The recommendations of those panels would then need to be considered by a Meeting of the Parties, and the

proposed inclusion discussed. It would be likely that a phase-out period for the chemical would then ensue, during which extensive trade may still continue.

28. The inclusion in Annex III to the Rotterdam Convention of any candidate chemicals already being considered under the Montreal Protocol may provide an opportunity for countries to take decisions on the future import of those chemicals. That may provide an initial control mechanism for the movement of such chemicals, and their inclusion should be considered on a case-by-case basis.

C. IMO International Convention on the Control of Harmful Antifouling Systems

29. Tributyl tin is the only chemical currently listed in this Convention and controls on its use have not yet entered into force. There are no controls on trade proposed under this Convention, and there would therefore be benefit to Parties in including tributyl tin in the Rotterdam Convention should it meet the criteria for inclusion in Annex III. Only the use of tributyl tin as an antifouling paint on ships is controlled under this Convention, whereas its use in other products, such as wood preservatives, slimicides, disinfectants and biocides for cooling systems, will not be addressed.

IV. Possible action by the Conference of the Parties

30. The Conference may wish to consider whether, in considering candidate chemicals for listing in Annex III to the Rotterdam Convention, the Chemical Review Committee may wish to give a lower priority to chemicals which are already included in either the Stockholm Convention or the Montreal Protocol on the basis that significant controls on the trade of such chemicals are already provided under those Conventions.

31. The Committee may also wish to consider whether chemicals being considered for inclusion under the Stockholm Convention or the Montreal Protocol, chemicals already included under those agreements but due to be phased out only over a long period and chemicals subject to other agreements that do not restrict their movement through trade should all be treated as if they were not included in any other convention.
