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Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

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Other matters

Correspondence with the Indian Chemical Council

Note by the Secretariat

The annex to the present note contains copies of correspondence between the Secretariat and the Indian Chemical Council regarding the operation of the prior informed consent procedure. The letters have been reproduced without formal editing.

* UNEP/FAO/RC/CRC.6/1.

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Annex

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Date: 31.07.2009

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2. Mr. Peter Kenmore
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   Secretariat of the Rotterdam Convention
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3. Ms. Karmen Krajnc
   Chair, CRC-5
   Head of Chemicals Unit
   Ministry of Health
   National Chemicals Bureau
   Malitrg 6, 1000, Ljubljana
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Dear M/s. Cooper and Kenmore,

I am sending this letter to you in response to your e-mail cum letter No. PL36/10 dated 10th July 2009 that conveyed that preparation of internal proposal/DGD for Endosulfan was in progress. In this connection, I would like to bring the following to your notice and also to the notice of CRC members& others.

During the meeting of CRC-5 (23rd – 27th March'09) the CRC member from India submitted a Conference Room Paper (UNEP/FAO/RC/CRC-5/CRP.6) highlighting, among others, the fact that the notification submitted by Sahelian Committee was not submitted as per Article 5 of Rotterdam Convention.

On 17th July 09, I sent to you a letter (a copy of attached) analyzing Article 5 of the Convention and driving home the point further that the Sahelian notification was inadmissible for Annex I and Annex II considerations as per Article 5 of the Convention as it was not submitted within the stipulated time of 90 days. I also sought a copy of an important legal opinion from you that, according to you, was made available at the CRC-5. I have yet to receive your response.

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A careful reading of past recommendations/decisions of INC/COP categorically establish the fact that the CRC can not legitimately go ahead and prepare a DGD for Endosulfan on the strength of Sahelian notification.

The Intergovernmental Negotiating Committee (INC) in its report (UNEP/FAI/PIC/INC.7/15) merely proposed that:

"The Interim Chemical Committee must deem a notification valid prior to developing a decision guidance document"

However, when the Conference of Parties (COP) considered this proposal at its second meeting (26 – 30th Sep'2005) it brought in additional elements of caution and adopted a decision that said:

"The Chemical Review Committee must deem a notification and relevant supporting documentation to meet the requirements of the Convention prior to developing a decision guidance document" (DecisionRC-2/2 in UNEP/FAO/RC/COP.2/19).

Thus, the COP decision categorically stipulates that *"the chemical review committee must deem a notification and relevant supporting documents to meet the requirements of the Convention"*.

What are the requirements of the Convention that a notification must meet?

- The first and the foremost is that the notification must meet the requirement of Article 5(1) of the Convention that stipulates 90 days time limit.

- Article 5(3)that makes it clear that a notification can be subjected to criteria in Annex I, (and consequently Annex II criteria)only if it is received as per 5(1) of the Convention.

When a notification fails to meet Article 5(1) and, consequently Article 5 (3) of the Convention, the CRC cannot go ahead with the examining the notification for Annex II criteria.

It must be noted that the term used in COP decision RC-2/2 is **"must deem"** and not **"may deem".**

Webster's revised unabridged dictionary defines the term "**deem**" as:

To be of the opinion
To think
To estimate
To pass judgment

The term **"must deem"** as used here gives CRC the obligation to think and to determine that the submitted notification meet **requirements of the Convention** (and not merely the requirement of Annex II).

The CRC should ensure that there is absence of evidence to the contrary.

In case of Sahelian notification there exist clear evidence to the contrary. It does not meet the requirements of Article 5(1) and 5(3) of the Convention.

90 days time limit is an important caveat under the Convention. It is both surprising and inexplicable that the Secretariat chose to ignore it while accepting the impugned notification for Annex I verification, and, in the process, undermined the spirit of the Convention.

That the Conference of the Parties (COP) considered 90 days time limit to be a significant requirement could be seen for the following:

The original version of Article 5 as proposed by the Interim Negotiating Committee (INC) read:

"A notification pursuant to paragraph 1 of this article shall be made as soon as possible but not later than 90 days after the date on which the regulatory action has taken effect" (UNEP/FAO/PIC/INC.5/3).

But the Conference of Plenipotentiaries (10-11 September 1998) modified the Article 5 to read:

"..... such notification shall be made as soon as possible, and in any event no later than ninety days after the date on which the final regulatory action has taken effect" (UNEP/FAO/RC/COP.2/19).

Note the revised text in the Article 5 that states ***"in any event no later than ninety days"***

It means that the notification for Annex I considerations shall not only be made as soon as possible; but it should not be delayed beyond 90 days.

In its submission to WTO (TN/TE/W/23 of 20th Feb 03), India had identified Article 5 of the Rotterdam Convention, among others, to be containing trade measures. Trade measures lead to trade obligations. Nonobservance and/or contravention of Article 5 in any manner is, therefore, unacceptable.

The mandatory provisions in Article 5(1) and 5(3) cannot be ignored by the Convention's Secretariat and the Chemical Review Committee.

I must also bring to your notice that the final report of CRC-5(UNEP/FAO/RC/CRC.5/16) carries contradictory and incorrect information about what happened at the CRC-5 meeting.

Paragraph 72 in page 9 of the final report of CRC.5 states:

"....responses to the outstanding questions regarding the notifications from the Sahelian countries would be made available at its next meeting to inform further discussion on whether all the criteria in Annex II had been met"

However paragraph 13 in page 26 of the same report claims:

"The Committee concluded that the notifications of final regulatory action by the Sahelian countries met the information requirements of Annex I and the criteria set out in Annex II of the Convention."

Both are mutually contradictory. It is shocking that the final report of the CRC should carry such serious contradictions.

It should be said that what's stated in paragraph 13 in page 26 of the report is incorrect. Paragraph 72 in page 9 (reproduced above) reflects the reality.

Article 7, paragraph 1 of the Rotterdam Convention states:

"For each chemical that the Chemical Review Committee has decided to recommend for listing in Annex III, it shall prepare a draft decision guidance document"

This is also reiterated in COP's decision RC 1/6 which states:

"..for each chemical it has decided to recommend for listing in Annex III[CRC shall] prepare a draft decision guidance document".

Clearly, the Convention allows the CRC to begin preparing the draft decision guidance document only after it has decided to recommend a chemical for listing in Annex III.

There was no final decision taken at CRC.5 on the Sahelian notification concerning Endosulfan as it suffered from series of flaws as shown in the Conference Room Paper (UNEP/FAO/RC/CRC.5/ CRP.19).

Paragraph 72 of the final report of the CRC-5 indeed confirms that only the next meeting of the CRC would discuss to know whether the Sahelian notification meets all the criteria of Annex II.

Under the circumstances, it is not all tenable and legitimate to go ahead with internal proposal/DGD for Endosulfan based on Sahelian notification. This must be aborted.

Rotterdam Convention is not a self executing treaty. To be valid for domestic implementation in countries that are Parties to the Convention, all decisions taken in Rotterdam Convention and its subsidiary body (CRC) must be consistent with the provisions of the Convention.

Thanking you,

Yours faithfully

S. Ganesan
Chairman
International Treaties Expert Committee
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CC: 1. Mr. Achinn Steiner, Executive Director, United Nations Environment Programme, Nairobi, Kenya.

2. Mr. Masa Nagai, Senior Legal Officer, Division of Environmental Law and Convention, United Nations Environment Programme (UNEP), Nairobi, Kenya.

3. Ms. Wanhua Yang, Legal Officer, United Nations Environment Programme (UNEP), UN Building, 2nd Floor, Rajdamnen Avenue, Bangkok 10200, Thailand (Phone No. + 662 288 1878).

4.All members of CRC and observers.

ROTTERDAM CONVENTION

SECRETARIAT FOR THE ROTTERDAM CONVENTION
ON THE PRIOR INFORMED CONSENT PROCEDURE
FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES
IN INTERNATIONAL TRADE

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- 4 SEP 2009

To: Mr. S. Ganesan
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Mumbai 400 001 - India.

From: Mr. Donald Cooper
Co-Executive Secretary, Secretariat of the Rotterdam Convention
and
Mr. Peter Kenmore
Co-Executive Secretary, Secretariat of the Rotterdam Convention.

Subject: Response concerning certain issues in connection with the interpretation and application of Article 5 of the Rotterdam Convention.

Geneva, 26 August 2009

Dear Mr. Ganesan,

We are writing to you in response to the issues you have raised in your various letters[1] to the Secretariat. This letter provides an overview of the key issues and serves to transmit a legal opinion which addresses in more detail your concerns regarding the interpretation and application of the Rotterdam Convention and in particular its Article 5, in the light of the Vienna Convention

[1] A list of the relevant letters is enclosed in Annex 2.

on the Law of Treaties and the World Trade Organization (WTO) rules, the notion of final regulatory action, and related procedural issues on specific chemicals.

The Vienna Convention on the Law of Treaties sets out internationally accepted rules and principles as to, *inter alia*, the interpretation of international treaties. As stated in the Vienna Convention on the Law of Treaties, it is essential that the objective of the Rotterdam Convention as well as the intention of the Parties when negotiating it, are kept in mind while interpreting its provisions. In that respect, it should be recalled that the primary objective of the Rotterdam Convention, as set out in Article 1, is to protect human health and the environment taking into account the specific needs of developing countries and countries with economies in transition. Pursuing this objective corresponds to a fair balance of the interests at stake, in support of the notion that "trade and environmental policies should be mutually supportive with a view to achieving sustainable development" as highlighted in the preamble of the Rotterdam Convention., and it is in accordance with international trade rules notably those under WTO. In negotiating the Rotterdam Convention, Parties ensured that it was in line with the WTO Agreements and their principles.

In reading and interpreting the procedural requirements of Article 5 of the Rotterdam Convention, one has to keep the objective of the Convention in mind. In this context, the requirement to notify a final regulatory action to ban or severely restrict a chemical that has been taken in order to protect human health or the environment should be seen as a means of international information exchange. In other words, not allowing a notification received after the ninety-day period specified in Article 5 would deprive Parties from benefiting from information that is essential to achieve the objective of the Convention. Consequently, the ninety-day period, as well as any procedural requirement or technicalities, such as the effective date of the final regulatory action, must be construed in such a manner to fulfill the objective of the Convention.

Given the above and as described in the enclosed legal opinion, the notifications of final regulatory actions from the European Community and Mauritania concerning endosulfan and the notification of final regulatory action from Canada concerning tributyltin (TBT) compounds have been made in conformity with the requirements set out in Article 5 of the Convention. We also conclude that no irregularity e.g. with respect to the meeting organization or reporting or violation of any decision-making rules has occurred in these cases and that due process of law, whether in substance or in the *modus operandi*, has been fully guaranteed and complied with.

We hope this clarifies your concerns. As noted above, a more detailed explanation on these matters and a thorough analysis may be found in the legal opinion prepared by the Senior Legal Officer of UNEP hereattached in Annex 1.

Yours sincerely,

Donald Cooper
Co- Executive Secretary
Secretariat of the Rotterdam Convention

Peter Kenmore
Co- Executive Secretary
Secretariat of the Rotterdam Convention

ANNEX 1

Legal opinion concerning certain issues associated with Article 5 of the Rotterdam Convention

- 21 August 2009 -

1. With regard to Article 5 of the Rotterdam Convention, the following issues have been raised:

I General rule concerning the interpretation of the Convention;

II Treatment of a notification of a final regulatory action received after the period specified in the second sentence of paragraph 1 of Article 5;

III Issues associated with the notification of the final regulatory action on endosulfan submitted by Mauritania, notifying the decision of the Permanent Inter-State Committee for Drought Control in the Sahel;

IV Issues associated with the notification of the final regulatory action on endosulfan submitted by the European Community;

V Issues associated with the notification of the final regulatory action on tributyltin (TBT) compounds submitted by Canada.

I. General rule concerning the interpretation of the Convention

2. As a general rule, the Conference of the Parties to the Rotterdam Convention has the ultimate authority to provide formal interpretation of the Convention if so required in accordance with its functions set out in paragraph 5 of Article 18. Regarding paragraph 1 of Article 5, no specific interpretation has been provided by the Conference of the Parties to date, since no legal issue has been raised before it on that matter.

3. In the absence of any decision concerning the interpretation of this article by the Conference of the Parties, should any need arise, the 1969 Vienna Convention on the Law of Treaties, in particular its Articles 31 and 32, might be referred to as it codifies internationally recognized norms and practices concerning the interpretation of international treaties, which is applicable to the Rotterdam Convention. In its Article 31 governing general rule of interpretation, the Vienna Convention states that:

"1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

"2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

- any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

"3. There shall be taken into account, together with the context:

- any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

- any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

- any relevant rules of international law applicable in the relations between the parties.

"4. A special meaning shall be given to a term if it is established that the parties so intended."

4. In its Article 32 governing supplementary means of interpretation, the Vienna Convention states that:

"Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- leaves the meaning ambiguous or obscure; or

- leads to a result which is manifestly absurd or unreasonable."

5. When the interpretation of the Rotterdam Convention is required, Articles 31 and 32 of the Vienna Convention in their entirety should be applied.

II. Treatment of a notification of a final regulatory action received after the period specified in the second sentence of paragraph 1 of Article 5

6. Paragraph 1 of Article 5 of the Rotterdam Convention is composed of two sentences as follows:

"Each Party that has adopted a final regulatory action shall notify the Secretariat in writing of such action.

"Such notification shall be made as soon as possible, and in any event no later than ninety days after the date on which the final regulatory action has taken effect, and shall contain the information required by Annex I, where available."

7. The first sentence sets out the right and obligation for each Party to institute the initial stage of the international information exchange procedure concerning chemicals under the Convention, by submitting a notification of a final regulatory action that it has adopted.

8. It should be viewed in the light of the objective of the Convention set out in Article 1, which is "to promote shared responsibility and cooperative efforts among Parties in the

international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision making process on their import and export and by disseminating these decisions to Parties." In this context, paragraph 1 of Article 5 is deemed to constitute a fundamental requirement which requires, and, at the same time, enables each Party to initiate the information exchange procedures of the Convention to achieve its objective.

9. The second sentence of paragraph 1 of Article 5 sets out the procedural requirements for a Party with regard to the submission of a final regulatory action. Those requirements are (i) the timeframe for submission of a notification of a final regulatory action, and (ii) the technical requirement for the information listed in Annex I of the Convention where available, which needs to accompany the notification of a final regulatory action.

10. Regarding a notification of a final regulatory action submitted by a Party after the 90-day period as specified by the Convention, there are two issues to be addressed.

11. The first issue is the act of the Party submitting the notification after the 90-day deadline. It might be deemed to constitute a case of non-compliance with the requirement of the Convention. However, since the Conference of the Parties to the Convention has not yet adopted procedures and institutional mechanisms for determining non-compliance with the provision of the Convention and for treatment of Parties found to be in non-compliance envisaged in Article 17 of the Convention, there is no procedure or mechanism to pursue this matter. Given the status of the negotiation of a compliance mechanism under the Convention as at the fourth meeting of the Conference of the Parties in October 2008, it seems highly probable that such a situation might be addressed by facilitative measure to assist the Party in question to comply with this requirement, rather than imposing any punitive measure (e.g. to deny accepting the submission of the notification), once such a mechanism is adopted in the future.

12. The second issue is receivability of a notification from a Party of a final regulatory action after the specified 90-day period. The Convention is silent on this point. It does not provide for any provision stating that a Party failing to submit a notification on a final regulatory action within the specified period loses its right to submit such notification or the Party is relieved from the obligation for it to notify the final regulatory action. As a procedural matter, the Convention, in paragraph 3 of Article5, mainly focuses on the information required under Annex I for a notification of a final regulatory action to become receivable for the purpose of information exchange among the Parties. Other than this aspect, the Convention appears to expect that a flow of information concerning final regulatory actions by Parties ought to occur in order to achieve its objective.

13. To clarify this point, it should be noted that during the preparation of the draft text of the Rotterdam Convention, the submission of a notification of a final regulatory action, supported by corroborating technical information, was considered a key and primary action required from each Party to initiate the international information exchange procedure of the Convention. On the other hand, the procedural requirement setting the timeframe for submitting the notification was considered separately and deemed as a supplementary requirement to ensure timely undertaking of such key action. The time frame of "no later than ninety days" was identified by the negotiating parties as a reasonable guidance for each Party how to submit a notification of a final regulatory action. However, in the process of the negotiation of the draft articles, it was apparent that the negotiating parties did not intend to put the requirement of the timeframe of submitting the notification to override the substantive obligation to submit a notification of a final regulatory

action, or to annul the right and obligation of each Party to notify a final regulatory action even if the submission of the notification was made after the 90-day period. These were reflected in the draft text on this subject negotiated during the preparation of the Rotterdam Convention.[i]

14. Given the above, it appears unreasonable and contrary to the objective of the Convention to assume that a Party loses its right and obligation to notify a final regulatory action concerning a chemical that it has taken if the Party submits the notification after the 90-day period specified in the Convention. Besides, the denial of receivability of such notification would be deemed to constitute a punitive measure to address such potential non-compliance situation, which appears to be contrary of the wish of the majority of the Parties expressed during the recent negotiations on a compliance mechanism of the Convention.

15. Rather, in the light of the objective of the Convention and the policy intent observed during the preparation of the text of the Convention, it appears reasonable to assume that the notification submitted later than the 90-day period is receivable by the Secretariat, provided that it contains the information required by Annex I. Such a notification, once verified by the Secretariat in accordance with paragraph 3 of Article 5, may be treated as a valid notification of a final regulatory action in the same manner as the other notifications are treated, and when the requirements of paragraph 5 of Article 5 are met, it may be forwarded to the Chemicals Review Committee together with the other relevant notifications. This practice has been observed under the Convention to date.

III. Notification of the final regulatory action on endosulfan submitted by Mauritania, notifying the decision of the Permanent Inter-State Committee for Drought Control in the Sahel

16. A letter from Mauritania's Minister for Agriculture, conveying the decision of the Permanent Inter-State Committee for Drought Control in the Sahel, dated 13 November 2007, notified that the ban on the distribution of endosulfan was to take effect on that day (i.e. 13 November 2007), and the ban on the use of endosulfan was to take effect on 31 December 2008.

17. The Rotterdam Convention, in paragraph (e) of Article 2, states that ""final regulatory action" means an action taken by a Party, that does not require subsequent regulatory action by that Party, the purpose of which is to ban or severely restrict a chemical." On the basis of this definition, it appears that the final regulatory action, in respect of the Rotterdam Convention, to ban endosulfan in the member States of the above Committee took effect on 31 December 2008, after which no subsequent regulatory action was to be required by the Parties concerned with respect to that chemical. While the date 13 November 2007 constituted the date on which a regulatory action to ban the distribution of the chemical took effect, it did not constitute a "final regulatory action" under the Convention, since a subsequent regulatory action to ban the use of the chemicals was to take effect at a later date.

18. In summary, in the above-mentioned case, the date of the final regulatory action was 31 December 2008, in accordance with paragraph (e) of Article 2 of the Convention.

19. Given the above, the submission by Mauritania of the above notification to the Secretariat in July 2008 is considered in conformity with the requirement of paragraph 1 of Article 5 of the Convention.

IV. Notification of the final regulatory action on endosulfan submitted by the European Community

20. The European Community, in its communication dated 3 October 2006, submitted a notification for final regulatory action concerning endosulfan. It contained two sets of regulatory actions, one for the withdrawal of the authorization for plant protection products containing endosulfan by 2 June 2006, and the other regulatory action for the withdrawal from the four of its member States (Greece, Spain, Italy, Poland) the authorization for specific uses by 30 June 2007.

21. In accordance with the definition of final regulatory action set out in paragraph (e) of Article 2 of the Convention, the latter date, i.e. 30 June 2007 is deemed to be the date on which the final regulatory action has taken effect for the purpose of the Convention.

22. Given the above, the submission by the European Community of the above notification to the Secretariat in October 2006 is considered in conformity with the requirement of paragraph 1 of Article 5 of the Convention.

V. Notification of the final regulatory action on tributyltin (TBT) compounds submitted by Canada

23. The Pest Management Regulatory Agency in Canada, in its capacity as the designated national authority of the country under the Convention, in a letter dated 5 August 2005, submitted among others, a notification of final regulatory action concerning tribuutyltin (TBT) compounds. This final regulatory action severely restricted the use of TBT compounds, whereby registrations of all TBT-based anti-fouling paints and the associated registered active ingredients and concentrates were phased out by 31 October 2002. A summary of the notifications was published in PIC Circular XXII (December 2005) and the full notification and supporting documentation were considered by the Chemical Review Committee at its second meeting in February 2006.

24 It should be noted that the Rotterdam Convention entered into force on 24 February 2004. For Canada, which acceded to the Convention on 26 August 2002, it entered into force on 24 February 2004. Since the above final regulatory action took effect before entry into force of the Convention for Canada, the notification was based on the requirements set out in paragraph 2 of Article 5 of the Convention.

25. The Convention, in paragraph 2 of Article 5, states that:

> "Each Party shall, at the date of entry into force of this Convention for it, notify the Secretariat in writing of its final regulatory actions in effect at that time, except that each Party that has submitted notifications of final regulatory actions under the Amended London Guidelines or the International Code of Conduct need not resubmit those notifications".

During the preparation of the text of the Convention, the phrase "at the date of entry into force of this Convention for it" was considered synonymous to the phrase "upon becoming Party to the Convention" and meant to require a Party to submit relevant notification as soon as possible after

the Convention has entered into force for it, and did not literally mean to require the Party to submit the notification on the date of entry into force for it.

26. Following the submission of the above notification by Canada, in accordance with paragraph 3 of Article 5, the Secretariat undertook necessary action as referred to above.

27. Given the above, the notification of the final regulatory action by Canada of TBT compounds and the subsequent actions are considered in conformity with the requirements of paragraphs 2 and 3 of Article 5 of the Convention.

[i] During the preparation of the draft text of the Rotterdam Convention, the negotiations on the contents of paragraph 1 of Article 5 took place at the second session of the Intergovernmental Negotiating Committee (INC). At that session, the Chair of the INC submitted the draft text prepared at the request of the INC at first session (UNEP/FAO/PIC/INC.2/6, Annex II). The corresponding part of the Chair's draft text read as follows:

> "1. Each Party having taken control action to ban or severely restrict a chemical shall notify the Secretariat [through the Designated National Authority] of such action and the reasons therefore substantially in the form set out in Annex ___ to this Convention. Such notification should clearly indicate what use or uses of the chemical in question has or have been banned or severely restricted.
>
> "2. Notification of a control action shall be provided as soon as practicable, but not later than ... months after the control action is taken."

After its consideration, the INC at its second session produced the following draft text (UNEP/FAO/PIC/INC.2/7, Annex I):

> "1. Each Party which has adopted a regulatory measure to ban or severely restrict a chemical shall notify the Secretariat in writing of such measure through its relevant designated national authority. [In order to be considered for inclusion in the prior informed consent procedure] The notification shall be in accordance with the provisions set out in [parts I and II of] Annex X.
>
> 2. A notification pursuant to paragraph 1 of this article shall be made as soon as possible, but not later than 90 days after the date on which the regulatory measure has taken effect."

ANNEX 2
List of correspondences from the ICC

Please find here below a chronological list of the ICC letters sent during the past year:

- 3rd August 2009, to Executive Director Mr. Achim Steiner;
- 31st and 17 July 2009, both addressed to Ms. Karmen Krajnc, Chair of the Chemical Review Committee (CRC)-5, Mr. Donald Cooper and Mr. Peter Kenmore;
- 15 July 2009 , to Mr. Donald Cooper and Mr. Peter Kenmore;
- 3rd June and 2nd April 2009, both addressed to Mr. Donald Cooper only;
- 23rd March 2009, to Mr. Donald Cooper and Mr. Peter Kenmore;
- 20 February 2009, one addressed to Mr. Peter Kenmore, the other to Mr. Donald Cooper; and
- 5 August 2008, to Mr. Donald Cooper.