



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

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**Chemical Review Committee**

**Sixth meeting**

Geneva, 15–19 March 2010

Item 3 of the provisional agenda\*

**Review of the outcome of the fourth meeting of the  
Conference of the Parties to the Rotterdam Convention  
relevant to the Committee's work**

**Letter from CropLife International on the legal opinion on  
intentional misuse and the application of criterion (d) of Annex II  
to the Convention**

**Note by the Secretariat**

The annex to the present note contains a copy of a letter received from CropLife International, dated 16 February 2010, containing comments on the legal opinion on intentional misuse and the application of criterion (d) of Annex II to the Convention, circulated in document UNEP/FAO/RC/CRC.6/10. The letter is reproduced as received without formal editing.

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

## **Annex**

Copy of a letter received from CropLife International dated 16 February 2010.

February 16, 2010

Peter Kenmore  
Co- Executive Secretary for Rotterdam  
Convention  
Food and Agriculture Organization  
Viale delle Terme di Caracalla  
00100 Rome  
Italy

Donald Cooper  
Co- Executive Secretary for Rotterdam  
Convention  
United Nations Environment  
Programme  
11-13 Chemin des Anémones  
CH-1219 Châtelaine GE  
Switzerland

Re: UNEP Legal Opinion on Intentional Misuse

Dear Mr. Kenmore and Mr. Cooper:

We have taken note of the recent "supplementary legal opinion" on the application of criterion (d) of Annex II of the Rotterdam Convention that was prepared by the UNEP legal office in response to Decision RC-4/6. The Secretariat circulated that opinion in document CRC.6/10.

With respect to the interpretation of the term "intentional misuse," we believe that the Conference of the Parties intended that the UNEP legal office would take careful consideration of the observations of parties, observer governments, and other stakeholders in this matter. The supplementary legal opinion refers in passing to the receipt of "views submitted by a number of Parties and interested observers," but otherwise omits any discussion of what those views were. It makes no effort to identify whether or how the drafters of the opinion considered and responded to those views. As a result, the members of the CRC -- and future participants at the fifth Conference of the Parties -- are currently deprived of the benefit of the considered views of Parties and observers on this question.

**We therefore write to request the Secretariat to make available the views of the Parties and observers that were submitted in accordance with decision RC-4/6.** We believe it would be appropriate and valuable to make these submissions available as additional information to inform the Committee's review of this matter.

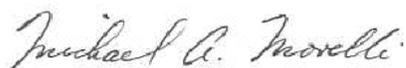
Although the Conference of the Parties requested that the UNEP opinion "be made available to the Committee to inform future discussion," the Secretariat will naturally be conscious that the interpretation and application of the Rotterdam Convention is a function that lies within the province of the individual parties and the Conference of the Parties collectively. UNEP has no formal authority to interpret the terms of the Convention, and the views of the UNEP legal office have no legal status as such. Their views are purely advisory in nature, and the weight that a Party or the Conference of the Parties as a whole

accords to them will depend on the rigor and persuasiveness of the analysis in any given opinion.

Our request that other submissions be made available is bolstered by our view in this case that the supplementary legal opinion is unlikely to be seen as helpful or persuasive. To take just one illustrative example, the UNEP opinion expressly espouses an interpretation that would result in a nullification of Annex II (d). The opinion asserts that "in the event where the criteria under paragraphs (a), (b) and (c) are met, it appears that the criterion contained in paragraph (d) cease [*sic*] to take effect." Under the UNEP reading, therefore, the intentional misuse criterion would have relevance *only* in circumstances where the other criteria are not satisfied -- that is, only when a given nomination is ineligible and thus would not proceed in any event. As a result, the opinion deprives Annex II (d) of any operative effect at all. This approach violates basic principles of treaty interpretation. See, e.g., WTO Appellate Body Report, United States -- Standards for Reformulated Gasoline, WT/DS2/AB/R at 23 (April 29, 1996) ("One of the corollaries of the 'general rule of interpretation' in the Vienna Convention is that interpretation must give meaning and effect to all the terms of a treaty. An interpreter is not free to adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to redundancy or inutility.") (citing numerous authorities).

We appreciate your attention to this request and look forward to our continued work together on the implementation of the Rotterdam Convention at the sixth meeting of the CRC in Geneva.

Yours Sincerely,



Michael A. Morelli, Ph.D.  
Chair PIC Project Team  
CropLife International

Director, Compliance & Global Regulatory Affairs  
Agricultural Products Group  
FMC Corporation  
Tel: +1 215 299 6414  
Email: [michael.morelli@fmc.com](mailto:michael.morelli@fmc.com)

cc: Ms. Marit E. Randall, CRC Chair