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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**

First meeting

Geneva, 20–24 September 2004

Item 7 (d) (i) of the provisional agenda*

**Matters stipulated by the Convention for action
by the Conference of the Parties: settlement of disputes:
adoption of an annex with arbitration procedures**

Settlement of disputes: adoption of an annex with arbitration procedures

Note by the secretariat

1. Article 20, paragraph 2, of the Rotterdam Convention provides that any Party that is not a regional economic integration organization may declare in a written statement that it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

“(a) Arbitration in accordance with procedures to be adopted by the Conference of the Parties in an annex as soon as practicable; and

* UNEP/FAO/RC/COP.1/1.

“(b) Submission of the dispute to the International Court of Justice.”

2. The Intergovernmental Negotiating Committee considered arbitration procedures at its eighth, ninth and tenth sessions.

3. At its tenth session, the Committee agreed on draft rules on arbitration and decided to forward the agreed text (UNEP/FAO/PIC/INC.10/24, annex VI), which is reproduced in the annex to the present note, to the Conference of the Parties for consideration at its first meeting.¹

Suggested action by the Conference of the Parties

4. The Conference of the Parties may wish to consider the annexed draft rules on arbitration.

¹ UNEP/FAO/PIC/INC.10/24, para. 102.

Annex

Settlement of disputes

Draft rules on arbitration

The arbitration procedure for purposes of paragraph 2 (a) of article 20 of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade shall be as follows:

Article 1

1. A Party may initiate recourse to arbitration in accordance with article 20 of the Convention by written notification addressed to the other Party to the dispute. The notification shall be accompanied by a statement of the claim, together with any supporting documents, and shall state the subject matter for arbitration including, in particular, the articles of the Convention the interpretation or application of which are at issue.
2. The claimant Party shall notify the secretariat that the Parties are referring a dispute to arbitration pursuant to article 20. The written notification of the claimant Party shall be accompanied by the statement of claim and the supporting documents referred to in paragraph 1 above. The secretariat shall forward the information thus received to all Parties.

Article 2

1. In disputes between two Parties, an Arbitral Tribunal shall be established. It shall consist of three members.
2. Each of the Parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the President of the Tribunal. The President of the Tribunal shall not be a national of one of the Parties to the dispute, nor have his or her usual place of residence in the territory of one of these Parties, nor be employed by any of them, nor have dealt with the case in any other capacity.
3. In disputes between more than two Parties, Parties in the same interest shall appoint one arbitrator jointly by agreement.
4. Any vacancy shall be filled in the manner prescribed for the initial appointment.
5. If the Parties do not agree on the subject matter of the dispute before the President of the Arbitral Tribunal is designated, the Arbitral Tribunal shall determine the subject matter.

Article 3

1. If one of the Parties to the dispute does not appoint an arbitrator within two months of the date on which the respondent Party receives the notification of the arbitration, the other Party may inform the Secretary-General of the United Nations who shall make the designation within a further two-month period.

2. If the President of the Arbitral Tribunal has not been designated within two months of the date of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a Party, designate the President within a further two-month period.

Article 4

The Arbitral Tribunal shall render its decisions in accordance with the provisions of the Convention and international law.

Article 5

Unless the parties to the dispute agree otherwise, the Arbitral Tribunal shall determine its own rules of procedure.

Article 6

The Arbitral Tribunal may, at the request of one of the Parties, recommend essential interim measures of protection.

Article 7

The Parties to the dispute shall facilitate the work of the Arbitral Tribunal and, in particular, using all means at their disposal, shall:

- (a) Provide it with all relevant documents, information and facilities; and
- (b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 8

The Parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the Arbitral Tribunal.

Article 9

Unless the Arbitral Tribunal determines otherwise because of the particular circumstances of the case, the costs of the Tribunal shall be borne by the Parties to the dispute in equal shares. The Tribunal shall keep a record of all its costs and shall furnish a final statement thereof to the Parties.

Article 10

A Party that has an interest of a legal nature in the subject matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the Arbitral Tribunal.

Article 11

The Arbitral Tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

Article 12

Decisions of the Arbitral Tribunal on both procedure and substance shall be taken by a majority vote of its members.

Article 13

1. If one of the Parties to the dispute does not appear before the Arbitral Tribunal or fails to defend its case, the other Party may request the Tribunal to continue the proceedings and to render its decision. Absence of a Party or failure of a Party to defend its case shall not constitute a bar to the proceedings.

2. Before rendering its final decision, the Arbitral Tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

The Arbitral Tribunal shall render its final decision within five months of the date on which it is fully constituted, unless it finds it necessary to extend the time limit for a period which should not exceed five more months.

Article 15

The final decision of the Arbitral Tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the Tribunal may attach a separate or dissenting opinion to the final decision.

Article 16

The award shall be binding on the parties to the dispute. The interpretation of the Convention given by the award shall also be binding upon a Party intervening under article 10 above insofar as it relates to matters in respect of which that Party intervened. The award shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

Article 17

Any controversy which may arise between those bound by the final decision in accordance with article 16 above, as regards the interpretation or manner of implementation of that decision, may be submitted by any of them for decision to the Arbitral Tribunal which rendered it.
