



**United Nations  
Environment Programme**

Distr.: General  
11 July 2005



UNEP

Original: English



**Food and Agriculture Organization  
of the United Nations**

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

**Second meeting**

Rome, 27–30 September 2005

Item 6 of the provisional agenda

**Issues arising out of the first meeting of the Conference of the Parties**

## **Question of the applicability of international trade to the Convention**

**Note by the Secretariat**

### **I. Introduction**

1. At the first meeting of the Conference of the Parties, several representatives questioned whether the existence of international trade in a chemical constituted a prerequisite for that chemical to be addressed in the Convention, and requested the secretariat to prepare a document on the subject for consideration by the Conference of the Parties at its second meeting. The present note, prepared in pursuance of that request, highlights the relevant provisions of the Convention, with a view to responding to the question raised by representatives.

### **II. International trade and the provisions of the Convention**

#### **A. Objective**

2. The Convention, in its Article 1, states that the objective of the Convention is “to promote shared responsibility and cooperative efforts among Parties in 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.”

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3. In other words, while the Convention sets out its ultimate objective to protect human health and the environment from potential harm of certain hazardous chemicals and to contribute to their environmentally sound use, it focuses on “international trade of certain hazardous chemicals” and it is designed “to promote shared responsibility and cooperative efforts among Parties” thereon. The term “international trade” is referred to in general, without specifying whether the Convention addresses ongoing international trade of such chemicals or their future international trade or both, or whether it includes a range of measures and actions directly or indirectly associated with international trade in such chemicals with a view to protecting human health and the environment from potential harm caused by the chemicals and contributing to their environmentally sound use.

4. Given the means of achieving this objective set out in the last part of Article 1 – namely, facilitating information exchange about the characteristics of such chemicals, providing a national decision-making process on their import and export and disseminating these decisions to Parties – the Convention appears to cover not only various stages of international trade in certain hazardous chemicals, including both existing and future international trade, but also other relevant aspects of managing such chemicals which might eventually assist Parties in taking their decisions with respect to international trade in such chemicals.

5. In summary, the objective of the Convention as set out in Article 1 is not restricted to the existing international trade in certain hazardous chemicals, but rather envisages a sequence of events with respect to such chemicals involving international trade as well as other aspects associated with managing those chemicals. The existence of international trade in such chemicals is relevant to the Convention, but it does not seem to constitute a prerequisite for the chemicals to be considered under the Convention.

## **B. Scope of the Convention**

6. In accordance with the definition of the scope of the Convention, set out in paragraph 1 of Article 3, the Convention applies to banned or severely restricted chemicals, and severely hazardous pesticide formulations. The definitions of the terms “banned or severely restricted chemicals” and “severely hazardous pesticide formulations”, set out in Article 2, respectively, do not refer to international trade as a precondition for determining that those chemicals are covered by the Convention.

## **C. Banned or severely restricted chemicals**

7. In Article 5 governing the procedures for banned or severely restricted chemicals, under its paragraph 1, each Party that has adopted a final regulatory action is required to notify the Secretariat in writing of such action, and such notification needs to contain the information required by Annex I, where available. The term “final regulatory action”, as defined in Article 2, 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, and international trade is not referred to in the definition as a prerequisite for a Party to take such actions. Annex I lists information requirements for notifications made to Article 5, which does not include international trade as an item for the required information.

8. Pursuant to paragraph 3 of Article 5, the Secretariat is required to verify whether the notification contains the information required by Annex I. If the notification contains the information required, the Secretariat must forthwith forward to all Parties a summary of the information received. If the notification does not contain the information required, it is required to inform the notifying Party accordingly. In accordance with paragraph 4 of Article 5, the Secretariat is required every six months to communicate to the Parties a synopsis of the information received pursuant to paragraphs 1 and 2 of the article, including information regarding those notifications which do not contain all the information required by Annex I. As the existence of international trade is not a requirement by a Party for taking the final regulatory action regarding a chemical and the notification thereon, the information thus communicated to the Parties may not necessarily contain the information on international trade with regard to that chemical.

9. Pursuant to paragraph 5 of Article 5, when the Secretariat has received at least one notification from each of two prior informed consent regions regarding a particular chemical that it has verified meets the requirements of Annex I, the Secretariat is required to forward the notifications to the Chemical Review Committee. In accordance with paragraph 6 of Article 5, the Chemical Review Committee is required to review the information provided in such notifications and, in accordance with the criteria set out in Annex II, recommend to the Conference of the Parties whether the chemical in

question should be made subject to the prior informed consent procedure and, accordingly, be listed in Annex III.

10. Annex II contains the criteria for listing banned or severely restricted chemicals in Annex III. In reviewing the notifications forwarded by the Secretariat pursuant to paragraph 5 of Article 5, the Chemical Review Committee is required, first, to confirm that the final regulatory action has been taken in order to protect human health or the environment; second, to establish that the final regulatory action has been taken as a consequence of a risk evaluation; third, to consider whether the final regulatory action provides a sufficiently broad basis to merit listing of the chemical in Annex III, by taking into account, among other points for consideration, whether there is evidence of ongoing international trade in the chemical; and, fourth, take into account that intentional misuse is not in itself an adequate reason to list a chemical in Annex III.

11. Therefore, when the Chemical Review Committee reviews the notifications of the final regulatory actions, evidence of ongoing international trade in the chemical is one of the items that the Committee is required to take into account during its consideration of whether the final regulatory action provides a sufficiently broad basis to merit listing of the chemical in Annex III. There might be some question, however, whether the lack of clear evidence or uncertainty about the ongoing international trade in the chemical alone could prevent the Committee from considering the merit of listing the chemical in Annex III. It seems reasonable to assume that the Committee, having considered all the criteria set out in Annex II, should evaluate the overall merit of listing the chemical in Annex III and make its recommendation.

#### **D. Severely hazardous pesticide formulations**

12. Under paragraph 1 of Article 6, any Party that is a developing country or a country with an economy in transition and that is experiencing problems caused by a severely hazardous pesticide formulation under conditions of use in its territory may propose to the Secretariat the listing of the severely hazardous pesticide formulation in Annex III. In developing a proposal, the Party may draw upon technical expertise from any relevant source. The proposal must contain the information required by part 1 of Annex IV, which does not require information on international trade in the severely hazardous pesticide formulation.

13. In accordance with paragraph 2 of Article 6, the Secretariat is required to verify whether the proposal contains the information required by part 1 of Annex IV. If the proposal contains the information required, the Secretariat must forthwith forward to all Parties a summary of the information received. If the proposal does not contain the information required, it is required to inform the proposing Party accordingly.

14. Pursuant to paragraph 3 of Article 6, the Secretariat is required to collect the additional information set out in part 2 of Annex IV regarding the proposal forwarded under paragraph 2. Part 2 of Annex IV does not require information on international trade in the severely hazardous pesticide formulation in question. When the requirements of paragraphs 2 and 3 above have been fulfilled with regard to a particular severely hazardous pesticide formulation, the Secretariat forwards the proposal and the related information to the Chemical Review Committee.

15. In accordance with paragraph 5 of Article 6, the Chemical Review Committee reviews the information provided in the proposal and the additional information collected and, in accordance with the criteria set out in part 3 of Annex IV, recommends to the Conference of the Parties whether the severely hazardous pesticide formulation in question should be made subject to the prior informed consent procedure and, accordingly, be listed in Annex III. Part 3 of Annex IV does not list international trade as an item on which the consideration of Chemical Review Committee is required.

16. In short, with regard to severely hazardous pesticide formulations, the existence of ongoing international trade does not constitute a prerequisite for them to be considered for listing in Annex III.

#### **E. Listing of chemicals in Annex III**

17. Regarding the listing of chemicals in Annex III, as set out in Article 7, for each chemical that the Chemical Review Committee has decided to recommend for listing in Annex III, a draft decision guidance document is to be prepared. The decision guidance document should, at a minimum, be based on the information specified in Annex I, or, as the case may be, Annex IV, and include information on uses of the chemical in a category other than the category to which the final regulatory action applies.

Neither Annex I nor Annex IV contain the requirement of the existence of international trade for the chemical.

18. During the above procedure, the existence of international trade in the chemical would be taken into account by the Chemical Review Committee when it applies the criteria set out in Annex II to review the notification concerning a banned or severely restricted chemical and prepare the recommendation and a decision guidance document. The recommendation of the Committee together with the draft decision guidance document is to be forwarded to the Conference of the Parties, which will decide whether the chemical should be made subject to the prior informed consent procedure and, accordingly, list the chemical in Annex III and approves the draft decision guidance document. The Convention does not set out specific criteria for the Conference of the Parties when it takes a decision to list a chemical in Annex III and approve the related decision guidance document. In doing so, the Conference of the Parties could address any matters that it would consider relevant, which might include the existence of international trade in the chemical but not as a requirement by the Convention.

#### **F. Procedure concerning removal of chemicals from Annex III**

19. Under Article 9 concerning the removal of chemicals from Annex III, if a Party submits to the Secretariat information that was not available at the time of the decision to list a chemical in Annex III and that information indicates that its listing may no longer be justified in accordance with the relevant criteria in Annex II or, as the case may be, Annex IV, the Secretariat is required to forward the information to the Chemical Review Committee. Consequently, the Chemical Review Committee is to review the information it receives under the above-mentioned procedure. For each chemical that the Committee decides, in accordance with the relevant criteria in Annex II or, as the case may be, Annex IV, to recommend for removal from Annex III, it prepares a revised draft decision guidance document.

20. To the extent that the criteria set out in Annex II are considered in this procedure, evidence of ongoing international trade in the chemical would become relevant as an item to be taken into account by the Committee. The recommendation is to be forwarded to the Conference of the Parties and be accompanied by a revised draft decision guidance document. The Conference of the Parties decides whether the chemical should be removed from Annex III and whether to approve the revised draft decision guidance document. The Convention does not set out specific criteria for the Conference of the Parties for its consideration and decision regarding the removal of the chemical.

#### **G. Obligations in relation to imports of chemicals listed in Annex III**

21. Pursuant to Article 10 governing the obligations in relation to imports of chemicals listed in Annex III, each Party is required to implement appropriate legislative or administrative measures to ensure timely decisions with respect to the import of chemicals listed in Annex III and to transmit to the Secretariat a response concerning the future import of the chemical concerned, which could be either a final decision, pursuant to legislative or administrative measures, to consent to import, or not to consent to import, or to consent to import only subject to specified conditions, or an interim response. If a Party modifies this response, it is required to submit the revised response to the Secretariat. The above decision on the future import needs to be taken irrespective of whether there is evidence of ongoing international trade of those chemicals or not.

22. If the Party decides not to consent to the import of a chemical or to consent to its import only under specified conditions, the Party is required to simultaneously prohibit, or make subject to the same condition, import of the chemical from any source and domestic production of the chemical for domestic use. Therefore, should there be ongoing international trade in such chemical, the import decision by the Party may effect such international trade.

23. In short, while the existence of ongoing international trade in the chemical is not a prerequisite for the Party to take its actions under this article, its decision concerning the future import of the chemical will cause the Party to take consequential actions affecting its international trade.

#### **H. Obligations in relation to exports of chemicals listed in Annex III**

24. Regarding the obligations in relation to exports of chemicals listed in Annex III, as set out in Article 11, each exporting Party is required to implement appropriate legislative or administrative measures to communicate the responses concerning the future imports of those chemicals taken by other Parties to those concerned within its jurisdiction, or to take appropriate, legislative or administrative

measures to ensure that exporters within its jurisdiction comply with decisions in each response, or to advise and assist importing Parties, upon request and as appropriate to obtain further information to help them to take action and to strengthen their capacities and capabilities to manage chemicals safely during their life-cycle. To the extent the Party takes measures concerning export of the chemical in response to each decision on the future imports by importing Parties, such measures need to be taken irrespective of whether there is ongoing international trade in the chemical.

25. Each Party is required to ensure that a chemical listed in Annex III is not exported from its territory to any importing Party that, in exceptional circumstances, has failed to transmit a response or has transmitted an interim response that does not contain an interim decision, unless it is a chemical that, at the time of import, is registered as a chemical in the importing Party, or it is a chemical for which evidence exists that it has previously been used in, or imported into, the importing Party and in relation to which no regulatory action to prohibit its use has been taken, or explicit consent to the import has been sought and received by the exporter through a designated national authority of the importing Party. In such circumstances, the existence of international trade in the chemical will be relevant.

## **I. Export notifications**

26. Pursuant to Article 12 concerning export notifications, where a chemical that is banned or severely restricted by a Party is exported from its territory, that Party is required to provide an export notification to the importing Party. The export notification must include the information set out in Annex V, and must be provided for that chemical prior to the first export following adoption of the corresponding final regulatory action. Thereafter, the export notification must be provided before the first export in any calendar year. The requirement to notify before export may be waived by the designated national authority of the importing Party.

27. Thus, following the adoption of its final regulatory action by the Party, there might be no international trade of the chemical between the Party and the importing Party before the first export of the chemical takes place. The existence of ongoing international trade in the chemical, as banned or severely restricted by the Party, is not a prerequisite for the Party to undertake the export notification. Subsequent export notifications will become relevant where international trade in that chemical exists between the exporting and importing Parties.

## **J. Information to accompany exported chemicals**

28. The provisions of Article 13 address the information to accompany exported chemicals, including specific Harmonized System customs codes to be assigned by the World Customs Organization (WCO) to the individual chemicals or groups of chemicals listed in Annex III, labelling requirements for chemicals listed in Annex III and chemicals banned or severely restricted to be exported, and providing each importer with a safety data sheet of such chemicals to be used for occupational purposes. The scope of this article covers information accompanying chemicals when they are exported or imported, which would be relevant to the existing and future international trade.

## **K. Information exchange**

29. Article 14 sets out provisions concerning information exchange, including the exchange of scientific, technical, economic and legal information concerning the chemicals within the scope of the Convention, publicly available information on domestic regulatory actions relevant to the objectives of the Convention, and information on domestic regulatory actions that substantially restrict one or more uses of the chemical. There are also provisions concerning confidential and non-confidential information. Under its paragraph 5, any Party requiring information on transit movements through its territory of chemicals listed in Annex III may report its need to the Secretariat, which is required to inform all Parties accordingly. The requirements under this article cover a wide range of information concerning banned or severely restricted chemicals or severely hazardous pesticides formulations, which might include information relating to international trade in those chemicals as well as other information on such chemicals. With regard to information on transit movements of the chemicals, the existing and future international trade would be relevant in providing such information.

## **L. Implementation of the Convention**

30. Under Article 15 entitled "Implementation of the Convention", each Party is required to take such measures as may be necessary to establish and strengthen its national infrastructures and institutions for the effective implementation of the Convention. These measures may include, as

required, the adoption or amendment of national legislative or administrative measures and may also include the establishment of national registers and databases including safety information for chemicals, the encouragement of initiatives by industry to promote chemical safety, and the promotion of voluntary agreements. Each Party is required also to ensure, to the extent practicable, that the public has appropriate access to information on chemical handling and accident management and on alternatives that are safer for human health or the environment than the chemicals listed in Annex III. Under this article, the Parties agree to cooperate, directly or, where appropriate, through competent international organizations, in the implementation of the Convention at the subregional, regional and global levels.

31. In short, the requirements for each Party or Parties set forth in this article are not subject to the existence of international trade in the chemicals, but rather inclusive of a wide range of measures contributing to the implementation of the Convention.

#### **M. Technical assistance**

32. Pursuant to Article 16 concerning technical assistance, the Parties are required, taking into account in particular the needs of developing countries and countries with economies in transition, to cooperate in promoting technical assistance for the development of the infrastructure and the capacity necessary to manage chemicals to enable implementation of the Convention. Parties with more advanced programmes for regulating chemicals are expected to provide technical assistance, including training, to other Parties in developing their infrastructure and capacity to manage chemicals throughout their life-cycle. The provision of technical assistance, as provided for in this article, is not confined within the areas associated with international trade in chemicals, and it inclusive of assistance for the development of the infrastructure and the capacity necessary to manage chemicals to enable implementation of the Convention.

### **III. Conclusion**

33. Given the above, it may be concluded that, while international trade as it relates to certain hazardous chemicals is a primary concern of the Convention, the Convention also envisages a wide range of measures to facilitate information exchange about their characteristics, provide for a national decision-making process on their import and export and disseminate these decisions to Parties, as well as related measures designed to contribute to its ultimate objective of protecting human health and the environment from potential harm from those chemicals and contributing to their environmentally sound use.

34. More specifically, the existence of ongoing international trade does not constitute a prerequisite for the initiation of information exchange on banned or severely restricted chemicals or severely hazardous pesticide formulations, based on the final regulatory actions of individual Parties relating to those chemicals or formulations, or for the submission of relevant information concerning those chemicals or formulations to the Chemical Review Committee.

35. To the extent that the criteria contained in Annex II are applied by the Chemical Review Committee for consideration of the listing or removal of banned or severely restricted chemicals, the Chemical Review Committee needs to take into account, among other points, whether there is evidence of ongoing international trade in the chemicals. This, however, should be viewed in the overall context of considering a sufficiently broad basis to merit listing the chemicals in Annex III or removing them from it.

36. Regarding the obligations relating to the export of chemicals listed in Annex III and export notifications, although the existence of ongoing international trade is not a prerequisite vis-à-vis the entirety of the relevant provisions, certain parts of the provisions are applicable when there is the existing international trade in such chemicals.