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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
Fourth meeting
Rome, 27–31 October 2008
Item 5 (a) of the provisional agenda*
Implementation of the Convention: status of implementation**

Ensuring the continued effectiveness of the Rotterdam Convention

Note by the Secretariat

1. During the discussion of chrysotile asbestos at the third meeting of the Conference of the Parties, many representatives expressed their disappointment that no consensus had been reached on listing that chemical in Annex III of the Rotterdam Convention, even though the Chemical Review Committee had found that it satisfied the criteria for doing so, suggesting that it set an unfortunate precedent with implications for the Convention's continued effectiveness.
2. In the light of that discussion and in the interest of ensuring the Convention's continued effectiveness, the Bureau requested the Secretariat to prepare a thought-starter paper that would describe possible approaches within the framework of the Convention, setting out the possible advantages and disadvantages of each, as a contribution to the discussion at the fourth meeting of the Conference of the Parties on chemicals recommended for listing in Annex III by the Chemical Review Committee but on which the Conference of the Parties is unable to reach consensus.
3. Annexed to the present note is a paper prepared by the Secretariat in response to that request. The paper does not set out an exhaustive list of possible approaches, nor is it intended to suggest that any particular approach is preferable. Rather it is intended to catalyse discussion between the Parties on possible ways forward. It is not meant to preclude consideration of any other approaches that Parties might envisage.

* UNEP/FAO/RC/COP.4/1.

4. The Conference of the Parties may wish:

(a) To consider the annexed thought-starter paper as a basis for a discussion at the fourth meeting of the Conference of the Parties on possible approaches to addressing the issue of lack of consensus on chemicals recommended by the Chemical Review Committee for listing in Annex III;

(b) Presuming that the overall objective would be to continue to strive for consensus on the inclusion of chemicals in Annex III, to consider at which point in the decision-making process any alternative measures might be invoked for individual chemicals.

Annex

Ensuring the continued effectiveness of the Rotterdam Convention

Background

1. The chemicals listed in Annex III of the Rotterdam Convention are subject to the Prior Informed Consent (PIC) procedure. That procedure, one of the Convention's key provisions, is a mechanism for obtaining formally and disseminating the decisions of importing Parties as to whether they wish to receive future shipments of chemicals listed in Annex III of the Convention and for ensuring compliance with those decisions by exporting Parties.
2. Chemicals are listed in Annex III by decisions of the Conference of the Parties based on the recommendations of the Chemical Review Committee. Paragraph 5 of article 22 states that decisions to amend Annex III are to be taken by consensus. At its third meeting, the Conference of the Parties did not reach consensus on listing chrysotile asbestos in Annex III. Many representatives expressed their disappointment in that regard, saying that it was an unfortunate precedent that had implications for the Convention's continued effectiveness and that it restricted the available information on the basis of which Parties, particularly those with developing or transitional economies, could make informed decisions on the use of that chemical (UNEP/FAO/RC/COP.3/26, paragraph 75).
3. In the light of the outcome on chrysotile asbestos and in the interest of ensuring the Convention's continued effectiveness, the Bureau requested the Secretariat to prepare a thought-starter paper that would set out possible approaches within the framework of the Convention for enabling the inclusion of chemicals in Annex III of the Convention other than by consensus, describing the possible advantages and disadvantages of each, for possible discussion by the Conference of the Parties at its fourth meeting.
4. In reviewing the approaches proposed or any others that it might identify, the Conference of the Parties may wish to consider at which point in the decision-making process such a measure could be invoked. For example, it could be invoked at the same meeting of the Conference of the Parties at which a recommendation to list a chemical in Annex III and adopt a decision guidance document is first considered or at a subsequent meeting of the Conference of the Parties with a view to promoting continuing negotiation between Parties during the interim period.

Introduction

5. The present paper lays the groundwork for discussion of possible approaches to addressing the issue of lack of consensus at the Conference of the Parties on chemicals recommended by the Chemical Review Committee for listing in Annex III by briefly describing two possible approaches within the framework of the Convention. There may be other approaches that the Conference may wish to consider.
6. The first approach involves amending the decision-making process for the addition of chemicals to Annex III of the Convention, while the second proposes the possible creation of a new annex for those chemicals on which the Conference of the Parties cannot reach consensus on listing in Annex III. A list of issues to consider is also presented for each approach.

Listing chemicals in Annex III of the Rotterdam Convention

7. Article 22 sets out the provisions applying to the adoption and amendment of annexes to the Convention. Paragraph 5 explicitly states that decisions to amend Annex III are to be taken by consensus. A change to the existing decision-making procedure would therefore require an amendment to the Convention.
8. Article 21 sets out the process to be followed in amending the Convention. Any Party may propose amendments to the Convention, which are to be communicated to all Parties at least six months before the meeting at which they are proposed for adoption. Paragraph 3 states that an amendment can be adopted by a three-fourths majority vote of the Parties present and voting at that meeting. Paragraph 5 further states that such amendments will enter into force for the Parties having accepted it on the ninetieth day after the date of deposit of instruments of ratification, acceptance or approval by at least three-fourths of the Parties before it would enter into force for those Parties.

Issues to consider

9. The nature of the amendment to the decision-making process (the alternative to the present requirement for consensus) requires further consideration. The simplest approach may be to bring the process for the inclusion of chemicals in Annex III into line with that for amending other annexes as set out in paragraphs 3 and 4 of article 22.

10. Independent of the amendment to the decision-making process, the following points will also need to be considered:

(a) As of June 2008, there were 120 Parties to the Convention, meaning that 90 ratifications would be necessary for any amendment to the decision-making process to enter into force. The ratification process is generally slow and experience suggests that it could take years for the amendment to enter into force. The possibility that the required number of ratifications might never be achieved must also be borne in mind;

(b) Amending the Convention in this manner would create a dual or parallel system involving those Parties that had ratified the amendment, to which the amended Convention would apply, and those Parties that had not ratified the amendment, to which the original Convention would apply.

Creation of a new annex for chemicals on which consensus is not reached regarding listing in Annex III

11. Paragraph 3 of article 22 sets out the provisions for the adoption of additional annexes to the Convention. In line with paragraphs 1–3 of article 21, a new annex to the Convention may be adopted by a three-fourths majority vote. As stated in subparagraph 3 (b) of article 22, Parties that cannot accept a new annex may opt out of it by so notifying the Depositary within one year of the date on which the annex is adopted. Annexes enter into force one year after adoption for all Parties that have not opted out of them.

12. A new annex could include chemicals that could not be listed in Annex III because of a lack of consensus but for which a three-fourths majority was reached. The annex would enter into force automatically for those Parties that did not opt out within one year from the communication to Parties of its adoption. The annex could provide that the process for including additional chemicals would not require ratification for each new chemical.

Issues to consider

13. The possible obligations with respect to the chemicals listed in a new annex require further consideration. For example, one might wish to establish obligations for chemicals listed in the new annex that are the same as for those presently listed in Annex III (apart from the amendment procedure in paragraph 5 of article 22), that is, to subject the chemicals in the new annex to the PIC procedure. This would create a dual or parallel system involving those Parties that accepted the annex and another for those that opted out. Assuming, however, that only those that have opposed adding chrysotile asbestos to Annex III would opt out, it would be expected that the great majority of Parties would agree to be bound by the obligations of the Convention for these chemicals.

14. Alternatively, chemicals listed in a new annex could be subject to a different set of obligations from those in Annex III, possibly voluntary in nature and focused more on information exchange. Chemicals listed in that new annex could also be moved to Annex III later, should the Conference of the Parties be able to reach consensus on doing so.