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OPERATIONAL PROCEDURES FOR THE INTERIM CHEMICAL REVIEW COMMITTEE

ISSUES ASSOCIATED WITH THE IMPLEMENTATION OF THE OPERATIONAL PROCEDURES:
DETERMINATION OF THE ONGOING TRADE IN CHEMICALS

Note by the secretariat

1. The purpose of the present note is to prepare a proposal for submission to the Interim Chemical Review Committee on determining whether or not there is evidence of ongoing international trade in chemicals proposed for inclusion in the Rotterdam Convention on the Prior Informed Consent procedure for certain hazardous chemicals and pesticides in international trade.

A. Background

2. The Rotterdam Convention requires that, when the secretariat has received notifications of final regulatory action to ban or severely restrict a chemical from each of two interim prior informed consent (PIC) regions, that it has verified meet the requirements of Annex I, it forward them to the Interim Chemical Review Committee for review based on the criteria in Annex II.

3. One of the criteria in Annex II considered by the Committee in determining whether the final regulatory action provides a sufficiently broad basis to merit listing of the chemical in annex III, is whether there is evidence of ongoing international trade in the chemical (Annex II, para.(c) (iv)).

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4. At its second session the Committee agreed that, when forwarding notifications for their review, the secretariat should initiate collection of information on international trade in the chemical (UNEP/FAO/PIC/ICRC.2/11, para. 28 (e)). No guidance was provided as to the nature of the information required by the Committee or how it might be collected.

B. Defining the problem

5. The challenge is to determine the sort of information that can be considered as evidence of international trade, where this information might be found and how the collection of this information might be routinely incorporated into the process for drafting decision guidance documents adopted by the Intergovernmental Negotiating Committee at its seventh session (decision INC-7/6).

6. The process for collection of this information will need to be as simple and straightforward as possible as in future there may be several chemicals under consideration at any given time. It will also be important that the process is open and transparent with clearly defined time-lines and requirements, in order that the information collected will be a sufficient basis for the work of the Committee.

7. The approach taken for pesticides and industrial chemicals may be different, reflecting the way in which these types of chemicals are regulated.

1. Type of information to be collected

8. The clearest evidence of movement in trade would be to collect information on imports and exports from the countries reporting the regulatory actions. The notification of final regulatory action form (section 2.5.3) requests that, where available, countries specify the quantity in metric tons of the chemical produced, imported, exported and used annually, with the most recent data, specifying period and year(s). For pesticides they are to estimate the quantity of active ingredients, while for formulated products they are asked to calculate the volume of active ingredients in individual products and include this in the total quantity. In general the level of detail provided is limited. Where information is included it is frequently limited to a statement of when a chemical was last imported or exported and in some cases the amount.

9. Depending on the timeliness of this information, a positive response regarding import or export of a chemical (date and where possible the amount) could constitute evidence of ongoing international trade. In the case of pesticides, which may not be imported or exported by a country annually, information from the preceding two or three years could constitute evidence of trade.

10. In considering this information it may also be important to determine if the regulatory action had an effect on the imports or exports. If the country is no longer exporting the chemical as a result of the regulatory action, the international trade may have stopped. This would provide the starting point for follow-up to determine if trade is ongoing.

2. Potential sources of information

11. The most direct source of information on whether or not a chemical is moving in trade might be the designated national authorities in the notifying countries. Two possible scenarios should be considered, however:

(a) Where the notification concerns a recent regulatory action the import or export information provided by the notifying country could be taken as evidence of ongoing trade;

(b) Where the regulatory action is one that was taken some five or more years previously, it is unlikely that the information provided by the notifying country reflects the current trade status of the chemical in question.

12. Where such trade-related information is not available from the notifying country, consideration is needed on alternative sources. The potential sources include other national Governments, industry (individual manufacturers and national, regional and international industry associations), non-governmental organizations and certain intergovernmental organizations.

(a) The pesticide industry generally has good knowledge of whether or not individual active ingredients are still manufactured and traded. It may be that the global industry association could be a single window for seeking information on specific active ingredients. A positive response that a chemical is in fact still manufactured and traded could be taken as sufficient evidence of ongoing trade. It needs to be recognized that there are individual companies and national associations that are not members of the global industry associations. As a result, a negative response could not necessarily be taken as an indication that the chemical is no longer manufactured or traded and would require follow-up.

It is not clear to what extent the industrial chemicals industry associations have access to information on specific chemicals that may be produced by their members;

(b) National Governments that are still using the chemical in question should be able to provide information on whether or not they manufacture or import the chemicals they are using. If they are manufacturing the chemical they should also be in a position to indicate whether or not they are exporting the chemical.

As the regulatory infrastructure in most countries for pesticides and industrial chemicals is substantially different, the likelihood of obtaining this information (directly or indirectly) from national Governments for these two groups of chemicals may not be equal. For example, for pesticides, many countries have a registration or approval system that may facilitate their reporting on manufacturing or trade in these chemicals. In contrast, there is frequently no equivalent system in place for industrial chemicals that would make it difficult for developing countries to provide information on manufacturing or trade to the Committee;

(c) Non-governmental organizations and others may have information on chemicals in use that could assist in follow-up with specific countries;

(d) Publications such as the *Pesticide Manual* or the *WHO Recommended Classification of Pesticides by Hazard* contain information on pesticide active ingredients believed to be obsolete or discontinued for use as a pesticide.

13. By keeping the question to a simple yes or no regarding ongoing manufacture and trade it may be possible to avoid issues associated with confidentiality.

C. Proposed process for determining evidence of trade

14. The process for determining whether or not there is ongoing international trade in a chemical must be as simple and pragmatic as possible, in order that it does not needlessly complicate the process for the development of decision guidance documents adopted by the Intergovernmental Negotiating Committee at its seventh session.

15. The simplest solution would be to have trade (import/export) information provided by countries as part of their submitted notifications of regulatory action. Where no information on imports or exports is provided by the notifying countries specific follow-up with industry associations and designated national authorities in other countries will be needed.

16. When the secretariat has received at least one notification from each of two PIC regions, the collection of information on evidence of trade could be undertaken from all possible sources simultaneously, as follows:

(a) For notifying countries, as a first step, the guidance on completing the notification form should make countries aware of the importance of including information on their imports and exports. Second, as part of the letter sent to countries to verify the completeness of their submitted notification of final regulatory action, they'll be informed that, once a second notification from another PIC region is provided, they will be requested to provide, where available, information on:

- (i) Whether or not they manufactured the chemical and, if so, whether they continue to export it;
- (ii) The last time that they imported the chemical;

(b) The relevant industry association (pesticide or industrial chemical) will be requested to provide a response as to whether the particular chemical is manufactured and traded. A positive response would be taken as evidence of trade. A negative response would require specific follow-up;

(c) A general call for information on continued use, import and export of the chemical could be posted on the Rotterdam website or included in the PIC circular each time that there were two verified notifications from two regions. This would also allow non-governmental organizations and others to provide information on evidence of continued production, use or trade.

17. Evidence of ongoing international trade for the chemical will be provided to the Committee for its consideration, along with the verified notifications of final regulatory action and supporting documentation submitted by the notifying countries.

D. Next steps

18. The Committee may wish to review the problem as defined in the present paper and consider whether the process proposed here for determining trade in chemicals represents a basis on which to proceed, on the understanding that the process will be amended as experience is gained in its implementation.
