106TH CONGRESS, 2d Session | SENATE | TREATY DOC. 106–21

ROTTERDAM CONVENTION CONCERNING HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

ROTTERDAM CONVENTION ON THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE, WITH ANNEXES, DONE AT ROTTERDAM, SEPTEMBER 10, 1998

FEBRUARY 9, 2000.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and order to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *February 9, 2000.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, with Annexes, done at Rotterdam, September 10, 1998. The report of the Department of State is enclosed for the information of the Senate.

The Convention, which was negotiated under the auspices of the United Nations Environment Program and the United Nations Food and Agriculture Organization, with the active participation of the United States, provides a significant and valuable international tool to promote sound risk-based decisionmaking in the trade of certain hazardous chemicals. Building on a successful voluntary procedure, the Convention requires Parties to exchange information about these chemicals, to communicate national decisions about their import, and to require that exports from their territories comply with the import decisions of other Parties.

The United States, with the assistance and cooperation of industry and nongovernmental organization, plays an important international leadership role in the safe management of hazardous chemicals and pesticides. This Convention, which assists developing countries in evaluating risks and enforcing their regulatory decisions regarding trade in such chemicals, advances and promotes U.S. objectives in this regard. All relevant Federal agencies support early ratification of the Convention for this reason, and we understand that the affected industries and interest groups share this view.

I recommend that the Senate give early and favorable consideration to the Convention and give its advice and consent to ratification, subject to the understanding described in the accompanying report of the Secretary of State.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, September 24, 1999.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, with Annexes, done at Rotterdam September 30, 1998. The United States signed the Convention, subject to ratification, on September 11, 1998. I recommend that the Convention be transmitted to the Senate for its advice and consent to ratification.

Advances in chemical synthesis and production in this century have been responsible for many important benefits currently enjoyed by modern society. The introduction and use of chemicals and pesticides into the environment, however, also carries with it inherent risks. The United States has made great strides to address these risks since the dangers of indiscriminate pesticide use were highlighted some thirty-five years ago. Each year, chemical manufacturers and developed-country governments such as the United States spend many millions of dollars to test and assess chemicals to ensure that they can be managed in a sound manner once they are introduced into commerce. The Environmental Protection Agency and other state and federal agencies employ a great number of experts to decide which chemicals can be used safely and to ensure their safe use.

Outside the developed world, however, countries simply do not have these resources at their disposal, and the United States and other developed countries have long recognized the critical role they play in sharing their experience and knowledge with developing countries and to help alert them to significant chemical risks. With the current pace of globalization and associated increases in chemical trade, the need to promote good risk-based decision-making is also increasing rapidly in many countries.

The Rotterdam Convention is a substantial new tool to promote this goal. The Convention establishes a procedure to promote shared responsibility in the international trade of certain hazardous chemicals through the exchange of information about these chemicals and the communication of national decisions about their import and export. Under the Convention, each Party agrees to inform the Secretariat of its national decisions regarding the import of certain listed chemicals, and each Party is required to ensure that exports from its territory comply with those import decisions. This mechanism is known as the prior informed consent, or "PIC",

procedure. The Convention also required each exporting Party to provide export notifications to importing Parties with respect to each chemical that the exporting Party has banned or severely restricted under its domestic law.

The Convention builds on voluntary guidelines for the exchange of information on chemicals in international trade and on a parallel international code of conduct for the distribution and use of pesticides (the "voluntary procedure"). The United States helped develop the voluntary procedure, which was designed to give developing countries information about risks posed by especially hazardous chemicals and to assist them in enforcing their decisions regarding trade in such chemicals. Over 150 countries currently participate in the voluntary procedure, which has been operational since 1992. Major chemical producers and environmental groups from the United States and abroad have supported the voluntary procedure and endorsed its being strengthened into binding obligations. The Convention includes in its original list of chemicals subject to the PIC procedure the 27 chemicals that were listed in the voluntary procedure at the time the Convention was concluded.

The United States played a leading role in negotiating the Convention, which was developed under the joint auspices of the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Environment Program (UNEP). Throughout the negotiations, the Department of State and interested federal agencies, including the Environmental Protection Agency, the Department of Commerce, the United States Trade Representative, and the Department of Agriculture, consulted with the Congress, industry, and environmental organizations. The relevant federal agencies support expeditious ratification of the Convention by the United States. The Convention has the support of U.S. industry and environmental organizations.

The following analysis reviews the Convention's key provisions and sets forth the proposed understanding of the United States with respect to several elements.

PREAMBLE

The Preamble emphasizes that the Convention shall not be interpreted as implying in any way a change in the rights and obligations of a Party under any existing international agreement applying to chemicals in international trade or to environmental protection. The text thus clarifies that the convention does not affect the rights and obligations created by agreements such as the Agreement establishing the World Trade Organization. This text was agreed to in recognition of the fact that the Convention can be implemented by Parties in a manner fully consistent with such agreements.

ARTICLE 1 (OBJECTIVE)

This article sets out the objective of the Convention, which is to be pursued in accordance with the specific operative provisions. The objective is to promote shared responsibility in the international trade of certain hazardous chemicals in order to protect human health and the environment.

ARTICLE 2 (DEFINITIONS)

Paragraph (a) expressly provides that the term "chemical" includes a substance "whether by itself or in a mixture or preparation." In defining a "chemical," paragraph (a) further provides that the term consists of two categories: pesticide (including severely hazardous pesticide formulations) and industrial. These categories are significant because the responses of importing countries are tied to a specific category of use, as are the obligations of exporting Parties under the Convention. This approach is consistent with the distinction between pesticides and industrial chemicals under U.S. law, and with the implementation of the voluntary procedure in the United States.

Paragraph (b) defines a "banned chemical" as a chemical all uses of which within the pesticide and/or industrial categories have been prohibited in order to protect human health or the environment. Paragraph (c) defines a "severely restricted chemical" as a chemical virtually all use of which within the pesticide and/or industrial categories has been prohibited, but for which certain specific uses remain allowed. These definitions expressly include a chemical that has been refused approval or withdrawn by industry when there is clear evidence that such action has been taken in order to protect human health or the environment. This definition reflects the fact that chemicals are sometimes withdrawn prior to a regulatory determination, based on the anticipation that they would be subject to a ban or severe restriction if the regulatory process were carried through to conclusion.

Paragraph (d) defines a "severely hazardous pesticide formulation" as "a chemical formulated for pesticidal use that produces severe health or environmental effects observable within a short period of time after single or multiple exposure, under conditions of use." In developed countries, such formulations are likely to be subject to stringent handling requirements, such as application by means of closed tractor cabs or fully enclosed suits with respirators. These requirements would not give rise to a definition as a "severely restricted chemical" under the Convention, but nonetheless may be difficult or impossible to put into effect in many developing countries. The Convention therefore sets out a specific procedure for the inclusion of such formulations in the PIC procedure.

Paragraph (e) defines "final regulatory action" as an action the purpose of which is to ban or severely restrict a chemical, and which does not require subsequent action. As discussed below, a Party's adoption of a "final regulatory action" with respect to a particular chemical gives rise to certain notification requirements. This definition makes it clear that interim domestic regulatory measures do not trigger such obligations.

ARTICLE 3 (SCOPE OF THE CONVENTION)

This article specifies that the Convention applies to banned or severely restricted chemicals and severely hazardous pesticide formulations. It also specifies that the Convention does not apply to: narcotic drugs and psychotropic substances; radioactive materials; wastes; chemical weapons; pharmaceuticals, including human and veterinary drugs; chemicals used as food additives; food; and

chemicals in quantities not likely to affect human health or the environment, provided they are imported for the purpose of research or analysis or by an individual for his or her personal use in quantities reasonable for such use.

ARTICLE 4 (DESIGNATED NATIONAL AUTHORITIES)

Each Party shall designate one or more national authorities to perform the administrative functions required by this Convention. In the United States, the Assistant Administrator for Prevention, Pesticides and Toxic Substances of EPA currently serves as the designated national authority for the voluntary PIC procedure, and it is anticipated that this arrangement would continue under the Convention.

ARTICLE 5 (PROCEDURES FOR BANNED OR SEVERELY RESTRICTED CHEMICALS)

Article 5 describes the mechanism for global notification of national decisions to ban or severely restrict chemicals. Under this mechanism, each Party shall notify the Secretariat when it adopts a final regulatory action to ban or severely restrict a chemical. The notification shall include certain information regarding both the chemical and the regulatory action, such as the basis for the regulatory action. The information requirements for such notifications are contained in Annex 1. In addition, this article sets out the procedure by which a banned or severely restricted chemical is considered for inclusion in the list of chemicals subject to the PIC procedure (Annex III).

Pursuant to paragraph 5, when the Secretariat has received notifications regarding a national decision to ban or severely restrict a particular chemical from at least two countries from different regions of the world, it forwards these notifications to the Chemical Review Committee established under the Convention. This two-region process ensures that chemicals of concern to only one region will not be subject to consideration for inclusion in the globally binding PIC procedure. The composition of the regions will be designated in a future decision of the conference of the Parties, based on the regional groupings used in the FAO.

Following transmittal of the notifications pursuant to paragraph 5, the Chemical Review Committee then considers the chemical for possible inclusion in the PIC procedure. Paragraph 6 requires that, in reviewing a notification, the Committee consider several criteria, including whether the regulatory action has been taken on the basis of a risk evaluation, and whether the considerations giving rise to the regulatory action are based on limited geographical or other circumstances. The criteria are set out in Annex II. Based on its review, the Chemical Review Committee then makes a recommendation to the Conference of the Parties whether the candidate chemical should be added to Annex III and thereby made subject to the PIC procedure.

ARTICLE 6 (PROCEDURES FOR SEVERELY HAZARDOUS PESTICIDE FORMULATIONS)

Article 6 establishes distinct procedures and criteria for considering inclusion of severely hazardous pesticide formulations in Annex III on the basis of actual problems in developing countries or in countries with economies in transition. Under paragraph 1, any developing country Party or Party with an economy in transition that is experiencing problems caused by a severely hazardous pesticide formulation may propose it for listing in Annex III. The proposal shall contain certain specified information, including a description of incidents related to the substance, such as adverse effects and the way in which the formulation was used, and any regulatory measure taken or intended to be taken by the proposing Party in response to these incidents.

Paragraph 2 requires the Secretariat to verify whether the proposal contains the required information, and, if so, to forward within six months a summary of the information to all Parties. Paragraph 3 further requires the Secretariat to collect certain additional information, including, for example, information on the properties of the formulation, the existence of handling restrictions in other States, and information on incidents in other States.

Pursuant to paragraph 5, when the requirements of paragraphs 2 and 3 have been fulfilled, the Chemical Review Committee reviews whether the pesticide formulation merits inclusion in Annex III. As with a banned or severely restricted chemical, the Convention specifies certain criteria that the Committee shall consider in its review, in order to help Parties determine the reliability and seriousness of incident reports and the degree to which they support the pesticide formulation's listing in Annex III. The criteria include, for example, the reliability of the evidence linking the formulation to the reported incidents, and the relevance of such incidents to other States with similar conditions. The criteria are set out in part 3 of Annex IV. Based on this review, the Chemical Review Committee then recommends to the Conference of the Parties whether the proposed pesticide formulation should be added to Annex III.

ARTICLE 7 (LISTING OF CHEMICALS IN ANNEX III)

This article sets out the procedure for the addition of a chemical to Annex III. For each chemical that the Chemical Review Committee decides to recommend for listing in Annex III, it shall prepare a decision guidance document and forward that document along with its recommendation to the Conference of the Parties.

The Conference of the Parties then makes a decision whether the chemical is to be listed in Annex III. Pursuant to paragraph 5(b) of Article 22, those decisions are taken by consensus and become binding on all Parties. This special procedure ensures that there is widespread support for the listing of a particular chemical, and that the list of chemicals that are subject to the PIC procedure is uniform for all Parties.

ARTICLE 8 (CHEMICALS IN THE VOLUNTARY PRIOR INFORMED CONSENT PROCEDURE)

As noted above, Annex III currently consists of the 27 chemicals that had been subject to the voluntary PIC procedure at the time the Convention was concluded. Because it was intended that the voluntary procedure would continue during the period before the convention's entry into force, however, Article 8 ensures that any new chemicals added to the voluntary procedure during that interim period will be fully considered before inclusion in the Convention. As with all decisions regarding the addition of new chemicals to Annex III, pursuant to paragraph 5(b) of Article 22, such decisions will be taken by the Conference of the Parties by consensus.

ARTICLE 9 (REMOVAL OF THE CHEMICALS FROM ANNEX III)

Article 9 sets forth the procedure for proposing the removal of a chemical from Annex III. A Party may submit information that was not available at the time the decision to list a chemical was made. The procedure under which such a proposal is considered closely parallels the procedure for adding chemicals, as set forth in Articles 6, 7, and 8.

ARTICLE 10 (OBLIGATIONS IN RELATION TO IMPORTS OF CHEMICALS LISTED IN ANNEX III)

Article 10 sets forth obligations on Parties with respect to the import of chemicals listed in Annex III. Pursuant to paragraph 2, for each chemical listed in Annex III, each Party shall transmit a response with its decision concerning the future import of that chemical; that decision will form the basis of exporting Party obligations under the PIC procedure. An importing Party's responses shall consist of: a decision to consent to import; a decision not to consent to import; or a decision to consent to import only subject to specified conditions. These responses may be either final decisions or interim responses.

As discussed above, pursuant to paragraph 5, a Party's response shall relate to the category or categories under which the chemical is listed in Annex III. For example, for those chemicals that are listed in Annex III under the pesticide category, decisions with respect to the import of the chemical shall apply only to uses as pesticides.

Paragraph 9 requires Parties that prohibit or condition the import of a chemical listed in Annex III to simultaneously prohibit or make subject to the same conditions both imports of the chemicals from any source, and domestic production of the chemical for domestic use. This provision thus requires that import decisions under the PIC procedure will have a trade neutral effect.

Paragraph 10 provides that every six months the Secretariat shall inform the Parties of the responses it has received.

ARTICLE 11 (OBLIGATIONS IN RELATION TO EXPORTS OF CHEMICALS LISTED IN ANNEX III)

Article 11 sets forth obligations on exporting Parties with respect to chemicals listed in Annex III. Paragraph 1 requires each Party

to adopt measures to communicate other Parties' import decision responses to those concerned in its jurisdiction and to take appropriate measures to ensure that exporters comply with those importing Party responses. This obligation is similar to current U.S. law requiring U.S. exporters to comply with specifications or directions of importers abroad.

Paragraph 1(c) requires Parties to assist importing countries, upon request and as appropriate, to obtain further information to help them to make responses under Article 10, and to strengthen their capacities to manage chemicals safely. The United States already provides such assistance upon request. The language of this article will give the United States the latitude to determine, from the standpoint of resource allocation and applicable U.S. law, those requests that are appropriate for U.S. assistance.

Paragraph 2 sets forth provisions that govern exports to a Party that has failed to transmit an import response or has transmitted an interim response that does not specify its decision with regard to imports. This provision requires that exporting Parties take steps to ensure that a listed chemical is not exported to a Party that has failed to transmit a response, unless the chemical is registered in the importing Party, there is evidence that the chemical has previously been used or imported there, or the exporter has obtained the importing Party's explicit consent. This grace period for importing countries parallels the approach in the voluntary PIC procedure, and reflects the fact that there may be exceptional circumstances in which certain Parties are unable to provide responses in a timely manner. These obligations remain in effect for a period of one year, beginning six months after the date that the Secretariat has circulated the initial set of responses to the Parties. This "sunset" provision, which is not part of the current voluntary PIC procedure, is designed to impose incentives on countries to ensure that they file import responses pursuant to Article 10.

ARTICLE 12 (EXPORT NOTIFICATION)

Article 12 requires a Party to provide an export notification to the importing Party when a chemical that is banned or severely restricted under the exporting Party's law is exported from its territory. The information required to be contained in these export notifications is set out in Annex V. The export notification shall be provided prior to the first export following adoption of the regulatory action, and, thereafter, before the first export in any calendar year or after a major change in the regulatory status of the chemical. This article also requires importing Parties to acknowledge receipt of the first export notification. In the absence of such acknowledgement, exporting Parties are required to submit a second notification. The second notification does not need to be provided prior to export. This article also provides that the export notification requirement may be waived by the importing Party.

These export notification obligations cease when a chemical has been listed in Annex III and the importing Party has provided an import decision response concerning that chemical. The requirement is based on the principle that importing Parties should be informed if they are receiving exports of chemicals that are banned or severely restricted in the country of export. Certain export notifi-

cation requirements are already in place in the United States and certain other developed countries.

Article 12 does not expressly state whether the obligation to provide export notifications extends to exports of chemicals in a different category (i.e., pesticide or industrial chemical) from the one in which the exporting Party imposed a ban or severe restriction. At the behest of the United States, Canada, Mexico and the European Union, it was made clear during the negotiation, however, that the obligation in article 12 would be fulfilled if a country only required notification of exports in the same category in which the ban or severe restriction had been taken. This category-based approach to export notification is consistent with the approach taken by the United States and several other countries in implementing the voluntary PIC procedure. In order to emphasize this point, I recommend that the following understanding be included in the U.S. instrument of ratification:

> It is the understanding of the United States of America that the notification obligation in Article 12 requires only that an exporting Party provide export notifications with respect to exports in the same category of chemicals in which the exporting Party has imposed a ban or severe restriction, and does not require notifications for exports of chemicals in a different category.

ARTICLE 13 (INFORMATION TO ACCOMPANY EXPORTED CHEMICALS)

Article 13 contains a number of provisions relating to shipping documents, labeling, and safety data sheets for exported chemicals that are either listed in Annex III or banned or severely restricted by an exporting Party. These provisions are in keeping with the purpose of the Convention to provide appropriate information regarding exports of especially hazardous chemicals.

Paragraph 1 encourages the world Customs Organization to assign specific Harmonized System customs codes to chemicals listed in Annex III. This approach has been used in the case of certain other controlled products, and was considered an effective way to use existing mechanisms to help Parties track the levels of PIC chemicals in their territory. Exporting Parties shall require that such codes, if assigned, are included in shipping documents.

Pursuant to paragraph 2, each Party shall require that exports of chemicals that are listed in Annex III or are banned or severely restricted in its territory be subject to certain labeling requirements. The labeling requirements shall ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards. Paragraph 3 provides that a Party may, should it so decide, require that chemicals subject to environmental or health labeling in its territory also be subject to labeling requirements upon export. These labeling requirements are similar to requirements under current U.S. law with respect to pesticide exports.

Paragraph 4 requires that, for chemicals listed in Annex III and chemicals that are banned or severely restricted in its territory that are to be used for occupational purposes, each exporting Party

shall require that a safety data sheet that follows an internationally recognized format is sent to the importer.

ARTICLE 14 (INFORMATION EXCHANGE)

Article 14 contains a number of general provisions designed to facilitate the exchange of information relevant to the objections of the Convention. The Convention will be an important mechanism for helping countries better obtain and use information in making decisions regarding chemicals posing particular risks, and this article is in keeping with that purpose.

Parties that exchange information pursuant to this Convention shall protect any confidential information as mutually agreed. Paragraph 3 lists several categories of information that shall not be regarded as confidential for the purposes of the Convention, including information referred to the Annex 1 (concerning notifications of final regulatory actions). Paragraph 2(b)(iii) of that annex requires that the notifications include an "[e]stimation, where available, of quantities of the chemical produced, imported, exported and used." The negotiating record expressly reflects that negotiators understood this provision to require reasonable reporting of available information on relative quantities of the chemicals produced, imported, exported, and used for the purpose of helping other Parties determine the significance of a Party's final action. For this reason, the United States would generally be able to provide the required information at a level of generality consistent with U.S. law regarding the protection of confidential business information.

ARTICLE 15 (IMPLEMENTATION OF THE CONVENTION)

This article requires each Party to establish the necessary institutional measures to effectively implement the Convention, to ensure that its public has appropriate access to information to hazardous chemicals, and to cooperate in implementation of the Convention. It also provides that the Convention does not restrict the right of a Party to take more protective measures, provided that such measures are consistent with the Convention and in accordance with international law.

ARTICLE 16 (TECHNICAL ASSISTANCE)

This article requires the Parties to cooperate in promoting technical assistance for the development of the capacity to manage chemicals to enable implementation of the Convention.

ARTICLE 17 (NON-COMPLIANCE)

This article provides that the Conference of the Parties shall, as soon as practicable, establish procedures for determining non-compliance with the Convention and for treatment of Parties found to be in non-compliance.

ARTICLE 18 (CONFERENCE OF THE PARTIES)

Article 18 establishes a Conference of the Parties and outlines its duties and functions. It also provides that the Conference of the Parties shall establish the Chemical Review Committee. The Com-

mittee will consist of a limited number of government-designated experts that are appointed by the Conference of the Parties.

ARTICLE 19 (SECRETARIAT)

Article 19 establishes a Secretariat, identifies its functions, and specifies that those functions shall be performed jointly by the Executive Director of UNEP and the Director-General of FAO.

ARTICLE 20 (SETTLEMENT OF DISPUTES)

This article provides that the Parties shall settle disputes through negotiation or other peaceful means. Consistent with many recent environmental agreements, this article also provides for mandatory recourse, at the request of one party to a dispute, to non-binding conciliation. In addition, paragraph 2 provides that a Party may declare that it is prepared to submit to compulsory dispute settlement by arbitration or before the International Court of Justice with respect to Parties that have made similar declarations. I recommend that the United States not make such a declaration.

ARTICLES 21–29 (FINAL CLAUSES)

Article 21 and 22 contain the procedures for amending the Convention and its annexes. An amendment to the Convention requires adoption by a three-fourths majority, and enters into force for those Parties having accepted the amendment on the ninetieth day after the date of deposit of instruments of ratification, acceptance or approval by at least three-fourths of the Parties. New annexes, as well as amendments to all annexes except for Annex III, are proposed and adopted in the same manner as amendments to the Convention. They differ, however, in that they enter into force one year after adoption for all Parties that have not, within that year, indicated their inability to accept them. Article 22 provides that annexes shall be restricted to procedural, scientific, technical or administrative matters; for this reason, it is envisaged that amendments to such annexes would not ordinarily be submitted for the Senate's advice and consent, but rather would be entered into under the existing authority of the Executive.

Paragraph 5 of Article 22 sets out a special procedure for the proposal, adoption, and entry into force of amendments to Annex III, due to the significant obligations attached to the listing of a chemical in Annex III, and the need for all Parties to have identical obligations with respect to that Annex. Amendments to Annex III are to be adopted by the Conference of the Parties by consensus and will enter into force for all Parties on a date to be specified in the relevant decision by the Conference of the Parties.

Article 23 describes voting procedure, including those for regional economic integration organizations. Article 24 specifies the opening of the Convention for signature. Article 25 provides rules governing ratification, acceptance, approval or accession. Article 26 specifies that the Convention will enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession. Article 27 prohibits reservations to the Convention. Article 28 provides for withdrawal by any Party at least three years after the Convention has entered into force for

that Party. Such withdrawal will take effect one year after receipt by the Depository of the notification of withdrawal. Article 29 specifies that the Secretary-General of the United Nations shall be the Depositary.

ANNEX I—INFORMATION REQUIREMENTS FOR NOTIFICATIONS MADE PURSUANT TO ARTICLE 5

Annex I contains information that Parties are required to provide to accompany a notification to the Secretariat of a final regulatory action pursuant to Article 5.

ANNEX II—CRITERIA FOR THE LISTING OF BANNED OR SEVERELY RESTRICTED CHEMICALS IN ANNEX III

Annex II contains detailed criteria to be used by the Chemical Review Committee in determining whether a chemical should be listed in Annex III on the basis of final regulatory actions to ban or severely restrict it. It is associated with the obligations in Article 5.

ANNEX III—CHEMICALS SUBJECT TO THE PRIOR INFORMED CONSENT PROCEDURE

Annex III contains the list of chemicals or classes of chemicals and their use categories that are subject to the Prior Informed Consent procedure. As noted above, at the time the Convention enters into force, Annex III shall consist of the 27 chemicals listed in the annex attached herewith.

ANNEX IV—INFORMATION AND CRITERIA FOR LISTING OF SEVERELY HAZARDOUS PESTICIDE FORMULATIONS IN ANNEX III

This annex sets out the information a Party is required to provide when it proposes the listing of a severely hazardous pesticide formulation, specifies additional information that the Secretariat is required to gather regarding the substance, and sets out criteria that the Chemical Review Committee shall take into account when reviewing whether to recommend the substance for inclusion in Annex III. The annex is associated with the obligations in Article 6.

ANNEX V—INFORMATION REQUIREMENTS FOR EXPORT NOTIFICATION

Annex V sets out the information that shall be contained in export notifications required under Article 12.

Although much of the Convention can be implemented in the United States under existing statutory authority, it is envisaged that certain changes in domestic law would be made before the United States would deposit its instrument of ratification. The United States would likely implement its obligations relating to the pesticide category of chemicals through the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and those relating to the industrial category through the Toxic Substances Control Act (TSCA). These statutes currently provide EPA with some limited authority over the export of particularly hazardous chemicals, but it is envisaged that additional legislative authority will be required

to expeditiously and effectively meet all the Convention's requirements.

The primary legislative changes would include a clarification of EPA's authority to condition or prohibit U.S. exports of Annex III listed chemicals in a manner consistent with the importing Party's import decision response, as required under Article 11. Similarly, additional authority may be required in order to ensure full compliance with the export notification requirements for banned or severely restricted chemicals that are set forth in Article 12, and with the labeling and safety data sheet requirements in Article 13. Certain other technical adjustments to existing authority may be required; all necessary changes will be included in the Administration's proposal for legislation to implement the Convention, which will be provided in due course.

To date, 62 states have signed the Convention; no state has yet acceded to or ratified the Convention. Several states, including many members of the Organization for Economic Cooperation and Development, are expected to deposit instruments of accession or ratification soon. Early U.S. ratification would provide valuable momentum to bring the Convention into force and would demonstrate the continued commitment of the United States to cooperation with the international community on chemicals management issues. It would also enhance the international leadership role of the United States related to the safe management of hazardous chemicals and pesticides, particularly during this important period when the details and implementation of the Convention are being discussed internationally. Finally, it would ensure that the United States is a Party when the Convention enters into force, when many of the critical decisions relating to its implementation will be made. For example, only Parties will be able to designate experts to sit on the Chemical Review Committee, which will play an important role in considering the addition of chemicals to Annex III.

I recommend that the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, with Annexes, be transmitted to the Senate for its advice and consent as soon as possible.

Respectfully submitted.

STROBE TALBOT.

ROTTERDAM CONVENTION ON THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE

UNITED NATIONS
1998

ROTTERDAM CONVENTION ON THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE

The Parties to this Convention,

Aware of the harmful impact on human health and the environment from certain hazardous chemicals and pesticides in international trade,

Recalling the pertinent provisions of the Rio Declaration on Environment and Development and chapter 19 of Agenda 21 on "Environmentally sound management of toxic chemicals, including prevention of illegal international traffic in toxic and dangerous products",

Mindful of the work undertaken by the United Nations Environment Programme (UNEP) and the Food and Agriculture Organization of the United Nations (FAO) in the operation of the voluntary Prior Informed Consent procedure, as set out in the UNEP Amended London Guidelines for the Exchange of Information on Chemicals in International Trade (hereinafter referred to as the "Amended London Guidelines") and the FAO International Code of Conduct on the Distribution and Use of Pesticides (hereinafter referred to as the "International Code of Conduct"),

Taking into account the circumstances and particular requirements of developing countries and countries with economies in transition, in particular the need to strengthen national capabilities and capacities for the management of chemicals, including transfer of technology, providing financial and technical assistance and promoting cooperation among the Parties,

Noting the specific needs of some countries for information on transit movements,

Recognizing that good management practices for chemicals should be promoted in all countries, taking into account, inter alia, the voluntary standards laid down in the International Code of Conduct and the UNEP Code of Ethics on the International Trade in Chemicals,

Desiring to ensure that hazardous chemicals that are exported from their territory are packaged and labelled in a manner that is adequately protective of human health and the environment, consistent with the principles of the Amended London Guidelines and the International Code of Conduct,

Recognizing that trade and environmental policies should be mutually supportive with a view to achieving sustainable development,

Emphasizing that nothing in this Convention shall be interpreted as implying in any way a change in the rights and obligations of a Party under any existing international agreement applying to chemicals in international trade or to environmental protection,

Understanding that the above recital is not intended to create a hierarchy between this Convention and other international agreements,

Determined to protect human health, including the health of consumers and workers, and the environment against potentially harmful impacts from certain hazardous chemicals and pesticides in international trade,

HAVE AGREED AS FOLLOWS:

Article 1

Objective

The objective of this Convention is to promote shared responsibility and cooperative efforts among Parties in the 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.

Article 2

Definitions

For the purposes of this Convention:

(a) "Chemical" means a substance whether by itself or in a mixture or preparation and whether manufactured or obtained from nature, but does not include any living organism. It consists of the following categories: pesticide (including severely hazardous pesticide formulations) and industrial;

(b) "Banned chemical" means a chemical all uses of which within one or more categories have been prohibited by final regulatory action, in order to protect human health or the environment. It includes a chemical that has been refused approval for first-time use or has been withdrawn by industry either from the domestic market or from further consideration in the domestic approval process and where there is clear evidence that such action has been taken in order to protect human health or the environment;

(c) "Severely restricted chemical" means a chemical virtually all use of which within one or more categories has been prohibited by final regulatory action in order to protect human health or the environment, but for which certain specific uses remain allowed. It includes a chemical that has, for virtually all use, been refused for approval or been withdrawn by industry either from the domestic market or from further consideration in the domestic approval process, and where there is clear evidence that such action has been taken in order to protect human health or the environment;

(d) "Severely hazardous pesticide formulation" means a chemical formulated for pesticidal use that produces severe health or environmental effects observable within a short period of time after single or multiple exposure, under conditions of use;

(e) "Final regulatory action" 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;

(f) "Export" and "import" mean, in their respective connotations, the movement of a chemical from one Party to another Party, but exclude mere transit operations;

(g) "Party" means a State or regional economic integration organization that has consented to be bound by this Convention and for which the Convention is in force;

(h) "Regional economic integration organization" means an organization constituted by sovereign States of a given region to which its member States

have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Convention;

(i) "Chemical Review Committee" means the subsidiary body referred to in paragraph 6 of Article 18.

Article 3

Scope of the Convention

1. This Convention applies to:

(a) Banned or severely restricted chemicals; and

(b) Severely hazardous pesticide formulations.

2. This Convention does not apply to:

(a) Narcotic drugs and psychotropic substances;

(b) Radioactive materials;

(c) Wastes;

(d) Chemical weapons;

(e) Pharmaceuticals, including human and veterinary drugs;

(f) Chemicals used as food additives;

(g) Food;

(h) Chemicals in quantities not likely to affect human health or the environment provided they are imported:

(i) For the purpose of research or analysis; or

(ii) By an individual for his or her own personal use in quantities reasonable for such use.

Article 4

Designated national authorities

1. Each Party shall designate one or more national authorities that shall be authorized to act on its behalf in the performance of the administrative functions required by this Convention.

2. Each Party shall seek to ensure that such authority or authorities have sufficient resources to perform their tasks effectively.

3. Each Party shall, no later than the date of the entry into force of this Convention for it, notify the name and address of such authority or authorities to the Secretariat. It shall forthwith notify the Secretariat of any changes in the name and address of such authority or authorities.

4. The Secretariat shall forthwith inform the Parties of the notifications it receives under paragraph 3.

Article 5

Procedures for banned or severely restricted chemicals

1. Each Party that has adopted a final regulatory action shall notify the Secretariat in writing of such action. Such notification shall be made as soon as possible, and in any event no later than ninety days after the date on which the final regulatory action has taken effect, and shall contain the information required by Annex I, where available.

2. Each Party shall, at the date of entry into force of this Convention for it, notify the Secretariat in writing of its final regulatory actions in effect at that time, except that each Party that has submitted notifications of final regulatory actions under the Amended London Guidelines or the International Code of Conduct need not resubmit those notifications.

3. The Secretariat shall, as soon as possible, and in any event no later than six months after receipt of a notification under paragraphs 1 and 2, verify whether the notification contains the information required by Annex I. If the notification contains the information required, the Secretariat shall forthwith forward to all Parties a summary of the information received. If the notification does not contain the information required, it shall inform the notifying Party accordingly.

4. The Secretariat shall every six months communicate to the Parties a synopsis of the information received pursuant to paragraphs 1 and 2, including information regarding those notifications which do not contain all the information required by Annex I.

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 meet the requirements of Annex I, it shall forward them to the Chemical Review Committee. The composition of the Prior Informed Consent regions shall be defined in a decision to be adopted by consensus at the first meeting of the Conference of the Parties.

6. The Chemical Review Committee shall 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.

Article 6

Procedures for severely hazardous pesticide formulations

1. 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 shall contain the information required by part 1 of Annex IV.

2. The Secretariat shall, as soon as possible, and in any event no later than six months after receipt of a proposal under paragraph 1, verify whether the proposal contains the information required by part 1 of Annex IV. If the proposal contains the information required, the Secretariat shall forthwith forward to all Parties a summary of the information received. If the proposal does not contain the information required, it shall inform the proposing Party accordingly.

3. The Secretariat shall collect the additional information set out in part 2 of Annex IV regarding the proposal forwarded under paragraph 2.

4. When the requirements of paragraphs 2 and 3 above have been fulfilled with regard to a particular severely hazardous pesticide formulation, the Secretariat shall forward the proposal and the related information to the Chemical Review Committee.

5. The Chemical Review Committee shall review 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, recommend 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.

Article 7

Listing of chemicals in Annex III

1. For each chemical that the Chemical Review Committee has decided to recommend for listing in Annex III, it shall prepare a draft decision guidance document. 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 for which the final regulatory action applies.

2. The recommendation referred to in paragraph 1 together with the draft decision guidance document shall be forwarded to the Conference of the Parties. The Conference of the Parties shall decide whether the chemical should be made subject to the Prior Informed Consent procedure and, accordingly, list the chemical in Annex III and approve the draft decision guidance document.

3. When a decision to list a chemical in Annex III has been taken and the related decision guidance document has been approved by the Conference of the Parties, the Secretariat shall forthwith communicate this information to all Parties.

Article 8

Chemicals in the voluntary Prior Informed Consent procedure

For any chemical, other than a chemical listed in Annex III, that has been included in the voluntary Prior Informed Consent procedure before the date of the first meeting of the Conference of the Parties, the Conference of the Parties shall decide at that meeting to list the chemical in Annex III, provided that it is satisfied that all the requirements for listing in that Annex have been fulfilled.

Article 9

Removal of chemicals from Annex III

1. 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 shall forward the information to the Chemical Review Committee.

2. The Chemical Review Committee shall review the information it receives under paragraph 1. For each chemical that the Chemical Review 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 shall prepare a revised draft decision guidance document.

3. A recommendation referred to in paragraph 2 shall be forwarded to the Conference of the Parties and be accompanied by a revised draft decision guidance document. The Conference of the Parties shall decide whether the chemical should be removed from Annex III and whether to approve the revised draft decision guidance document.

4. When a decision to remove a chemical from Annex III has been taken and the revised decision guidance document has been approved by the Conference of the Parties, the Secretariat shall forthwith communicate this information to all Parties.

Article 10

Obligations in relation to imports of chemicals listed in Annex III

1. Each Party shall implement appropriate legislative or administrative measures to ensure timely decisions with respect to the import of chemicals listed in Annex III.

2. Each Party shall transmit to the Secretariat, as soon as possible, and in any event no later than nine months after the date of dispatch of the decision guidance document referred to in paragraph 3 of Article 7, a response concerning the future import of the chemical concerned. If a Party modifies this response, it shall forthwith submit the revised response to the Secretariat.

3. The Secretariat shall, at the expiration of the time period in paragraph 2, forthwith address to a Party that has not provided such a response, a written request to do so. Should the Party be unable to provide a response, the Secretariat shall, where appropriate, help it to provide a response within the time period specified in the last sentence of paragraph 2 of Article 11.

4. A response under paragraph 2 shall consist of either:

(a) A final decision, pursuant to legislative or administrative measures:

(i) To consent to import;

(ii) Not to consent to import; or

(iii) To consent to import only subject to specified conditions; or

(b) An interim response, which may include:

(i) An interim decision consenting to import with or without specified conditions, or not consenting to import during the interim period;

(ii) A statement that a final decision is under active consideration;

(iii) A request to the Secretariat, or to the Party that notified the final regulatory action, for further information;

(iv) A request to the Secretariat for assistance in evaluating the chemical.

5. A response under subparagraphs (a) or (b) of paragraph 4 shall relate to the category or categories specified for the chemical in Annex III.

6. A final decision should be accompanied by a description of any legislative or administrative measures upon which it is based.

7. Each Party shall, no later than the date of entry into force of this Convention for it, transmit to the Secretariat responses with respect to each chemical listed in Annex III. A Party that has provided such responses under the Amended London Guidelines or the International Code of Conduct need not resubmit those responses.

8. Each Party shall make its responses under this Article available to those concerned within its jurisdiction, in accordance with its legislative or administrative measures.

9. A Party that, pursuant to paragraphs 2 and 4 above and paragraph 2 of Article 11, takes a decision not to consent to import of a chemical or to consent to its import only under specified conditions shall, if it has not already done so, simultaneously prohibit or make subject to the same conditions:

(a) Import of the chemical from any source; and

(b) Domestic production of the chemical for domestic use.

10. Every six months the Secretariat shall inform all Parties of the responses it has received. Such information shall include a description of the legislative or administrative measures on which the decisions have been based, where available. The Secretariat shall, in addition, inform the Parties of any cases of failure to transmit a response.

Article 11

Obligations in relation to exports of chemicals listed in Annex III

1. Each exporting Party shall:

(a) Implement appropriate legislative or administrative measures to communicate the responses forwarded by the Secretariat in accordance with paragraph 10 of Article 10 to those concerned within its jurisdiction;

(b) Take appropriate legislative or administrative measures to ensure that exporters within its jurisdiction comply with decisions in each response no later than six months after the date on which the Secretariat first informs the Parties of such response in accordance with paragraph 10 of Article 10;

(c) Advise and assist importing Parties, upon request and as appropriate:

(i) To obtain further information to help them to take action in accordance with paragraph 4 of Article 10 and paragraph 2 (c) below; and

(ii) To strengthen their capacities and capabilities to manage chemicals safely during their life-cycle.

2. Each Party shall 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:

(a) It is a chemical that, at the time of import, is registered as a chemical in the importing Party; or

(b) 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

(c) Explicit consent to the import has been sought and received by the exporter through a designated national authority of the importing Party. The importing Party shall respond to such a request within sixty days and shall promptly notify the Secretariat of its decision.

The obligations of exporting Parties under this paragraph shall apply with effect from the expiration of a period of six months from the date on which the Secretariat first informs the Parties, in accordance with paragraph 10 of Article 10, that a Party has failed to transmit a response or has transmitted an interim response that does not contain an interim decision, and shall apply for one year.

Article 12

Export notification

1. Where a chemical that is banned or severely restricted by a Party is exported from its territory, that Party shall provide an export notification to the importing Party. The export notification shall include the information set out in Annex V.

2. The export notification shall be provided for that chemical prior to the first export following adoption of the corresponding final regulatory action. Thereafter, the export notification shall 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.

3. An exporting Party shall provide an updated export notification after it has adopted a final regulatory action that results in a major change concerning the ban or severe restriction of that chemical.

4. The importing Party shall acknowledge receipt of the first export notification received after the adoption of the final regulatory action. If the exporting Party does not receive the acknowledgement within thirty days of the dispatch of the export notification, it shall submit a second notification. The exporting Party shall make reasonable efforts to ensure that the importing Party receives the second notification.

5. The obligations of a Party set out in paragraph 1 shall cease when:

(a) The chemical has been listed in Annex III;

(b) The importing Party has provided a response for the chemical to the Secretariat in accordance with paragraph 2 of Article 10; and

(c) The Secretariat has distributed the response to the Parties in accordance with paragraph 10 of Article 10.

Article 13

Information to accompany exported chemicals

1. The Conference of the Parties shall encourage the World Customs Organization to assign specific Harmonized System customs codes to the individual chemicals or groups of chemicals listed in Annex III, as

appropriate. Each Party shall require that, whenever a code has been assigned to such a chemical, the shipping document for that chemical bears the code when exported.

2. Without prejudice to any requirements of the importing Party, each Party shall require that both chemicals listed in Annex III and chemicals banned or severely restricted in its territory are, when exported, subject to labelling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards.

3. Without prejudice to any requirements of the importing Party, each Party may require that chemicals subject to environmental or health labelling requirements in its territory are, when exported, subject to labelling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards.

4. With respect to the chemicals referred to in paragraph 2 that are to be used for occupational purposes, each exporting Party shall require that a safety data sheet that follows an internationally recognized format, setting out the most up-to-date information available, is sent to each importer.

5. The information on the label and on the safety data sheet should, as far as practicable, be given in one or more of the official languages of the importing Party.

Article 14

Information exchange

1. Each Party shall, as appropriate and in accordance with the objective of this Convention, facilitate:

(a) The exchange of scientific, technical, economic and legal information concerning the chemicals within the scope of this Convention, including toxicological, ecotoxicological and safety information;

(b) The provision of publicly available information on domestic regulatory actions relevant to the objectives of this Convention; and

(c) The provision of information to other Parties, directly or through the Secretariat, on domestic regulatory actions that substantially restrict one or more uses of the chemical, as appropriate.

2. Parties that exchange information pursuant to this Convention shall protect any confidential information as mutually agreed.

3. The following information shall not be regarded as confidential for the purposes of this Convention:

(a) The information referred to in Annexes I and IV, submitted pursuant to Articles 5 and 6 respectively;

(b) The information contained in the safety data sheet referred to in paragraph 4 of Article 13;

(c) The expiry date of the chemical;

(d) Information on precautionary measures, including hazard classification, the nature of the risk and the relevant safety advice; and

(e) The summary results of the toxicological and ecotoxicological tests.

4. The production date of the chemical shall generally not be considered confidential for the purposes of this Convention.

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 shall inform all Parties accordingly.

Article 15

Implementation of the Convention

1. Each Party shall take such measures as may be necessary to establish and strengthen its national infrastructures and institutions for the effective implementation of this Convention. These measures may include, as required, the adoption or amendment of national legislative or administrative measures and may also include:

(a) The establishment of national registers and databases including safety information for chemicals;

(b) The encouragement of initiatives by industry to promote chemical safety; and

(c) The promotion of voluntary agreements, taking into consideration the provisions of Article 16.

2. Each Party shall 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.

3. The Parties agree to cooperate, directly or, where appropriate, through competent international organizations, in the implementation of this Convention at the subregional, regional and global levels.

4. Nothing in this Convention shall be interpreted as restricting the right of the Parties to take action that is more stringently protective of human health and the environment than that called for in this Convention, provided that such action is consistent with the provisions of this Convention and is in accordance with international law.

Article 16

Technical assistance

The Parties shall, taking into account in particular the needs of developing countries and countries with economies in transition, cooperate in promoting technical assistance for the development of the infrastructure and the capacity necessary to manage chemicals to enable implementation of this Convention. Parties with more advanced programmes for regulating chemicals should provide technical assistance, including training, to other Parties in developing their infrastructure and capacity to manage chemicals throughout their life-cycle.

Article 17

Non-Compliance

The Conference of the Parties shall, as soon as practicable, develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Convention and for treatment of Parties found to be in non-compliance.

Article 18

Conference of the Parties

1. A Conference of the Parties is hereby established.

2. The first meeting of the Conference of the Parties shall be convened by the Executive Director of UNEP and the Director-General of FAO, acting jointly, no later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference.

3. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party provided that it is supported by at least one third of the Parties.

4. The Conference of the Parties shall by consensus agree upon and adopt at its first meeting rules of procedure and financial rules for itself and any subsidiary bodies, as well as financial provisions governing the functioning of the Secretariat.

5. The Conference of the Parties shall keep under continuous review and evaluation the implementation of this Convention. It shall perform the functions assigned to it by the Convention and, to this end, shall:

(a) Establish, further to the requirements of paragraph 6 below, such subsidiary bodies as it considers necessary for the implementation of the Convention;

(b) Cooperate, where appropriate, with competent international organizations and intergovernmental and non-governmental bodies; and

(c) Consider and undertake any additional action that may be required for the achievement of the objectives of the Convention.

6. The Conference of the Parties shall, at its first meeting, establish a subsidiary body, to be called the Chemical Review Committee, for the purposes of performing the functions assigned to that Committee by this Convention. In this regard:

(a) The members of the Chemical Review Committee shall be appointed by the Conference of the Parties. Membership of the Committee shall consist of a limited number of government-designated experts in chemicals management. The members of the Committee shall be appointed on the basis of equitable geographical distribution, including ensuring a balance between developed and developing Parties;

(b) The Conference of the Parties shall decide on the terms of reference, organization and operation of the Committee;

(c) The Committee shall make every effort to make its recommendations by consensus. If all efforts at consensus have been exhausted, and no consensus

reached, such recommendation shall as a last resort be adopted by a two-thirds majority vote of the members present and voting.

7. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Party to this Convention, may be represented at meetings of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, qualified in matters covered by the Convention, and which has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

Article 19

Secretariat

1. A Secretariat is hereby established.

2. The functions of the Secretariat shall be:

(a) To make arrangements for meetings of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;

(b) To facilitate assistance to the Parties, particularly developing Parties and Parties with economies in transition, on request, in the implementation of this Convention;

(c) To ensure the necessary coordination with the secretariats of other relevant international bodies;

(d) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and

(e) To perform the other secretariat functions specified in this Convention and such other functions as may be determined by the Conference of the Parties.

3. The secretariat functions for this Convention shall be performed jointly by the Executive Director of UNEP and the Director-General of FAO, subject to such arrangements as shall be agreed between them and approved by the Conference of the Parties.

4. The Conference of the Parties may decide, by a three-fourths majority of the Parties present and voting, to entrust the secretariat functions to one or more other competent international organizations, should it find that the Secretariat is not functioning as intended.

Article 20

Settlement of disputes

1. Parties shall settle any dispute between them concerning the interpretation or application of this Convention through negotiation or other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party that is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, with respect to any dispute concerning the interpretation or application

of the Convention, 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

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

3. A Party that is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedure referred to in paragraph 2 (a).

4. A declaration made pursuant to paragraph 2 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

5. The expiry of a declaration, a notice of revocation or a new declaration shall not in any way affect proceedings pending before an arbitral tribunal or the International Court of Justice unless the parties to the dispute otherwise agree.

6. If the parties to a dispute have not accepted the same or any procedure pursuant to paragraph 2, and if they have not been able to settle their dispute within twelve months following notification by one party to another that a dispute exists between them, the dispute shall be submitted to a conciliation commission at the request of any party to the dispute. The conciliation commission shall render a report with recommendations. Additional procedures relating to the conciliation commission shall be included in an annex to be adopted by the Conference of the Parties no later than the second meeting of the Conference.

Article 21

Amendments to the Convention

1. Amendments to this Convention may be proposed by any Party.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. The text of any proposed amendment shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate the proposed amendment to the signatories to this Convention and, for information, to the Depositary.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.

4. The amendment shall be communicated by the Depositary to all Parties for ratification, acceptance or approval.

5. Ratification, acceptance or approval of an amendment shall be notified to the Depositary in writing. An amendment adopted in accordance with paragraph 3 shall 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. Thereafter, the amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of ratification, acceptance or approval of the amendment.

Article 22

Adoption and amendment of annexes

1. Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any annexes thereto.

2. Annexes shall be restricted to procedural, scientific, technical or administrative matters.

3. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:

(a) Additional annexes shall be proposed and adopted according to the procedure laid down in paragraphs 1, 2 and 3 of Article 21;

(b) Any Party that is unable to accept an additional annex shall so notify the Depositary, in writing, within one year from the date of communication of the adoption of the additional annex by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous notification of non-acceptance in respect of an additional annex and the annex shall thereupon enter into force for that Party subject to subparagraph (c) below; and

(c) On the expiry of one year from the date of the communication by the Depositary of the adoption of an additional annex, the annex shall enter into force for all Parties that have not submitted a notification in accordance with the provisions of subparagraph (b) above.

4. Except in the case of Annex III, the proposal, adoption and entry into force of amendments to annexes to this Convention shall be subject to the same procedures as for the proposal, adoption and entry into force of additional annexes to the Convention.

5. The following procedure shall apply to the proposal, adoption and entry into force of amendments to Annex III:

(a) Amendments to Annex III shall be proposed and adopted according to the procedure laid down in Articles 5 to 9 and paragraph 2 of Article 21;

(b) The Conference of the Parties shall take its decisions on adoption by consensus;

(c) A decision to amend Annex III shall forthwith be communicated to the Parties by the Depositary. The amendment shall enter into force for all Parties on a date to be specified in the decision.

6. If an additional annex or an amendment to an annex is related to an amendment to this Convention, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention enters into force.

Article 23

Voting

1. Each Party to this Convention shall have one vote, except as provided for in paragraph 2 below.

2. A regional economic integration organization, on matters within its competence, shall exercise its right to vote with a number of votes equal to

the number of its member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

3. For the purposes of this Convention, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 24

Signature

This Convention shall be open for signature at Rotterdam by all States and regional economic integration organizations on the 11th day of September 1998, and at United Nations Headquarters in New York from 12 September 1998 to 10 September 1999.

Article 25

Ratification, acceptance, approval or accession

1. This Convention shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. It shall be open for accession by States and by regional economic integration organizations from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organization that becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In its instrument of ratification, acceptance, approval or accession, a regional economic integration organization shall declare the extent of its competence in respect of the matters governed by this Convention. Any such organization shall also inform the Depositary, who shall in turn inform the Parties, of any relevant modification in the extent of its competence.

Article 26

Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.

2. For each State or regional economic integration organization that ratifies, accepts or approves this Convention or accedes thereto after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purpose of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of that organization.

Article 27

Reservations

No reservations may be made to this Convention.

Article 28

Withdrawal

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

Article 29

Depositary

The Secretary-General of the United Nations shall be the Depositary of this Convention.

Article 30

Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at Rotterdam on this tenth day of September, one thousand nine hundred and ninety-eight.

Annex I

INFORMATION REQUIREMENTS FOR NOTIFICATIONS MADE PURSUANT TO ARTICLE 5

Notifications shall include:

1. Properties, identification and uses

(a) Common name;

(b) Chemical name according to an internationally recognized nomenclature (for example, International Union of Pure and Applied Chemistry (IUPAC)), where such nomenclature exists;

(c) Trade names and names of preparations;

(d) Code numbers: Chemicals Abstract Service (CAS) number, Harmonized System customs code and other numbers;

(e) Information on hazard classification, where the chemical is subject to classification requirements;

(f) Use or uses of the chemical;

(g) Physico-chemical, toxicological and ecotoxicological properties.

2. Final regulatory action

(a) Information specific to the final regulatory action:

(i) Summary of the final regulatory action;

(ii) Reference to the regulatory document;

(iii) Date of entry into force of the final regulatory action;

(iv) Indication of whether the final regulatory action was taken on the basis of a risk or hazard evaluation and, if so, information on such evaluation, covering a reference to the relevant documentation;

(v) Reasons for the final regulatory action relevant to human health, including the health of consumers and workers, or the environment;

(vi) Summary of the hazards and risks presented by the chemical to human health, including the health of consumers and workers, or the environment and the expected effect of the final regulatory action;

(b) Category or categories where the final regulatory action has been taken, and for each category:

(i) Use or uses prohibited by the final regulatory action;

(ii) Use or uses that remain allowed;

(iii) Estimation, where available, of quantities of the chemical produced, imported, exported and used;

(c) An indication, to the extent possible, of the likely relevance of the final regulatory action to other States and regions;

(d) Other relevant information that may cover:

(i) Assessment of socio-economic effects of the final regulatory action;

(ii) Information on alternatives and their relative risks, where available, such as:

- Integrated pest management strategies;

- Industrial practices and processes, including cleaner technology.

Annex II

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 shall:

(a) Confirm that the final regulatory action has been taken in order to protect human health or the environment;

(b) Establish that the final regulatory action has been taken as a consequence of a risk evaluation. This evaluation shall be based on a review of scientific data in the context of the conditions prevailing in the Party in question. For this purpose, the documentation provided shall demonstrate that:

(i) Data have been generated according to scientifically recognized methods;

(ii) Data reviews have been performed and documented according to generally recognized scientific principles and procedures;

(iii) The final regulatory action was based on a risk evaluation involving prevailing conditions within the Party taking the action;

(c) Consider whether the final regulatory action provides a sufficiently broad basis to merit listing of the chemical in Annex III, by taking into account:

(i) Whether the final regulatory action led, or would be expected to lead, to a significant decrease in the quantity of the chemical used or the number of its uses;

(ii) Whether the final regulatory action led to an actual reduction of risk or would be expected to result in a significant reduction of risk for human health or the environment of the Party that submitted the notification;

(iii) Whether the considerations that led to the final regulatory action being taken are applicable only in a limited geographical area or in other limited circumstances;

(iv) Whether there is evidence of ongoing international trade in the chemical;

(d) Take into account that intentional misuse is not in itself an adequate reason to list a chemical in Annex III.

Annex III

CHEMICALS SUBJECT TO THE PRIOR INFORMED CONSENT PROCEDURE

Chemical	Relevant CAS number(s)	Category
2,4,5-T	93-76-5	Pesticide
Aldrin	309-00-2	Pesticide
Captafol	2425-06-1	Pesticide
Chlordane	57-74-9	Pesticide
Chlordimeform	6164-98-3	Pesticide
Chlorobenzilate	510-15-6	Pesticide
DDT	50-29-3	Pesticide
Dieldrin	60-57-1	Pesticide
Dinoseb and dinoseb salts	88-85-7	Pesticide
1,2-dibromoethane (EDB)	106-93-4	Pesticide
Fluoroacetamide	640-19-7	Pesticide
HCH (mixed isomers)	608-73-1	Pesticide
Heptachlor	76-44-8	Pesticide
Hexachlorobenzene	118-74-1	Pesticide
Lindane	58-89-9	Pesticide
Mercury compounds, including inorganic mercury compounds, alkyl mercury compounds and alkyloxyalkyl and aryl mercury compounds		Pesticide
Pentachlorophenol	87-86-5	Pesticide
Monocrotophos (Soluble liquid formulations of the substance that exceed 600 g active ingredient/l)	6923-22-4	Severely hazardous pesticide formulation
Methamidophos (Soluble liquid formulations of the substance that exceed 600 g active ingredient/l)	10265-92-6	Severely hazardous pesticide formulation

Chemical	Relevant CAS number(s)	Category
Phosphamidon (Soluble liquid formulations of the substance that exceed 1,000 g active ingredient/l)	13171-21-6 (mixture, (E)&(Z) isomers) 23783-98-4 ((Z)-isomer) 297-99-4 ((E)-isomer)	Severely hazardous pesticide formulation
Methyl-parathion (emulsifiable concentrates (EC) with 19.5%, 40%, 50%, 60% active ingredient and dusts containing 1.5%, 2% and 3% active ingredient)	298-00-0	Severely hazardous pesticide formulation
Parathion (all formulations - aerosols, dustable powder (DP), emulsifiable concentrate (EC), granules (GR) and wettable powders (WP) - of this substance are included, except capsule suspensions (CS))	56-38-2	Severely hazardous pesticide formulation
Crocidolite	12001-28-4	Industrial
Polybrominated biphenyls (PBB)	36355-01-8(hexa-) 27858-07-7 (octa-) 13654-09-6 (deca-)	Industrial
Polychlorinated biphenyls (PCB)	1336-36-3	Industrial
Polychlorinated terphenyls (PCT)	61788-33-8	Industrial
Tris (2,3-dibromopropyl) phosphate	126-72-7	Industrial

Annex IV

INFORMATION AND CRITERIA FOR LISTING SEVERELY HAZARDOUS PESTICIDE FORMULATIONS IN ANNEX III

Part 1. Documentation required from a proposing Party

Proposals submitted pursuant to paragraph 1 of Article 6 shall include adequate documentation containing the following information:

(a) Name of the hazardous pesticide formulation;

(b) Name of the active ingredient or ingredients in the formulation;

(c) Relative amount of each active ingredient in the formulation;

(d) Type of formulation;

(e) Trade names and names of the producers, if available;

(f) Common and recognized patterns of use of the formulation within the proposing Party;

(g) A clear description of incidents related to the problem, including the adverse effects and the way in which the formulation was used;

(h) Any regulatory, administrative or other measure taken, or intended to be taken, by the proposing Party in response to such incidents.

Part 2. Information to be collected by the Secretariat

Pursuant to paragraph 3 of Article 6, the Secretariat shall collect relevant information relating to the formulation, including:

(a) The physico-chemical, toxicological and ecotoxicological properties of the formulation;

(b) The existence of handling or applicator restrictions in other States;

(c) Information on incidents related to the formulation in other States;

(d) Information submitted by other Parties, international organizations, non-governmental organizations or other relevant sources, whether national or international;

(e) Risk and/or hazard evaluations, where available;

(f) Indications, if available, of the extent of use of the formulation, such as the number of registrations or production or sales quantity;

(g) Other formulations of the pesticide in question, and incidents, if any, relating to these formulations;

(h) Alternative pest-control practices;

(i) Other information which the Chemical Review Committee may identify as relevant.

Part 3. Criteria for listing severely hazardous pesticide formulations in Annex III

In reviewing the proposals forwarded by the Secretariat pursuant to paragraph 5 of Article 6, the Chemical Review Committee shall take into account:

(a) The reliability of the evidence indicating that use of the formulation, in accordance with common or recognized practices within the proposing Party, resulted in the reported incidents;

(b) The relevance of such incidents to other States with similar climate, conditions and patterns of use of the formulation;

(c) The existence of handling or applicator restrictions involving technology or techniques that may not be reasonably or widely applied in States lacking the necessary infrastructure;

(d) The significance of reported effects in relation to the quantity of the formulation used;

(e) That intentional misuse is not in itself an adequate reason to list a formulation in Annex III.

Annex V

INFORMATION REQUIREMENTS FOR EXPORT NOTIFICATION

1. Export notifications shall contain the following information:

(a) Name and address of the relevant designated national authorities of the exporting Party and the importing Party;

(b) Expected date of export to the importing Party;

(c) Name of the banned or severely restricted chemical and a summary of the information specified in Annex I that is to be provided to the Secretariat in accordance with Article 5. Where more than one such chemical is included in a mixture or preparation, such information shall be provided for each chemical;

(d) A statement indicating, if known, the foreseen category of the chemical and its foreseen use within that category in the importing Party;

(e) Information on precautionary measures to reduce exposure to, and emission of, the chemical;

(f) In the case of a mixture or a preparation, the concentration of the banned or severely restricted chemical or chemicals in question;

(g) Name and address of the importer;

(h) Any additional information that is readily available to the relevant designated national authority of the exporting Party that would be of assistance to the designated national authority of the importing Party.

2. In addition to the information referred to in paragraph 1, the exporting Party shall provide such further information specified in Annex I as may be requested by the importing Party.