

## EXPLANATORY STATEMENT 12 OF 2009

### AMENDMENT TO ANNEX III OF THE ROTTERDAM CONVENTION ON THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE (THE CONVENTION)

#### Practical and legal effect

1. The proposed treaty action results from an amendment to Annex III of the Convention, which adds tributyltin (TBT) compounds in the pesticide category to the list of 30 chemicals already in Annex III to the Convention. Annex III lists the chemicals subject to the Convention's Prior Informed Consent Procedure, which provides for information exchange regarding the import and export of listed chemicals (as outlined in Attachment A). This does not require banning or a phase out of chemicals.
2. The treaty amendment has only a negligible financial and legal effect within Australia. The amendment is procedural and will not alter existing domestic import or manufacturing requirements within Australia. Some minor legislative amendments to Australian law will be required (see paragraph 6 below), which will not create significant new legal obligations within Australia.

#### Nature and timing of proposed treaty matter

3. At its fourth meeting, 27-31 October 2008, the Conference of the Parties to the Convention (COP 4) agreed by consensus to list all TBT compounds in Annex III.
4. After decision by the COP, listing occurs automatically – in this case on 1 February 2009. Australia does not have any new obligations until 31 October 2009, when it must advise the Secretariat of its interim response or final decision on the import of TBT. An interim response has been provided indicating that a decision is under active consideration in the context of Australia's treaty making process. With respect to the final import decision, it is proposed that Australia maintains its current arrangements whereby TBT compounds can be imported to Australia and are then subject to domestic restrictions. On this basis, the Secretariat would be informed that Australia consents to the import of TBT compounds. After June 2010, if a company in Australia wished to export TBT compounds, it would notify the importing country through the relevant Australian authority and comply with the sovereign decision taken by that country.

#### Reasons for Australia to take the proposed action relating to the treaty matter

5. TBT compounds are hazardous, and meet the requirements for listing under Annex III of the Convention. Support for the listing is consistent with Australia's support for the Convention. No objections to Australia's support for listing TBT were raised during the consultation process in preparation for COP 4 (Attachment B). Australia already has domestic legislation that controls TBT compounds (Attachment C).

#### Implementing legislation

6. Compliance with the Convention requires only a minor legislative amendment to include TBT in the list of chemicals referred to in the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995*, Schedule 1 and the *Customs (Prohibited Exports) Regulations 1958*, Schedule 2, as listed in Attachment C. The Department of Agriculture, Fisheries and Forestry will coordinate the legislative changes. The Australian Pesticides and Veterinary Medicines Authority and the Customs and Border Protection Service Australia have indicated it will take six to eight weeks to complete the required legislative amendments.

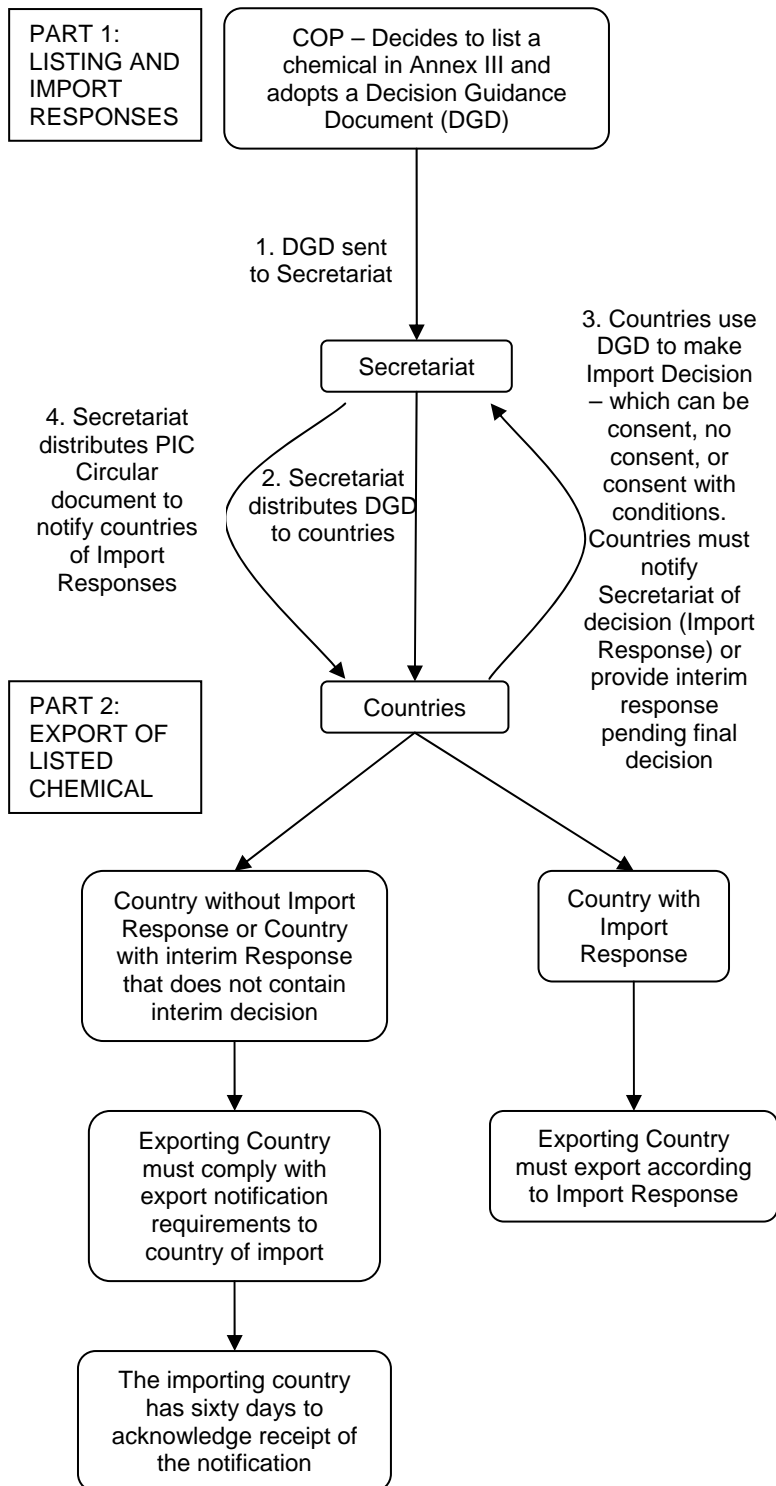
#### Attachments

- A – The Prior Informed Consent Procedure and Australia's Obligations for the listing of TBT  
B – Consultation  
C – Domestic Legislation controlling TBT

Environment Quality Division  
Department of the Environment, Water, Heritage and the Arts  
Submitted to JSCOT: 15 September 2009  
Tabled: 15 September 2009

## ATTACHMENT A

### EXISTING REQUIREMENTS UNDER THE PRIOR INFORMED CONSENT (PIC) PROCEDURE



### AUSTRALIA'S NEW OBLIGATIONS FROM ADDITION OF TRIBUTYL TIN (TBT) COMPOUNDS TO ANNEX III

- Australia should provide an interim or a final import response to the Secretariat by 31 October 2009. If the response is an interim response Australia may provide a further response to the Secretariat of its final decision.



- Australia has until June 2010 to take appropriate legislative or administrative measures to ensure that exporters within its jurisdiction: comply with the import responses provided by other countries as a result of listing; or, if no import response or decision is received, provide export notifications to the country of import in accordance with the Convention.



**CONSULTATION WITH AUSTRALIAN GOVERNMENT AND STATE AND TERRITORY AGENCIES REGARDING THE ADDITION OF TRIBUTYLTIN COMPOUNDS TO ANNEX III OF THE ROTTERDAM CONVENTION**

The following departments and agencies were consulted in preparation for the fourth Conference of the Parties to the Rotterdam Convention for the Prior Informed Consent Procedure for Certain Hazardous Chemicals in International Trade (the Convention) and in preparation of this Explanatory Statement for the listing of tributyltin (TBT) compounds in Annex III of the Convention. No opposition was raised by any of the listed agencies in relation to the proposed amendment.

**Australian Government Departments**

Attorney-General's Department – Office of International Law (OIL)

- *Consulted March 2008.* OIL advised that a decision by the COP to amend Annex III of the Rotterdam Convention, to add or remove chemical(s), would be subject to the domestic treaty approval process. The advice specified that the treaty approval process should be undertaken once an amendment to the annex has been adopted by the COP (reference number 08/5420).

Customs and Border Protection Service Australia

Department of Agriculture, Fisheries and Forestry

Department of Agriculture, Fisheries and Forestry – Australian Pesticides and Veterinary Medicines Authority (APVMA)

- *Consulted March–July 2009.* There are five registered products containing TBT allowed for use in Australia. Only one company is known to export a small quantity of TBT. The company has advised that it expects that these exports will cease when the importing country registers its own products for use.

Department of Education, Employment and Workplace Relations – Safe Work Australia

Department of Finance and Deregulation – Office of Best Practice Regulation

- *Consulted March 2008.* OBPR advised that no further regulatory impact analysis would be required for the proposed addition of chemicals under the Rotterdam Convention (OBPR ID 9486).

Department of Infrastructure, Transport, Regional Development and Local Government.

Department of Health and Ageing - National Industrial Chemicals Notification and Assessment Scheme (NICNAS)

***Interdepartmental Committee Meeting (consulted September 2008):***

Department of Agriculture, Fisheries and Forestry – Australian Pesticides and Veterinary Medicines Authority

Department of Agriculture, Fisheries and Forestry

Department of Foreign Affairs and Trade

Department of Health and Ageing – Office of Chemical Safety

Department of Innovation, Industry, Science and Research

**State and Territory agencies through the National framework for Chemicals Environmental Management (NChEM) Working Group:**

Australian Capital Territory – Department of Environment, Climate Change, Energy and Water

New South Wales – Department of Environment and Climate Change

Queensland – Department of Environment and Natural Resources

Queensland – Department of Transport and Main Roads

South Australia – Environment Protection Authority

Tasmania – Department of Environment, Parks, Heritage and the Arts

Tasmania – Department of Primary Industries and Water

Western Australia – Department of Environment and Conservation

## DOMESTIC LEGISLATION CONTROLLING TRIBUTYL TIN (TBT) IN AUSTRALIA

### Legislation requiring amendment to comply with the Rotterdam Convention

Australia satisfies its Rotterdam Convention obligations in relation to agricultural and veterinary chemicals through the use of complementary regulations administered by the Department of Agriculture, Fisheries and Forestry through the Australian Pesticides and Veterinary Medicines Authority and by the Customs and Border Protection Service Australia. Both pieces of legislation will require amendment to add tributyltin to the list of chemicals under export control. The estimated time for the amendments is six to eight weeks.

- *Agricultural and Veterinary Chemicals (Administration) Regulations 1995* – Schedule 1 – Chemicals (regulation 1.3. definition of **controlled chemical**)
- *Customs (Prohibited Exports) Regulations 1958* – Schedule 2 – Goods, being certain chemicals, the exportation of which is prohibited unless permission is granted under regulation 4A (regulation 4A)

### Other Legislation controlling import and use of TBT in Australia

#### Commonwealth

*Protection of the Sea (Harmful Anti-fouling Systems) Act 2006*

#### State and Territory

New South Wales	Organotin Wastes Chemical Control Order 1989, under the <i>Environmentally Hazardous Chemicals Act 1985</i>
South Australia	Environment Protection (Water Quality) Policy 2003, under the <i>Environment Protection Act 1993</i> .
Tasmania	Agricultural and Veterinary Chemicals (Control of Use) Order (No. 3) 2001 under the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 1995</i> .
Victoria	Order relating to notifiable chemicals, Gazetted in No. S94, Gazette 29/6/2000, page 1, under the <i>Environment Protection Act 1970</i> .
Western Australia	<i>Environmental Protection Regulations 1987</i> , Part 7 Antifouling Paint, and <i>Environmental Protection (Abrasive Blasting) Regulations 1998</i> , Reg 7 in relation to aquatic environments.

TBT is classified as hazardous, therefore state and territory legislation controlling hazardous waste and occupational health and safety legislation for the control of hazardous substances in the workplace may also apply to TBT compounds despite not specifically listing TBT within the legislation.