

**Documents tabled on 12 March 2008
(previously tabled on 11 September 2007):**

National Interest Analysis [2008] ATNIA 5

with attachment on consultation

**Withdrawal of Australia's exemption for the use of mirex under Article 4 of
the Stockholm Convention on Persistent Organic Pollutants,
done at Stockholm on 22 May 2001 - [2004] ATS 23**

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY SUMMARY PAGE

Withdrawal of Australia's exemption for the use of mirex under Article 4 of the Stockholm Convention on Persistent Organic Pollutants, done at Stockholm on 22 May 2001 - [2004] ATS 23

Nature and timing of proposed treaty action

1. Australia ratified the Stockholm Convention on Persistent Organic Pollutants (POPs) on 20 May 2004. The Convention requires Parties to eliminate the use of POPs, which are toxic and persistent chemicals. The chemical mirex is one of the 12 POPs currently listed for action under Annexes A, B and C of the Convention. Mirex is listed under Annex A for elimination.
2. Under Article 4 of the Convention, Parties may register a specific exemption when ratifying the Convention to allow continued production and/or use of chemicals listed under Annex A. The obligation under the specific exemption is to restrict production and/or use rather than to eliminate use while the exemption is valid.
3. Upon Australia's ratification of the Convention, Australia registered an entry to the Register of Specific Exemptions for the continued use of mirex. Australia and China were the only countries to lodge a specific exemption for mirex.
4. Unless an earlier date is indicated in the Register by the requesting Party, each exemption will expire five years after the date of entry into force of the Convention. Australia's exemption will expire on 17 May 2009 unless an extension is requested and granted, or the exemption is withdrawn.
5. The proposed treaty action is to withdraw Australia's entry for the continued use of mirex from the Register of Specific Exemptions. It is proposed that Australia submits its notification of withdrawal to the Stockholm Secretariat as soon as practicable. .

Overview and national interest summary

6. The objective of the treaty action is to withdraw Australia's exemption for mirex, the active ingredient in the pesticide products Mirex Termite Bait and Mirant to control the giant termite (*Mastotermes darwiniensis*). The Australian Pesticides and Veterinary Medicines Authority (APVMA) ceased registration for Mirex Termite Bait on 30 June 2005 and ceased registration for Mirant on 30 June 2006. The Agriculture Protection Board for Western Australia chose not to renew their registration for Mirex Termite Bait, and the company Mirant Pty Ltd voluntarily cancelled their registration for Mirant. Research by the Northern Territory Government found alternative chemical products to replace mirex. The APVMA has issued permits for the use of these alternative pesticide products. The successful elimination of mirex from use in Australia allows Australia to withdraw its exemption for mirex under the Convention.
7. Australia's withdrawal of mirex from the Register would build on Australia's commitment to protect human health and the environment from the adverse effects of POPs, enhance Australia's capacity to influence international efforts to address chemicals issues, and demonstrate Australia's commitment to supporting effective approaches to eliminating the production and use of POPs.

Reasons for Australia to take the proposed treaty action

8. Australia registered a specific exemption for the chemical mirex in accordance with Article 4 of the Convention. At the time of registration, Mirant was registered by the company Mirant Pty Ltd for use in the Northern Territory to control the giant termite (*Mastotermes darwiniensis*) in horticultural crops. Another product, Mirex Termite Bait, was registered by the Agriculture Protection Board for Western Australia for use in Western Australia by licensed pest controllers to control termites.
9. Research by the Northern Territory Government found that the chemical fipronil was a suitable alternative to control the giant termite. The APVMA has issued several permits for the use of pesticide products containing the active ingredient fipronil. This has allowed the use of mirex in Australia to be phased out.
10. The company Mirant Pty Ltd volunteered not to renew its registration for Mirant with the APVMA. The Agriculture Protection Board for Western Australia indicated that production and distribution of Mirex Termite Bait had not occurred since 1994.
11. In January 2006, the Northern Territory Government ceased issuing new authorisations for the product Mirant. Prior to this, authorisations were issued with a maximum term of 12 months.
12. Under section 54 of the Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* (Agvet Codes), the registration of Mirex Termite Bait ceased on 30 June 2005 and the registration of Mirant ceased on 30 June 2006.
13. Under section 54(2)a of the Agvet Codes, use or other dealings with the product may continue for up to two years after the day on which the registration ceased. In the case of the product Mirant, the APVMA reduced this period to seven months.
14. On 31 January 2007, the APVMA declared that all authorisations issued by the Northern Territory Government for the use of the product Mirant ceased to apply from that day. From 1 February 2007, it became an offence to possess for the purpose of supply, or to supply, the unregistered product Mirant in Australia.

Obligations

15. As it currently stands, the specific exemption for mirex relieves Australia from the obligation under Article 3 of the Convention to eliminate the chemical. Nonetheless, Australia is bound by the lesser obligation to restrict production and or use of mirex.
16. Following the proposed withdrawal of Australia's registered exemption for mirex, Australia will have an obligation to prohibit the production, use and import of mirex under Article 3. The export of mirex will also be prohibited under Article 3(2)(a), except for the purpose of environmentally sound disposal. In addition, Article 6 requires any stockpiles of mirex to be destroyed in an environmentally sound manner.
17. In February 2007, a stockpile of approximately 165 kg of Mirant remained in the Northern Territory. The Northern Territory Government collected these stocks, which are awaiting destruction at the BCD Technologies plant in Queensland, in accordance with the obligation under Article 6 of the Convention.

Implementation

18. Implementation of the withdrawal of mirex is the responsibility of several government agencies:

- Australian Government Department of the Environment and Water Resources is the focal point for implementing the Convention in Australia and will continue cooperation with other Australian Government and State and Territory agencies to ensure we meet our obligations under the Convention;
- Australian Government Department of Agriculture, Fisheries and Forestry administers the *Agricultural and Veterinary Chemicals Code Act 1994* (Agvet Codes). No amendments to the Agvet Codes are necessary;
- APVMA issues permits that allow a person to possess, supply or use a chemical product, which would otherwise be an offence under the Agvet Code. The APVMA will not issue any future permits of products containing the chemical mirex; and
- Northern Territory Government undertook research for alternatives to mirex, controlled the every day use of mirex, arranged for the destruction of the remaining stocks, and will not authorise any future uses of the chemical mirex.

Costs

19. There are no direct foreseeable financial costs to the Commonwealth of Australia or the States and Territories from taking the proposed treaty action.

Regulation impact statement

20. The Department of the Environment and Water Resources has assessed the implementation of the Convention against criteria in *The Best Practice Regulation Handbook*. This regulatory option has no impact on business and individuals or on the economy and a Regulation Impact Statement or Business Cost Calculator report is not required.

Future treaty action

21. The withdrawal of Australia's registered exemption will not invoke any future treaty action.

Withdrawal or denunciation

22. Under Article 4 of the Convention, when there are no longer any Parties registered for a particular type of specific exemption, no new registrations may be made with respect to it.

23. Under Article 28 of the Convention, a Party may withdraw from the Convention any time after three years from the date the Convention enters into force for that Party. Withdrawal takes effect upon the expiration of one year from the date notification of withdrawal is received by the depository. Australia's withdrawal would be subject to our domestic treaty process.

Contact details

Chemical Policy Section
Environment Quality Division
Department of the Environment and Water Resources.

Withdrawal of Australia's exemption for the use of mirex under Article 4 of the Stockholm Convention on Persistent Organic Pollutants, done at Stockholm on 22 May 2001 - [2004] ATS 23

CONSULTATIONS

Australia's National Implementation Plan (NIP)

1. Under Article 7 of the Stockholm Convention on Persistent Organic Pollutants, each Party is required to develop a National Implementation Plan (NIP) setting out how it will address its obligations under the Convention.
2. The Department of the Environment and Water Resources led the development of the NIP in consultation with other Australian Government agencies including the Departments of Agriculture, Fisheries and Forestry; Health and Ageing; Foreign Affairs and Trade; and Industry, Tourism and Resources. State and Territory governments and non-government organisations were consulted through the Stockholm Reference Group which was established in December 2004 and which includes representatives from industry, environment groups, primary producers and the health sector, and any other groups, companies or individuals with an interest in the Stockholm Convention. In addition to consultation through these forums, a draft NIP was released in October 2005 for broader public comment. Comments received were taken into consideration in preparing the final NIP. Three individual submissions (two industries and one public health) and a joint submission from several environment groups were received. The concerns raised were of a minor nature. A combined submission from seven environment groups (Allergy, Sensitivity and Environmental Health Association, Alliance for a Clean Environment, Contaminated Sites Alliance, Greenpeace Australia Pacific, National Toxics Network, Total Environment Centre, and World Wildlife Fund Australia) supported a ban on the use of mirex.
3. Australia's NIP outlines the actions that Australia:
 - has undertaken to date in reducing the presence of POPs; and
 - will undertake in the future to meet its obligations under the Convention.
4. Australia submitted its final NIP to the Stockholm Convention Secretariat on 9 August 2006.

Proposed actions towards the elimination of mirex from Australia as stated in the NIP

5. Section 2.2 of the NIP lists the proposed actions for governments to implement, in order to eliminate mirex in Australia.

6. An extract from the NIP states:

Proposed actions related to Article 4 of the Stockholm Convention

The Northern Territory Government to:

- maintain controls on the use of Mirant to ensure that releases of mirex to the environment are minimised
- cease issuing new authorisations for the use of Mirant and have all authorisations expire before February 2007
- continue further trial work on the active ingredient fipronil as an alternative control for the giant termite *and*
- ensure that once remaining authorisations for the use of Mirant expire, remaining stocks of mirex are destroyed in an environmentally sound manner.

The Australian Government to withdraw the exemption once the current authorisations for the use of Mirant expire.

7. Extensive consultation was undertaken by the Northern Territory Government and at the Commonwealth level with industry groups and registrants in the lead up to the voluntary cancellation and non-renewal of the registrations for mirex. The Northern Territory Government liaised with the Northern Territory Horticulture Association, Northern Territory Mango Association, growers, chemical companies and the APVMA to research alternatives to mirex. At the Commonwealth level, the Department of the Environment and Water Resources sought the views of non-government organisations through the Stockholm Reference Group (SRG). The Commonwealth also consulted through the Stockholm Intergovernmental Forum comprised of representatives from Australian Government, State and Territory agencies.

8. As stated in the NIP, the implementation of the proposed actions for the elimination of mirex involved a two phase process. The first phase involved receiving support from the Northern Territory horticulture industry, growers and chemical companies for research into an alternative chemical product, and for the APVMA to issue permits for its use to control the giant termite. The second phase involved the APVMA, Mirant Pty Ltd and the Agriculture Protection Board of Western Australia in the cancellation and non-renewal of registration of mirex in Australia.

List of stakeholders consulted during the research, de-registration and destruction of mirex in Australia

9. All stakeholders consulted supported the actions of the Northern Territory Government and APVMA to eliminate mirex in Australia and the subsequent withdrawal of Australia's exemption from the Convention. The stakeholders consulted were:

- Australian Government Department of Agriculture, Fisheries and Forestry.
- Northern Territory Government:
 - Department of Primary Industry, Fisheries and Mines, facilitated research to identify alternative chemicals to mirex.
 - Department of Natural Resources and Environment and the Arts, acted as the focal point in the Northern Territory Government. A correspondence letter was sent to the Australian Department of the Environment and Water Resources on 2 March 2006, responding to issues raised by the Stockholm Reference Group.
 - Department of Business, Industry and Resources Development, was responsible for managing the use of mirex in the Northern Territory.
- Australian Pesticides and Veterinary Medicines Authority, ceased registration of Mirant and Mirex Termite Bait, and authorised permits for pesticide products containing the alternative chemical, fipronil.
- Northern Territory Horticulture Association, is the peak body for horticulture in the Northern Territory.
- Northern Territory Mango Industry Association, is the peak body for mango growers in the Northern Territory. Facts about the use of mirex in the Northern Territory mango industry were issued to stakeholders on 4 May 2005.
- Mirant Pty Ltd and the Agriculture Protection Board of Western Australia, the registrants of the chemical products containing mirex.
- BASF Australia Ltd, the registrant of fipronil based products.

- Stockholm Intergovernmental Forum, comprised of representatives of Australian Government and State and Territory government agencies. Issues about mirex were discussed at the following meeting dates: 30 September 2004 and 7 March 2007.
- Stockholm Reference Group, the consultation mechanism for the non-government sector, open to any organisation, company or individual with an interest in the Stockholm Convention, and includes representatives from industry, environment, primary producers and health sectors. Issues about mirex were discussed at the following meeting dates: 23 February 2005, 21 July 2005, 22 November 2005, 7 April 2006 and 3 April 2007.