

Amendments to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

Introduction

- 8.1 The proposed treaty action (the Amendments) amends the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* (the Rotterdam Convention).
- 8.2 The Amendments make three general changes to Annex III and inserts a new Annex VI.

Background

- 8.3 The Rotterdam Convention entered into force generally on 24 February 2004 and for Australia 18 August 2004. The first Conference of the Parties (COP 1) took place on 24 September 2004. The Amendments are a result of COP 1.

- 8.4 The primary purpose of the Rotterdam Convention is the implementation of the Prior Informed Consent (PIC) procedure. This means that the export of a chemical covered by the Rotterdam Convention can only take place with the prior informed consent of the importing Party. The Rotterdam Convention establishes a means for formally obtaining and disseminating the Parties' import/export decisions and health and safety data on the hazardous industrial chemicals and pesticides listed in Annex III.

The Amendments

- 8.5 The Amendments make three general changes to Annex III and insert a new Annex VI.
- 8.6 Tetraethyl lead and tetramethyl lead were added to Annex III following agreement amongst the Parties at COP 1 that tetraethyl lead and tetramethyl lead meet the criteria listed in Annex II of the Rotterdam Convention.¹
- 8.7 Australia does not use, import or export tetramethyl lead but does export a small amount of tetraethyl lead in aviation fuel.²
- 8.8 The second amendment to Annex III changes the listing of parathion from the 'severely hazardous pesticide formulation' category to the 'pesticide' category.
- 8.9 Chemicals listed in the 'pesticide' category have generally undergone a more rigorous assessment than those chemicals listed in the 'severely hazardous pesticide formulation' category. This is because the 'severely hazardous pesticide formulation' category is aimed primarily at developing countries who are unable to undertake a robust risk assessment in the way that developed countries are able to.³
- 8.10 Chemicals listed as in the 'pesticide' category must have undergone a full risk assessment by two different countries in two different PIC regions.⁴ The Chemical Review Committee examines the notifications

1 National Interest Analysis (NIA), para. 10.

2 NIA, para. 10.

3 Mr Mark Hyman, *Transcript of Evidence*, 20 June 2005, pp. 28-29.

4 Mr Mark Hyman, *Transcript of Evidence*, 20 June 2005, p. 28. There are 6 PIC regions established under the Rotterdam Convention: Southwest Pacific (includes Australia),

received from the two countries, ensures that those risk assessments meet a series of tests and that the chemical therefore warrants a full listing.⁵

- 8.11 The third amendment to the Rotterdam Convention involves a number of minor descriptive changes to four chemicals listed in Annex III. The chemicals now include all their salts and esters:⁶
- ‘2,4,5-T’: The entry to Annex III is to be amended to read ‘2,4,5-T and its salts and esters’
 - ‘pentachlorophenol’: The entry to Annex III is to be amended to read ‘pentachlorophenol and its salts and esters’
 - ‘dinoseb and its dinoseb salts’: The entry to Annex III is to be amended to read ‘dinoseb and its salts and esters’
 - ‘methyl-parathion’: The entry in Annex III is to be amended to read ‘methyl parathion (emulsifiable concentrates (EC) at or above 19.5% active ingredient and dusts at or above 1.5% active ingredient.
- 8.12 The fourth and final amendment is the adoption of Annex VI which contains dispute settlement procedures for matters arising under the Rotterdam Convention. Annex VI sets out the rules on arbitration and conciliation.
- 8.13 Representatives of the Department of the Environment and Heritage informed the Committee of an error in paragraph 17 of the National Interest Analysis (NIA) which states that Parties are obliged to make a declaration in relation to their preferred method of dispute settlement under the Rotterdam Convention. This is not obligatory and is at the discretion of the Party. Australia is currently considering whether to make this declaration and accept either arbitration in accordance with the Rotterdam Convention or adjudication by the International Court of Justice, or both.⁷

North America, Near East, Europe, Asia, and Africa. See
<<http://www.pic.int/en/ViewPage.asp?id=106>> for more information.

5 Mr Mark Hyman, *Transcript of Evidence*, 20 June 2005, p. 28.

6 NIA, paras 11 and 12.

7 Mr Mark Hyman, *Transcript of Evidence*, 20 June 2005, p. 26.

- 8.14 The Department of the Environment and Heritage advised that it is unaware of any disputes under the Rotterdam Convention that may have occurred prior to Annex VI and advised the Committee that it was unlikely that many would occur in the future.⁸ However, the Department did suggest that the kinds of disputes which might arise under the Convention could relate to the incorrect exportation of a chemical to a country that has restricted the use of this chemical.⁹

Implementation

- 8.15 The listing of tetraethyl and tetramethyl lead on Annex III will require Australia to prepare an import response, as required under Article 10 of the Rotterdam Convention, regarding the future import of these chemicals.¹⁰ The listing will also require regulations under section 106 of the *Industrial Chemicals (Notification and Assessment) Act 1989*. The export regulations will require authorisation from the Director of National Industrial Chemicals Notification and Assessment Scheme (NICNAS), a statutory scheme administered by the Australian Government Department of Health and Ageing, prior to export to ensure that the chemicals are only exported to countries that have agreed to accept them.¹¹
- 8.16 The movement of parathion to the 'pesticide' category will not require legislative or administrative changes as parathion is already controlled under Schedule 1 of the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995* and Schedule 2 of the *Customs (Prohibited Exports) Regulations 1958*.¹² In addition, Australian Customs Service, under the *Customs (Prohibited Exports) Regulations*, maintain complementary border controls to ensure export of the chemicals listed in Annex III comply with Australia's obligations.¹³
- 8.17 The descriptive changes to four chemicals listed in Annex III will only require minimal changes to Schedule 1 of the *Agricultural and Veterinary Chemicals (Administration) Regulations 1995* and Schedule 2

8 Mr Mark Hyman, *Transcript of Evidence*, 20 June 2005, p. 26.

9 Mr Mark Hyman, *Transcript of Evidence*, 20 June 2005, p. 26.

10 NIA, para. 10.

11 NIA, para. 21.

12 NIA, para. 10.

13 NIA, para. 20.

of the *Customs (Prohibited Exports) Regulations 1958*.¹⁴ All forms of these chemicals are listed in Schedule 1 and 2 but the entry for methyl-parathion on Annex III was simplified to the above entry from 'emulsifiable concentrates (EC) with 19.5%, 40%, 50% and 60% active ingredient and dusts containing 1.5%, 2% and 3% active ingredient'.¹⁵

Costs and consultation

- 8.18 The financial costs to industry will be minimal and any expenses related to making regulations in order to comply with the Amendments will be absorbed by Australian Government departmental budgets.¹⁶
- 8.19 Stakeholders, including State and Territory government representatives, industry and community groups with an interest in chemical management were invited to attend the COP 1. The only response was received from the National Toxics Network and their representative attended the meeting as part of the Australian delegation.¹⁷
- 8.20 Following COP 1, a letter was sent to State and Territory governments, industry and community groups informing them of the Amendments.¹⁸ No concerns were raised by stakeholders regarding the Amendments.¹⁹
- 8.21 NICNAS publicised the listing of tetraethyl and tetramethyl lead in Annex III via a notice in the Chemical Gazette of November 2004. NICNAS also contacted specifically nominated Rotterdam Convention contacts in the States and Territories on 8 November 2004 to advise them of the listing.²⁰

14 NIA, para. 12.

15 NIA, para. 12.

16 NIA, para. 25.

17 NIA, Consultation Annex, para. 2.

18 NIA, Consultation Annex, para. 3.

19 NIA, Consultation Annex, para. 3.

20 NIA, Consultation Annex, para. 4.

Automatic entry into force

- 8.22 The Amendments automatically enter into force on 1 February 2005 with obligations for Parties due to take effect from December 2005. The new Annex VI on arbitration and conciliation enters into force for all Parties on 11 January 2006.²¹
- 8.23 As a consequence of the Amendments automatically entering into force, the Minister for the Environment and Heritage, Senator the Hon Ian Campbell, wrote to the Chair of the Joint Standing Committee on Treaties in August 2004 providing details of the Amendments in advance and advising that the NIA would be forwarded following COP 1.²²
- 8.24 The Committee notes that the Amendments were adopted at COP 1 on 24 September 2004. However, the Committee also notes that the NIA was not tabled until 11 May 2005.
- 8.25 The Committee recognises that the election may have caused some delays in the tabling of the NIA. Notwithstanding these delays, given that the Joint Standing Committee on Treaties was re-established in the 41st Parliament on 18 November 2004, the Committee would have expected a more timely tabling.
- 8.26 The Committee reiterates that every effort should be made to ensure that the Committee has an opportunity to review proposed treaty actions prior to entering into force.

Conclusion

- 8.27 The Committee appreciates that improving knowledge and information about these chemicals protects human health and the environment and, as a result, continues to support the Rotterdam Convention. The Committee recognises that the Amendments are relatively minor in nature and do not impose many additional obligations or costs on Australia. The Committee supports the Amendments to the Rotterdam Convention.

21 NIA, para. 1.

22 NIA, para. 2.