

EXPLANATORY STATEMENT 2 OF 2014

AMENDMENTS, ADOPTED ON 10 MAY 2013, TO ANNEX III OF THE ROTTERDAM CONVENTION ON THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE [2014] ATS 5

Practical and legal effect

1. The proposed treaty action results from amendments to include additional items in Annex III of the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*, done at Rotterdam on 10 September 1998 ('the Convention'¹). The amendments add azinphos-methyl in the pesticide category and commercial-pentabromodiphenyl ether², commercial-octabromodiphenyl ether,³ and perfluorooctane sulfonic acid, perfluorooctane sulfonates, perfluorooctane sulfonamides and perfluorooctane sulfonyls (collectively referred to as PFOS)⁴ in the industrial category to the list of 43 chemicals already in Annex III to the Convention. Annex III lists the chemicals subject to the Convention's Prior Informed Consent (PIC) 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 phasing out these chemicals.
2. The Convention requires Parties advise as to whether they will permit the importation of chemicals in Annex III, and if so, under what conditions. It also requires Parties engaged in the exportation of chemicals in Annex III to observe other Parties' advice on the importation of chemicals in Annex III, including any applicable prohibitions or conditions.
3. In practical terms, only PFOS and azinphos-methyl are currently used in Australia. In particular, there are two registered products containing azinphos-methyl in use in Australia, there are no exports from Australia. There are also currently no exports of PFOS and imports are declining (Attachment D). The two other items added to Annex III – commercial-pentabromodiphenyl ether and commercial-octabromodiphenyl ether – are no longer used in Australia and are not exported from Australia.
4. The inclusion of the new items in Annex III will require some minor changes to Australia law in order to bring them under the appropriate regulatory framework. This will result in the new additions to the industrial category in Annex III being subject to annual authorisation fees for export (\$750 or \$1700, depending on the destination) and import (\$1700). These fees are unlikely to have a substantial financial impact in view of the low volume of import of these products, and no record of export. In contrast, azinphos-methyl will not be subject to import and export fees due to the different requirements for pesticides under Australian regulation.

Nature and timing of proposed treaty matter

5. At its sixth meeting, 28 April to 10 May 2013, the Conference of the Parties to the Convention (COP 6) agreed by consensus to list the four chemicals in Annex III (Decisions RC-6/4, RC-6/5, RC-6/6 and RC-6/7, see Attachment E). The then Parliamentary Secretary for Sustainability and Urban Water, Senator the Hon Don Farrell, wrote to the Chair Joint Standing Committee on Treaties in advance of COP 6 to advise of the potential listing of these chemicals.
6. Pursuant to the decision by the COP, the amendments entered into force on 10 August 2013. Under Article 10 of the Convention, the practical implementation of the amendments must occur by 10 May 2014, by which time Australia must advise the Convention Secretariat of its interim response or final decision on the import of all four chemicals (that is, whether Australia will continue to permit

¹ [2004] ATS 22

² Specific chemicals as listed in the decisions at Attachment E: Decision RC-6/5.

³ Specific chemicals as listed in the decisions at Attachment E: Decision RC-6/6.

⁴ Specific chemicals as listed in the decisions at Attachment E: Decision RC-6/7.

the import of these chemicals, and under what conditions). With respect to the final import decisions, it is proposed that Australia take the following approach:

- Australia consents to the conditional importation of azinphos-methyl, which is subject to the same domestic restrictions as for all pesticides;
- Australia consents to the conditional importation of PFOS. However, authorisation for import would be required;
- Australia consents to the conditional importation of commercial-octabromodiphenyl ether. However, authorisation for import would be required.

7. With respect to interim import decisions, Australia would provide an interim response of “no consent” to the importation of commercial-pentabromodiphenyl ether, since it is subject to an interim ban awaiting the completion of an assessment by Australian authorities.

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

8. Azinphos-methyl, commercial-pentabromodiphenyl ether, commercial-octabromodiphenyl ether and PFOS are hazardous chemicals 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 of any of the four chemicals were raised during the consultation process in preparation for COP 6 (Attachment B).

Implementing legislation

9. Compliance with the Convention requires only minor legislative amendments to certain subordinate instruments (see Attachment C).

Attachments

A – The Prior Informed Consent Procedure and Australia’s Obligations for the listing of chemicals

Environment Quality Division,
Department of the Environment

B – Consultation

C – Domestic legislation regulating the four chemicals

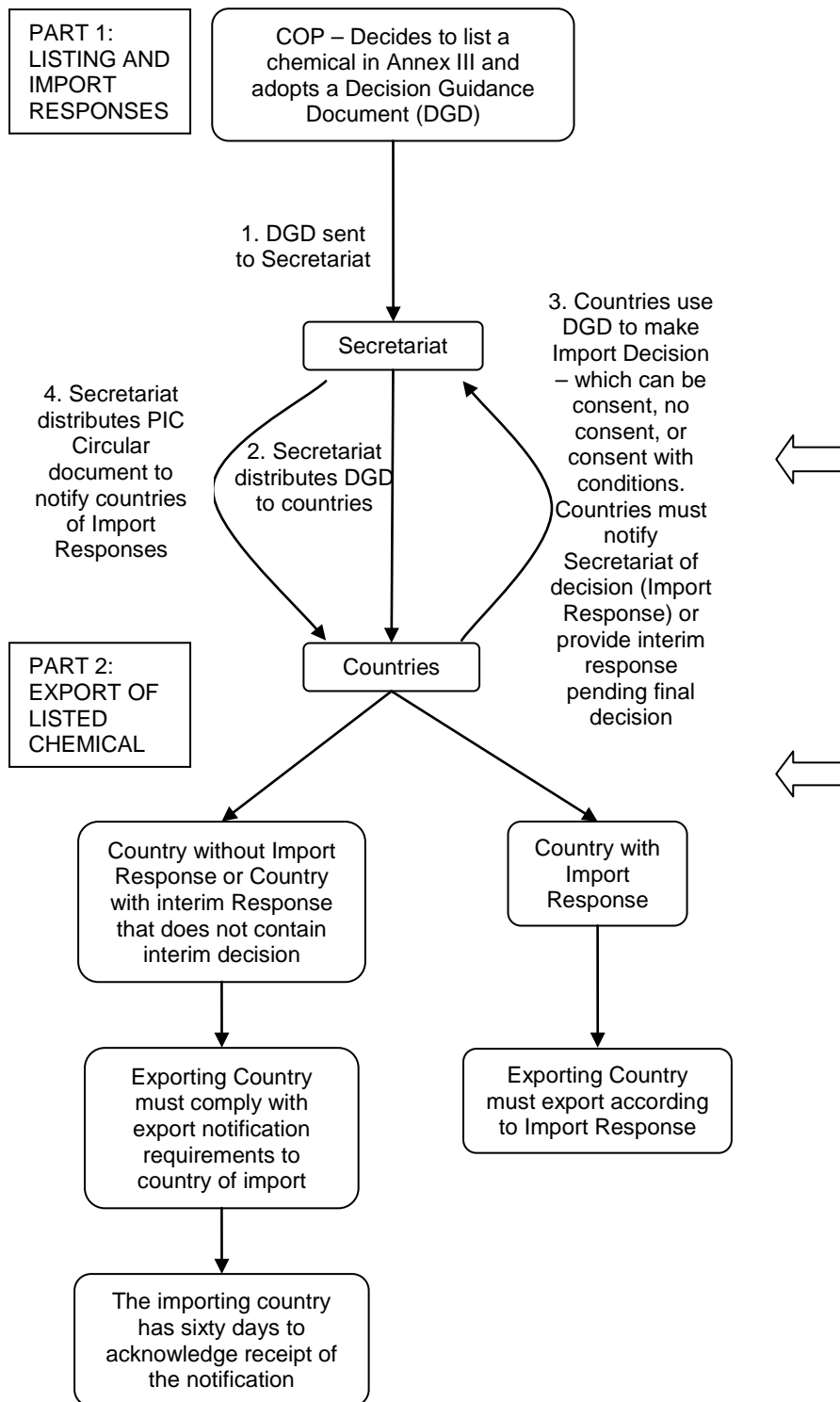
Submitted to JSCOT: 19 March 2014

D – Consultation on PFOS

E – Rotterdam Convention decisions to list chemicals

ATTACHMENT A

EXISTING REQUIREMENTS UNDER THE PRIOR INFORMED CONSENT (PIC) PROCEDURE



AUSTRALIA'S RESPONSIBILITIES FROM THE ADDITION OF CHEMICALS TO ANNEX III

- Australia must provide an interim or a final import response to the Secretariat by 10 May 2014. If the response is an interim response, Australia may provide a later response to the Secretariat of its final decision.

- Australia has six months following receipt of the PIC Circular (step 4) 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. The first import responses were notified in the December 2013 PIC Circular. If Australia were an exporter of these chemicals, legislative amendments to ensure export requirements are met would need to be completed by June 2014. However, Australia does not export these chemicals so the procedures are largely administrative to ensure continued compliance.

ATTACHMENT B

CONSULTATION WITH AUSTRALIAN GOVERNMENT AND STATE AND TERRITORY AGENCIES REGARDING THE ADDITION OF AZINPHOS-METHYL, COMMERCIAL-PENTABROMODIPHENYL ETHER, COMMERCIAL-OCTABROMODIPHENYL ETHER AND PFOS TO ANNEX III OF THE ROTTERDAM CONVENTION

The following departments and agencies were consulted in preparation for the sixth Conference of the Parties to the Rotterdam Convention for the Prior Informed Consent Procedure for Certain Hazardous Chemicals in International Trade (the Convention) and approval was received for the proposed listings.

Department of Agriculture

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

Department of Employment – Asbestos Safety and Eradication Agency

Department of Finance and Deregulation – Office of Best Practice Regulation

- *Consulted January 2013.* OBPR advised that no further regulatory impact analysis would be required for the proposed addition of chemicals under the Rotterdam Convention (OBPR ID 14574).

Department of Foreign Affairs and Trade

Department of Health

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

Department of Industry

In addition, the following agencies were consulted in regards to the listing of azinphos-methyl, commercial-pentabromodiphenyl ether, commercial-octabromodiphenyl ether and PFOS 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)

Department of Agriculture

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

Department of Foreign Affairs and Trade

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

State and Territory environment agencies

Australian Capital Territory – Environment and Sustainable Development Directorate

New South Wales – Environment Protection Authority

Northern Territory – Environment Protection Authority

Queensland – Department of Environment and Heritage Protection

South Australia – Environment Protection Authority

Tasmania – Department of Primary Industries, Parks, Water and Environment

Victoria – Environment Protection Authority

Western Australia – Department of Environment Regulation

Consultations were also undertaken with the small number of Australian companies importing PFOS and PFOS-containing products. These indicated that the listings were unlikely to change their business practices (see Attachment D).

ATTACHMENT C

DOMESTIC LEGISLATION CONTROLLING AZINPHOS-METHYL, COMMERCIAL-PENTABROMODIPHENYL ETHER, COMMERCIAL-OCTABROMODIPHENYL ETHER AND PFOS 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 through the Australian Pesticides and Veterinary Medicines Authority and by the Australian Customs and Border Protection Service. These regulations are:

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

Azinphos-methyl would need to be added to the list of chemicals noted in the schedules of both regulations listed above to ensure compliance with the Convention. The Department of Agriculture and the Australian Customs and Border Protection Service would make the legislative changes.

Australia satisfies its Rotterdam Convention obligations in relation to industrial chemicals through the use of regulations administered by the National Industrial Chemicals Notification and Assessment Scheme. These regulations are:

- *Industrial Chemicals (Notification and Assessment) regulations 1990* – Regulation 11C – Introduction and export of certain industrial chemicals prohibited without permission (Act s 106).

Pentabromodiphenyl ether, octabromodiphenyl ether and PFOS would need to be added to this regulation to ensure compliance with the Convention. The National Industrial Chemicals Notification and Assessment Scheme would make the legislative changes.

The regulations will require amendment to add azinphos-methyl, pentabromodiphenyl ether, octabromodiphenyl ether and PFOS to the relevant lists of chemicals under export control. The estimated time for the amendments is two to three months.

State and Territory legislation controlling the use of azinphos-methyl in Australia

No state or territory legislation will require amendment.

Australian Capital Territory	<i>Environment Protection Act 1997</i> and Environment Protection Regulation 2005
New South Wales	<i>NSW Pesticides Act 1999</i> and NSW Pesticides Regulation 2009
Northern Territory	<i>Agricultural and Veterinary Chemicals (Control of Use) Act 2004</i> , <i>Agricultural and Veterinary Chemicals (Control of Use) Regulations 2005</i> and <i>Agricultural and Veterinary Chemicals</i>

	<i>(Northern Territory) Act 1995</i>
Queensland	<i>Chemical Usage (Agricultural and Veterinary) Control Act 1988 and Chemical Usage (Agricultural and Veterinary) Control Regulation 1999.</i>
South Australia	<i>Agricultural and Veterinary Products (Control of Use) Act 2002 and Agricultural and Veterinary Products (Control of Use) Regulations 2004.</i>
Tasmania	<i>Agricultural and Veterinary Chemicals (Control of Use) Act 1995</i>
Victoria	Order regulating the use of agricultural chemical products by authorised personnel, under the <i>Agricultural and Veterinary Chemicals (Control of Use) Act 1992.</i> <i>Drugs, Poisons and Controlled Substances Act 1981</i> and its regulations.
Western Australia	<i>Agricultural and Veterinary Chemicals (Western Australia) Act 1995</i>

There is no state or territory legislation that is specifically in place to control the use of pentabromodiphenyl ether, octabromodiphenyl ether or PFOS. Queensland is currently consulting on a draft policy to restrict perfluorinated firefighting foams which include those containing PFOS.

Azinphos-methyl, PFOS and components of commercial-pentabromodiphenyl ether and commercial-octabromodiphenyl ether are classified as hazardous; therefore some State and Territory legislation controlling hazardous waste, transport, environmental protection and occupational health and safety legislation for the control of hazardous substances in the workplace may also apply to these compounds in some States or Territories.

ATTACHMENT D

PERFLUOROOCCTANE SULFONIC ACID (PFOS) IN AUSTRALIA

The Department of the Environment has undertaken technical analysis and consultation with industry in relation to PFOS since PFOS was listed on the *Stockholm Convention on Persistent Organic Pollutants*⁵ (the Stockholm Convention) in 2009 as a result of its toxicity, persistence in the environment, bioaccumulation and propensity to undergo long range transport. As a result of the listing on the Stockholm Convention, there have been significant international efforts to phase out the uses of PFOS. Due to the harm to human health and the environment from PFOS, along with the anticipated regulation as a result of the listing on the Stockholm Convention, industry in Australia has already begun a move to a commercially available 'drop in' replacement.

Imports of PFOS in Australia are primarily through one importer, which imported 100kg in 2013. This quantity has reduced from up to 400kg per year in previous years. The primary import company provides the PFOS for reformulation to the suppliers of PFOS-containing industrial products for use in Australia. Information received indicates that there may be a few other small imports of PFOS each year by businesses that find it preferable to import their PFOS-containing products direct from international suppliers based in China. Only one business importing PFOS products directly has been identified, importing approximately 10kg per year. This importer advised that the annual authorisation fee is unlikely to change their practice of direct importation which is viewed as economically preferable.

China is now a party to the Stockholm Convention amendments and therefore we expect supply from China will significantly reduce as a result of the requirements China must now fulfil under that Convention. Consequently, the impact of NICNAS' fee for annual authorisation to import chemicals listed on the Rotterdam Convention will be minor as it is expected to apply only to one or a few chemical import businesses, only once per year and over a short period of time as full transition away occurs.

Australia does not export PFOS and international demand for PFOS is decreasing such that it is unlikely that there would be a market available for new businesses to be established to export PFOS in the future.

⁵ [2004] ATS 23



Australian Government

Department of Foreign Affairs and Trade

Amendments, adopted on 10 May 2013, to Annex III of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

(Geneva, 10 May 2013)

Entry into force: 10 August 2013

AUSTRALIAN TREATY SERIES
[2014] ATS 5

Head agreement: [2004] ATS 22

Explanatory Statement reference: [2014] AMTAES 2

RC-6/4: Listing of azinphos-methyl in Annex III to the Rotterdam Convention

The Conference of the Parties,

Noting with appreciation the work of the Chemical Review Committee,

Having considered the recommendation of the Chemical Review Committee to make azinphos-methyl subject to the prior informed consent procedure and accordingly to list it in Annex III to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade,

Satisfied that all the requirements for listing in Annex III to the Rotterdam Convention have been met,

1. *Decides* to amend Annex III to the Rotterdam Convention to list the following chemical:

Chemical	Relevant CAS number(s)	Category
Azinphos-methyl	86-50-0	Pesticide

2. *Also decides* that this amendment shall enter into force for all parties on 10 August 2013;

3. *Approves* the draft decision guidance document on azinphos-methyl set out in the annex to document UNEP/FAO/RC/COP.6/7/Add.1.

RC-6/5: Listing of commercial pentabromodiphenyl ether in Annex III to the Rotterdam Convention

The Conference of the Parties,

Noting with appreciation the work of the Chemical Review Committee,

Having considered the recommendation of the Chemical Review Committee to make pentabromodiphenyl ether (CAS No. 32534-81-9) and pentabromodiphenyl ether commercial mixtures subject to the prior informed consent procedure and accordingly to list those chemicals in Annex III to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade,

Satisfied that all the requirements for listing in Annex III to the Rotterdam Convention have been met,

1. *Decides* to amend Annex III to the Rotterdam Convention to list the following chemicals:

Chemical	Relevant CAS number(s)	Category
Commercial pentabromodiphenyl ether including: - Tetrabromodiphenyl ether - Pentabromodiphenyl ether	40088-47-9 32534-81-9	Industrial

2. *Also decides* that this amendment shall enter into force for all parties on 10 August 2013;

3. *Approves* the draft decision guidance document on pentabromodiphenyl ether (CAS No. 32534-81-9) and pentabromodiphenyl ether commercial mixtures set out in the annex to document UNEP/FAO/RC/COP.6/8/Add.1.

RC-6/6: Listing of commercial octabromodiphenyl ether in Annex III to the Rotterdam Convention

The Conference of the Parties,

Noting with appreciation the work of the Chemical Review Committee,

Having considered the recommendation of the Chemical Review Committee to make octabromodiphenyl ether commercial mixtures subject to the prior informed consent procedure and accordingly to list those chemicals in Annex III to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade,

Satisfied that all the requirements for listing in Annex III to the Rotterdam Convention have been met,

1. *Decides* to amend Annex III to the Rotterdam Convention to list the following chemicals:

Chemical	Relevant CAS number(s)	Category
Commercial octabromodiphenyl ether including: - Hexabromodiphenyl ether - Heptabromodiphenyl ether	36483-60-0 68928-80-3	Industrial

2. *Also decides* that this *amendment* shall enter into force for all parties on 10 August 2013;

3. *Approves* the draft *decision* guidance document on octabromodiphenyl ether commercial mixtures set out in the annex to document UNEP/FAO/RC/COP.6/9/Add.1.

RC-6/7: Listing of perfluorooctane sulfonic acid, perfluorooctane sulfonates, perfluorooctane sulfonamides and perfluorooctane sulfonyls in Annex III to the Rotterdam Convention

The Conference of the Parties,

Noting with appreciation the work of the Chemical Review Committee,

Having considered the recommendation of the Chemical Review Committee to make perfluorooctane sulfonic acid, perfluorooctane sulfonates, perfluorooctane sulfonamides and perfluorooctane sulfonyls subject to the prior informed consent procedure and accordingly to list those chemicals in Annex III to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade,

Satisfied that all the requirements for listing in Annex III to the Rotterdam Convention have been met,

1. *Decides* to amend Annex III to the Rotterdam Convention to list the following chemicals:

Chemical	Relevant CAS number(s)	Category
Perfluorooctane sulfonic acid, perfluorooctane sulfonates, perfluorooctane sulfonamides and perfluorooctane sulfonyls including: - Perfluorooctane sulfonic acid - Potassium perfluorooctane sulfonate - Lithium perfluorooctane sulfonate	1763-23-1 2795-39-3 29457- 72-5	Industrial

- Ammonium perfluorooctane sulfonate - Diethanolammonium perfluorooctane sulfonate	29081-56-9 70225-14-8	
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Chemical	Relevant CAS number(s)	Category
- Tetraethylammonium perfluorooctane sulfonate - Didecyldimethylammonium perfluorooctane sulfonate - N-Ethylperfluorooctane sulfonamide - N-Methylperfluorooctane sulfonamide - N-Ethyl-N-(2-hydroxyethyl) perfluorooctane sulfonamide -N-(2-Hydroxyethyl)-Nmethylperfluorooctane sulfonamide - Perfluorooctane sulfonyl fluoride	56773-42-3 251099-16-8 4151-50-2 31506-32-8 1691-99-2 24448-09-7 307-35-7	Industrial

2. *Also decides* that this amendment shall enter into force for all parties on 10 August 2013;

3. *Approves* the draft decision guidance document on perfluorooctane sulfonic acid, perfluorooctane sulfonates, perfluorooctane sulfonamides and perfluorooctane sulfonyls contained in document UNEP/FAO/RC/COP.6/10/Add.1.