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**Rotterdam Convention on the Prior
Informed Consent Procedure for Certain
Hazardous Chemicals and Pesticides in
International Trade
Conference of the Parties
Third meeting**

Geneva, 9–13 October 2006

Item 6 (a) of the provisional agenda*

**Issues arising out of previous meetings of the
Conference of the Parties: non-compliance**

**Non-compliance: Procedures and institutional mechanisms for
determining non-compliance with the provisions of the
Convention and for the treatment of Parties found to be in
non-compliance**

Note by the Secretariat

1. Article 17 of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade reads as follows:

“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.”

2. At its first meeting, the Conference of the Parties adopted decision RC-1/10, in which it recalled article 17 of the Rotterdam Convention and, mindful that the procedures and mechanisms under article 17 would help address issues of non-compliance, including by facilitating assistance and providing advice to Parties facing compliance issues, noted with appreciation the preparatory work already undertaken by the Intergovernmental Negotiating Committee on the elaboration of the procedures and mechanisms called for by article 17, and especially that reflected in the note by the secretariat¹ on procedures and institutional mechanisms for determining non-compliance with the

* UNEP/FAO/RC/COP.3/1.

¹ UNEP/FAO/RC/COP.1/20.

provisions of the Convention and for the treatment of Parties found to be in non-compliance. Against that background, the Conference of the Parties decided to convene an open-ended ad hoc working group on article 17 immediately prior to its second meeting, with a view to preparing for and carrying forward deliberations on the issue.

3. Pursuant to decision RC-1/10, the Open-ended Ad Hoc Working Group on article 17 met on 26 and 27 September 2005 at the headquarters of the Food and Agriculture Organization of the United Nations in Rome.

4. At its second meeting, the Conference of the Parties decided in its decision RC-2/3:

(a) To consider further the procedures and institutional mechanisms on non-compliance required under article 17 of the Convention for adoption at its third meeting;

(b) That the draft text contained in the annex to the decision would be the basis for its further work on the matter at its third meeting;

(c) To invite the Parties to include in their respective delegations to the third meeting of the Conference of the Parties at least one expert who would participate in further work on the matter during that meeting.

Suggested action by the Conference of the Parties

5. The Conference of the Parties may wish to consider the annex to decision RC-2/3 on the establishment of a compliance committee, which is reproduced as the annex to the present note, and to take a decision concerning the procedures and institutional mechanisms for determining non-compliance with the provisions of the Convention and for the treatment of Parties found to be in non-compliance.

Annex to decision RC-2/3²

Establishment of a compliance committee

1. A compliance committee (hereinafter referred to as “the Committee”) is hereby established.

Members

2. The Committee shall consist of [10][14][15][21] members. Members shall be nominated by Parties and elected by the Conference of the Parties. In electing members, due consideration shall be given to the principle of equitable geographical representation of [the regional groups of the United Nations] [the PIC regions].

[2 alt. The Committee shall consist of [17][19] members. Members shall be nominated by Parties and elected by the Conference of the Parties on the basis of equitable geographical distribution, including ensuring a balance between developed and developing Parties, drawn from the following regional groups of the United Nations:

African States: [4][5]

Asian and Pacific States: [4][5]

Central and Eastern European States: 2

Latin American and Caribbean States: 3

Western European and other States: 4]

3. Members shall have expertise and specific qualifications in the subject matter covered by the Convention. They shall serve objectively and in the best interests of the Convention.

Election of members

4. At the meeting at which the Committee is established, the Conference of the Parties shall elect half the members of the Committee for one term and half the members for two terms. The Conference of the Parties shall, at each ordinary meeting thereafter, elect for two full terms new members to replace those members whose period of office has expired or is about to expire. Members shall not serve for more than two consecutive terms. For the purpose of the present decision, “term” shall mean the period that begins at the end of one ordinary meeting of the Conference of the Parties and ends at the end of the next ordinary meeting of the Conference of the Parties.

5. If a member of the Committee resigns or is otherwise unable to complete his or her term of office or to perform his or her functions, the Party who nominated that member shall nominate an alternate to serve for the remainder of the term.

Officers

6. The Committee shall elect its own Chair. [A] vice-chair and a rapporteur shall be elected, on a rotating basis, by the Committee in accordance with rule 30 of the rules of procedure of the Conference of the Parties.

Meetings

7. The Committee shall hold meetings as necessary and wherever possible in conjunction with meetings of the Conference of the Parties or other Convention bodies.

8. Subject to paragraph 9 below, the meetings of the Committee shall be open to Parties [and [open] [closed] to the public] unless the Committee and the Party whose compliance is in question agree otherwise.

The Parties [or observers] to whom the meeting is open shall not have a right to participate in the meeting unless the Committee and the Party whose compliance is in question agree otherwise.

9. Where a submission is made with respect to the possible non-compliance of a Party, it shall be invited to participate in the consideration of the submission by the Committee. Such a Party,

² UNEP/FAO/RC/COP.2/19, annex I.

however, may not take part in the elaboration and adoption of a recommendation or conclusion of the Committee.

10/11. The Committee shall make every effort to reach agreement on all matters of substance by consensus. [Where this is not possible, the report shall reflect the views of all the Committee members. If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall, as a last resort be taken by a two-thirds majority of the members present and voting or by [XX] members, whichever is greater.]

[[X] members of the Committee shall constitute a quorum.]

12. Submissions may be made in writing, through the secretariat where subparagraph[s] (a) [and (b)] appl[y][ies], by:

(a) A Party which believes that, despite its best endeavours, it is, or will be, unable to comply with certain obligations under the Convention. Such a submission should include details as to which specific obligations are concerned and an assessment of the reason why the Party may be unable to meet those obligations. Where possible, substantiating information, or advice as to where such substantiating information may be found, may be provided. The submission may include suggestions for solutions which the Party considers may be most appropriate to its particular needs;

[(b) A Party that has concerns or is affected by a failure to comply with the Convention's obligations by another Party [with which it is directly involved under the Convention]. A Party intending to make a submission under this subparagraph should before so doing undertake consultations with the Party whose compliance is in question. The submission should include details as to which specific obligations are concerned, and information substantiating the submission;]

[(c) The secretariat, if, while acting pursuant to its functions under [articles [4, 5, 10 [and][.] 11[and 12]] of] the Convention, it becomes aware of possible difficulties for any Party in complying with its obligations under [articles [4, 5, 10 [and][.] 11 [and 12]] of] the Convention [or when it receives submissions from individuals or organizations having reservations about a Party's compliance with its obligations under the Convention]].

13. The secretariat shall forward submissions made under subparagraph 12 (a) above, within two weeks of receiving such submissions, to the members of the Committee for consideration at the Committee's next meeting.

14. [The secretariat shall, within two weeks of its receiving any submission made under subparagraph 12 (b) or making a submission under subparagraph 12 (c) above, send a copy to the Party whose compliance with the Convention is in question and to the members of the Committee for consideration at the Committee's next meeting.]

[14 bis If the secretariat, while acting pursuant to its functions under articles 4, 5, or 10 of the Convention, becomes aware of possible difficulties by a Party in complying with its obligations under the Convention, it may request the Party concerned to furnish necessary information about the matter. If there is no response from the Party concerned within three months or such longer period as the circumstances of the matter may require, or the matter is not resolved through administrative action or through diplomatic contacts, the secretariat shall report the matter to the Parties pursuant to paragraph 4 of article 4, paragraph 4 of article 5 or paragraph 10 of article 10 of the Convention, and shall inform the members of the Committee which [, if appropriate,] shall consider the matter at the Committee's next meeting.]

15. Parties whose compliance is in question may present responses or comments at every step of the proceedings described in the present decision.

16. Without prejudice to paragraph 15 above, additional information, provided by a Party whose compliance is in question in response to a submission, should be forwarded to the secretariat within three months of the date of receipt of the submission by that Party, unless the circumstances of a particular case require an extended period of time. Such information shall be immediately transmitted to the members of the Committee for consideration at the Committee's next meeting. [Where a submission has been made pursuant to subparagraph 12 (b) above, the information shall be forwarded by the secretariat also to the Party that made the submission.]

17. The Committee may decide not to proceed with submissions which it considers to be:

(a) De minimis;

- (b) Manifestly ill-founded.

Facilitation

18. The Committee shall consider any submission made to it in accordance with paragraph 12 [or any matter referred to it in accordance with paragraph 14 bis] above with a view to establishing the facts and the root causes of the matter of concern, and to assisting in its resolution. To that end, the Committee may provide a Party with:

- (a) Advice;
- (b) Non-binding recommendations;
- (c) Any further information required to assist the Party in developing a compliance plan, including timelines and targets.

Possible measures to address compliance issues

19. If, after undertaking the facilitation procedure set forth in paragraph 18 above and taking into account the cause, type, degree and frequency of compliance difficulties, including financial and technical capacities of the Parties whose compliance is in question, the Committee considers it necessary to propose further measures to address a Party's compliance problems, it may recommend to the Conference of the Parties that it consider [appropriate] [the following] measures, to be taken in accordance with international law, to attain compliance[, including]:

- (a) Further support under the Convention for the Party concerned, including facilitation, as appropriate, of access to financial resources, technical assistance and capacity-building;
- (b) Providing advice regarding future compliance in order to help Parties to implement the provisions of the Convention and to promote cooperation between all Parties;
- [(b bis) Statement of concern on non-compliance;]
- (c) Statement of concern regarding possible future non-compliance;
- [(d) Statement on the determination of non-compliance;][Declaration on non-compliance;]
- [(e) Issuing a caution;]
- [(f) Suspending rights and privileges under the Convention;]
- [(g) Recommending a non-compliant Party to take steps to remedy the non-compliant situation, such as re-import/re-export of the chemical or safe disposal at the expense of the non-compliant Party.]

Handling of information

21. [The Committee may receive relevant information, through the secretariat, from the Parties [and from other relevant sources.]]

[21 alt: As regards paragraph 12 submissions, the Committee may only receive information:

- (a) Submitted by the secretariat from Parties pursuant to paragraphs 12 and 16;
- (b) Obtained by the secretariat from Parties while acting pursuant to its functions under the Convention; and
- (c) With the consent of the Party concerned, as requested by the Committee from any source.]

22. For the purposes of examining systemic issues of general compliance under paragraph 25, the Committee may:

- (a) Request information from all Parties;
- [(b) [As directed by the Conference of the Parties] Request relevant information from any reliable sources and outside experts; and
- (c) Consult with the secretariat and draw upon its experience and knowledge base.]

23. Subject to article 14 of the Convention, the Committee, any Party and any person involved in the deliberations of the Committee shall protect the confidentiality of information received in confidence.

Monitoring

24. The Compliance Committee should monitor the consequences of action taken in pursuance of paragraphs 18 or 19 above.

General compliance issues

25. The Compliance Committee may examine systemic issues of general compliance of interest to all Parties where:

(a) The Conference of the Parties so requests;

(b) The Committee, on the basis of information obtained by the secretariat, while acting pursuant to its functions under the Convention, from Parties and submitted to the Committee by the secretariat, decides that there is a need for an issue of general non-compliance to be examined and for a report on it to be made to the Conference of the Parties.

Reports to the Conference of the Parties

26. The Committee shall submit a report to each ordinary meeting of the Conference of the Parties reflecting:

(a) The work that the Committee has undertaken;

(b) The conclusions or recommendations of the Committee;

(c) The future programme of work of the Committee, including the schedule of expected meetings which it considers necessary for the fulfilment of its programme of work, for the consideration and approval of the Conference of the Parties.

Other subsidiary bodies

27. Where the activities of the Committee with respect to particular issues overlap with the responsibilities of another Rotterdam Convention body, the Conference of the Parties may direct the Committee to consult with that body.

Relationship with other relevant multilateral environmental agreements

[28. Where there is a relationship with other relevant multilateral environmental agreements, the Committee may solicit specific information, upon request by the Conference of the Parties, or directly, from committees dealing with hazardous substances and wastes under the auspices of other relevant multilateral environmental agreements and report on these activities to the Conference of the Parties.]

Review of the compliance mechanism

29. The Conference of the Parties shall regularly review the implementation of the procedures and mechanisms set forth in the present decision.

Relationship with settlement of disputes

30. These procedures and mechanisms shall be without prejudice to article 20 of the Convention.