

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

February 4-5, 2002

RESOLVED, That the American Bar Association supports prompt ratification and implementation by the United States of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

REPORT

The proposed resolution expresses the support of the American Bar Association (ABA) for the United States promptly to ratify and implement the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention),¹ and reflects ABA support for the establishment of this legally binding instrument to facilitate informed decision-making, particularly by governments concerning the importation of potentially hazardous chemicals.

BACKGROUND

Chemicals offer many important benefits through industrial, pesticidal and other uses. At the same time, some chemicals can pose serious risks to human health and the environment if misused, or if appropriate use information is not provided. Countries attempt to safeguard citizens from the risks of hazardous chemicals while allowing for the beneficial use of chemicals. However, some countries lack the political infrastructure, trained personnel and general understanding of chemical management issues necessary to regulate them. The Rotterdam Convention is intended to help remedy such regulatory limitations.

The Rotterdam Convention, also known as the PIC Convention, builds on earlier voluntary procedures for prior informed consent to trade in hazardous chemicals embodied in the Food and Agriculture Organization (FAO) International Code of Conduct for the Distribution and Use of Pesticides and in the United Nations Environment Programme (UNEP) Amended London Guidelines for the Exchange of Information on Chemicals in International Trade.² These non-binding international initiatives call for exporting and importing countries to work together to establish and apply “prior informed consent” (PIC) procedures to increase access to information regarding potential risks associated with the use of hazardous chemicals, to facilitate informed decision-making by national authorities concerning the importation of such substances. Negotiations to formalize these initiatives through a binding agreement officially began in 1996 and resulted in the adoption of the Rotterdam Convention in September 1998.

Over 70 countries, including the United States, have signed the Convention, and 14 have ratified the instrument.³ The Convention will enter into force following ratification by fifty governments.⁴ Pending its entry into force, over 160 governments have agreed to participate in an “interim PIC procedure” that continues to apply the existing voluntary PIC program modified

¹ The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, UNEP/CHEMICALS/98/17, *opened for signature* Sept. 10, 1998 [hereinafter Rotterdam Convention].

² UNEP Amended London Guidelines on the Exchange of Information on Chemicals in International Trade (1989); FAO Code of Conduct for the Distribution and Use of Pesticides (1985).

³ *See* United Nations Treaty System, *available at* <http://untreaty.un.org> (last updated June 29, 2001).

⁴ *See* Rotterdam Convention, art. 26.

in accordance with the terms of the Convention.⁵

TERMS OF THE CONVENTION⁶

The Convention creates a formal mechanism to provide participating (“Party”) governments information regarding the risks posed by banned or severely restricted chemicals, and severely hazardous pesticide formulations.⁷ The principle mechanism established is a set of procedures to exchange information on the basis for regulating certain chemicals, and to seek the consent of Party governments before import of chemicals listed under the Convention.

The Convention, as written, lists 27 such chemicals, making them subject to these PIC procedures.⁸ Parties must notify the Convention Secretariat of their decisions on whether to consent, not consent, or conditionally consent to import for each listed substance.⁹ Exporting Parties must ensure that exporters within their jurisdictions comply with these decisions. Each Party of export is further obliged to communicate to all relevant individuals within its jurisdiction the importation decisions of other Parties. Also, if a Party fails to notify a decision on whether to import a listed chemical, exporting Parties may, nonetheless, have to ensure the chemical is not exported to that Party for a prescribed period of months unless the chemical has previously been used or imported and is not subject to regulatory action in the importing country, is registered there, or import is approved in response to an explicit request by the exporter.¹⁰

In addition, if a chemical is banned or severely restricted domestically by an exporting Party, that Party is required to provide export notifications to importing Parties of the risks associated with the use of that chemical. These export notifications must be provided prior to the first export and again once each calendar year.¹¹

The Parties to the Convention may decide to list additional substances under the Convention. If a Party decides to ban or severely restrict a chemical, it must send notification of the regulatory action to the Convention’s Secretariat. When the Secretariat receives at least one notification from two of the seven designated PIC regions, the Secretariat must then refer the

⁵ Status of Implementation of the Interim PIC Procedure as it Relates to the Work of the Interim Chemical Review Committee, UNEP/FAO/PIC/ICRC.2/3, Dec. 15, 2000.

⁶ This summary of the terms of the Convention is intended to provide a general overview, and does not reflect the full detail of the rights, obligations and procedures established under the instrument.

⁷ The Convention does not apply to narcotic drugs, psychotropic substances, radioactive substances, wastes, chemical weapons, human or veterinary pharmaceuticals, food additives, food, or limited quantities of chemicals used for research and development or for personal, individual use. *See* Rotterdam Convention, art. 3.

⁸ Chemicals are listed under Annex III of the Convention.

⁹ To assure trade neutrality, if a country bans or restricts the import of a particular chemical, it also must correspondingly prohibit or restrict all other imports and production for domestic use. *See* Rotterdam Convention, art. 10.

¹⁰ *See id.* at arts. 10 and 11.

¹¹ *See id.* at art. 12.

chemical to the Chemical Review Committee.¹² The Chemical Review Committee has the task of deciding whether to recommend that the Conference of the Parties list the chemical, based upon specified criteria detailed in the Convention. It then forwards a Decision Guidance Document to the Conference of the Parties for review. The Conference of the Parties can amend the Convention list only by consensus.¹³

The Convention also requires Parties to impose labeling requirements for listed chemicals, and to compel provision to importers of safety data sheets for chemicals to be used for occupational purposes, to ensure adequate availability of information regarding risks to human health or the environment. In addition, the Convention calls upon Parties to facilitate exchange of non-confidential information regarding chemicals.¹⁴

Parties are obliged to perform necessary measures to implement the Convention. The Convention recognizes, however, that some developing countries, or countries with economies in transition, may lack the technical capacity to manage hazardous chemicals. The Convention requires Parties with more enhanced regulatory programs to assist other Parties to develop the infrastructure and capacity to manage chemicals throughout their life cycle.¹⁵

DOMESTIC STATUS OF THE CONVENTION

On February 9, 2000, President Clinton transmitted the Rotterdam Convention to the Senate for its advice and consent to ratification. The transmittal documents expressly note the support of the relevant federal agencies for expeditious ratification.¹⁶ As of July 9, 2001, the Convention remained in the Senate Foreign Relations Committee and had not yet been placed on a calendar for discussion in the Committee. Draft implementing legislation is currently being prepared through an interagency process. Although much of the Convention can be implemented under existing U.S. law, it is expected that some changes will be needed, including to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA), to ensure full compliance with Convention obligations regarding exportation of listed substances, export notification, and the labeling and safety data sheet requirements.¹⁷

CONCLUSION

United States ratification of the Rotterdam Convention can be expected to encourage the

¹² The Convention also allows developing countries or countries in economic transition individually to propose the inclusion of "severely hazardous pesticide formulations" for consideration by the Chemical Review Committee. *See* Rotterdam Convention, art. 6. This provision offers these countries a way to expedite review of pesticides that they consider to be of particular concern.

¹³ *See* Rotterdam Convention, arts. 6-9, 22, annexes II, IV. The Convention also provides for the delisting of chemicals through essentially the same process. *See id.* at art. 9.

¹⁴ *See id.* at arts. 13 and 14.

¹⁵ *See id.* at arts. 15 and 16.

¹⁶ *See id.*

¹⁷ *See id.*

participation of other countries. Ratification will also indicate United States support for this regime and its important objectives. More generally, it will reflect the continued leadership of the United States in the development of international chemicals policy, and help demonstrate the commitment of the United States to play a leadership role in the development of international environmental law as a whole. The Administration appears to support the Convention, as do relevant stakeholders. The proposed ABA resolution in support of ratification and implementation would encourage and could assist this worthwhile effort.

ADDITIONAL INFORMATION ABOUT THE ROTTERDAM CONVENTION

Date of U.S. Signature:	September 11, 1998
Treaty Citation:	The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, <i>opened for signature</i> Sept. 10, 1998, U.N. Doc. UNEP/CHEMICALS/98/17
Date Submitted to Senate:	February 9, 2000
Date Treaty Entered Into Force:	Not yet in force
Number of Parties to Treaty:	14 ratifications (as of June 29, 2001)

Respectfully submitted,



Robert E. Lutz, II
Chair
Section of International Law and Practice
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