

## **PIC COP-3 HIGHLIGHTS: MONDAY, 9 OCTOBER 2006**

The third Conference of the Parties (COP-3) to the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade convened on Monday in Geneva, Switzerland. In the morning, delegates heard opening statements by representatives of the UN Food and Agriculture Organization (FAO) and United Nations Environment Programme (UNEP), and addressed organizational matters, rules of procedure, implementation of the Convention, and non-compliance issues. In the afternoon, delegates continued meeting in plenary in parallel with the budget contact group and the working group on non-compliance.

### **OPENING PLENARY**

President Ruisheng Yue (China), welcoming the Republic of Congo as the Convention's 109th signatory, said commitments made when ratifying the Convention should now be turned into action.

Frits Schlingemann, UNEP, on behalf of Achim Steiner, UNEP Executive Director, reviewed progress made in the last 15 years, and reiterated the Convention's role as an early-warning mechanism against unwanted imports, commended the growing number of ratifications, and regretted that not all parties were utilizing the Convention's mechanisms.

Niek van der Graff, Rotterdam Convention Joint Executive Secretary, FAO, reviewed progress made on the Convention's implementation, including outreach and technical assistance. He highlighted collaboration with the World Customs Organization, exemplified by the entry into force in January 2007 of a Harmonized System customs code for PIC chemicals. He said successful implementation was due, in part, to FAO-UNEP cooperation. Van der Graff urged action on chrysotile asbestos and reiterated Annex III (Chemicals subject to the PIC Procedure) inclusion is not a recommendation to ban global trade or use. He urged parties to review the list of more than 160 chemicals for which a first notification has been made, and encouraged development of national plans or strategies for implementation.

### **ORGANIZATIONAL MATTERS**

President Yue introduced, and COP-3 adopted, the annotated agenda for the meeting and its organization of work (UNEP/FAO/RC/COP.3.1 and Add.1). Underscoring the COP-3 outcome will guide the Convention's implementation for the next two years, he referred delegates to his Scenario Note (UNEP/FAO/RC/COP.3/2), and highlighted the need to: agree on the 2007-2008 programme of work and budget; provide guidance on non-compliance, financial mechanisms and synergies; and reach a decision on chrysotile asbestos.

### **RULES OF PROCEDURE**

The Secretariat submitted for adoption of the COP rules of procedure (UNEP/FAO/RC/COP.3/3), noting that COP-1 and COP-2 did not reach consensus on the reference to a two-thirds majority vote, which remains bracketed.

JAPAN, supported by INDIA, CHINA, BRAZIL, the US and others, proposed decision by consensus only. Finland, speaking on behalf of the EUROPEAN UNION (EU), with many others, supported majority vote if consensus is not achieved. ETHIOPIA and MEXICO also favored majority vote, noting references to voting in the Convention's text and the two-thirds majority vote practice of the UN General Assembly.

Noting lack of consensus, President Yue said no formal decision will be taken on the issue by COP-3, and that COP decisions will be taken by consensus until the brackets in the Rules of Procedure are removed.

### **IMPLEMENTATION OF THE CONVENTION**

**STATUS OF IMPLEMENTATION:** The Secretariat presented UNEP/FAO/RC/COP.3/4, and President Yue urged parties to consider why few pesticide formulations had been notified for consideration. The EU expressed concern over parties' continued failure to provide Annex III import responses, and encouraged members to use CRC's guidance on notification procedures. CHILE indicated that inconsistent export advice formats, including from the EU, made reaction difficult. OMAN and SUDAN called for continuing technical assistance to meet their commitments. NORWAY underscored the need to adjust the work programme and budget to assist countries requiring resources for implementation.

**REPORT OF CRC-2:** CRC Chair Bettina Hitzfeld (Switzerland) introduced the CRC-2 report (UNEP/FAO/RC/COP.3/7), and outlined the meeting's outcome.

**Issues arising out of CRC-2:** CRC-2 Chair Hitzfeld presented UNEP/FAO/RC/COP.3/8 and noted that, *inter alia*, CRC-2: agreed in general on procedures for the preliminary review of notifications and the Committee's work prioritization in progress; recommended COP-3 consideration of including chrysotile asbestos in Annex III; addressed use of previously considered notifications; and extensively discussed the term "misuse" while considering Thailand's notification regarding endosulfan.

On procedures for preliminary review of notifications, the EU, SWITZERLAND, AUSTRALIA, NIGERIA, CHINA and CANADA supported consideration of notifications on a case-by-case basis. INDIA emphasized objectivity and suggested CRC's decision on endosulfan contravenes the Convention.

On the definition of "misuse", the EU supported the CRC's recommended definition. INDIA stressed that "intentional misuse" is not an adequate reason for Annex III listing, and urged not considering pesticides under Annex III because they are highly regulated. CHILE said it does not always refer to

“illegal use.” AUSTRALIA urged clarification of “intentional misuse” and requested the CRC to seek legal advice from UNEP, and delegates agreed.

**Treaty restrictions and other Multilateral Environment Agreements (MEAs):** The Secretariat presented UNEP/FAO/RC/COP.3/9, on the Convention’s treatment of substances in which trade is prohibited or restricted by the Stockholm Convention, the Montreal Protocol and International Maritime Organization Convention.

SWITZERLAND, supported by NEW ZEALAND, the EU and AUSTRALIA supported a case-by-case approach to prioritization of chemicals. The US opposed basing decisions on another MEA’s criteria. COP-3 agreed to the Secretariat’s proposal to assign a lower priority to chemicals included in the Stockholm Convention or Montreal Protocol, and not to assign a lower priority to chemicals considered for inclusion, or due to be phased out, under these agreements.

#### CONSIDERATION OF A CHEMICAL TO BE INCLUDED IN THE CONVENTION’S ANNEX III:

**Chrysotile asbestos:** On UNEP/FAO/RC/COP.3/8 Annex II, President Yue underscored the legal validity of using previously considered notifications in including chemicals in Annex III. CANADA, NORWAY and CHILE said they were satisfied with the process’ legality. KYRGYZSTAN, supported by the RUSSIAN FEDERATION, underscored that the procedure for including chrysotile asbestos was not observed. President Yue stressed that the COP had not considered this issue and the Secretariat confirmed UNEP legal officers’ advice that a lack of consensus does not invalidate notifications. SWITZERLAND supported this advice. President Yue deferred discussions on the issue.

#### ISSUES FROM PREVIOUS COPs

**NON-COMPLIANCE:** Noting the Convention’s Article 17 (Non-compliance) specifies development of rules and procedures on this issue, the Secretariat introduced this agenda item (UNEP/FAO/RC/COP.3/12), and recalled COP-2 decision (RC-2/3) to consider the procedures and mechanisms on non-compliance for adoption at COP-3. President Yue proposed, and delegates agreed, to establish a working group to further consider this issue, with Denis Langlois (Canada) as its Chair.

#### REPORT ON ACTIVITIES OF THE SECRETARIAT

President Yue introduced the report on activities of the Secretariat (UNEP/FAO/COP.3/22) and Status of Designated National Authorities (DNAs) (UNEP/FAO/COP.3/INF.2). The Secretariat asked delegates to review the list of DNAs and make any necessary corrections. Delegates took note of the report.

#### PROGRAMME OF WORK AND PROPOSED BUDGET 2007-2008

The Secretariat introduced the agenda item on the 2007-2008 programme of work and budget (UNEP/FAO/RC/COP.3/23 and Corr.1, UNEP/FAO/RC/COP.3/24 and Corr.1, and UNEP/FAO/RC/COP.3/INF.12). He drew attention to: ongoing support of FAO and UNEP for Secretariat operations; status of contributions; issues associated with host country support; expenditures, noting that COP-3 cost more than anticipated; and issues related to staffing. Lamenting payment delays, the EU said it was looking for ways to encourage parties to pay budget contributions on time. A budget contact group was established.

The Secretariat introduced the currency study (UNEP/FAO/RC/COP.3/18). The EU said it was not in a position to use multicurrency systems, that there was no basis for changing the *status quo*, and that the matter should be reconsidered at COP-4. MEXICO preferred maintaining the *status quo* and establishing a contingency fund.

#### WORKING GROUPS

**NON-COMPLIANCE:** Working Group Chair Langlois stressed the COP-3 mandate to adopt procedures and mechanisms on non-compliance, and invited comments on five issues that remain bracketed on establishment of a compliance committee (UNEP/FAO/RC/COP.3/12 Annex): membership; open versus closed meetings; consensus versus vote-based decision making; triggers for the non-compliance procedure; and possible measures to address non-compliance.

Many parties supported a facilitative rather than punitive mechanism, while the EU, ETHIOPIA and MALI stressed the need for an appropriate response to non-compliance.

On membership, while parties generally agreed on equitable geographical distribution and balance between developed and developing country participation, some parties supported composition based on UN regions, while others favored PIC regions, with the US stating that PIC regions better reflect current bilateral trade discussions.

Many parties agreed that consensus should be reached if possible, but if not, a two-thirds majority vote should be implemented, which JAPAN and AUSTRALIA opposed.

The EU further proposed the committee be open to the public, with interventions on specific issues only made upon approval of a party concerned. SOUTH AFRICA, ETHIOPIA, JAMAICA, ECUADOR, VENEZUELA and CHILE supported a process open to the public, with some stating the non-compliant party could protest. NORWAY encouraged NGO participation. OMAN, CHINA, GHANA, THAILAND, MALAYSIA and others said discussions should only involve parties, although some considered the non-compliant party could agree to an open process. SWITZERLAND, supported by the US, said the committee could work more effectively if closed, with CANADA highlighting closed sessions under the Montreal Protocol as being conducive to frank discussions.

On triggers, AUSTRALIA advocated party self-invocation only, while the EU suggested accepting submissions on non-compliance from parties, the Secretariat, individuals and groups, provided safeguards are in place. JAPAN opposed party-to-party triggers. CHINA, SOUTH AFRICA and the US said the Secretariat should not trigger the process, while SWITZERLAND and NORWAY said it could be helpful, and MALAYSIA proposed the Secretariat’s involvement if the matter is not resolved within a certain timeframe.

Many parties opposed the more punitive measures outlined, while the EU favored stricter compliance measures, including a declaration of non-compliance and, opposed by JAPAN and CANADA, suspension of parties’ rights and privileges.

OMAN supported first establishing a clear financial mechanism, and CHINA and INDIA highlighted the link between the financial mechanism and compliance. GHANA suggested an “implementation” rather than “compliance” committee. The US said the COP-2 decision does not require consensus at COP-3, but that every effort to reach consensus should be made.

Delegates then discussed existing non-compliance mechanisms and existing precedents under the Montreal Protocol, the Basel Convention and the Cartagena Protocol on Biosafety, particularly regarding dispute settlement procedure and suspension of rights and privileges. Chair Langlois adjourned the session, encouraging informal consultations.

**BUDGET:** This contact group met in the afternoon and agreed to appoint Paul Garnier (Switzerland) as Chair, reviewed the Secretariat’s latest budget figures, contained in UNEP/FAO/COP.3/INF.12, and agreed to revise figures to reflect delegates’ comments. The group also looked at draft elements for a decision on 2007-2008 financing and budget. The group will continue its work on Tuesday.

#### IN THE CORRIDORS

As COP-3 opened in Geneva’s glorious autumn sunshine, delegates were overheard chatting about their expectations for the meeting. Some placed great importance on the format of discussions on chrysotile asbestos, and the announcement that the issue would be discussed in a Friends of the Chair group raised a few eyebrows. One delegate complained about the lack of transparency whereas others suggested the format of discussions does not matter, since inclusion of chrysotile is a political “yes” or “no” question. As discussions began anew on non-compliance, another delegate risked the prediction that an agreement on a non-punitive mechanism, in step with other MEAs, will be reached by the end of the week. Other delegates, noting lack of progress at COP-2, feared “irreconcilable differences” would prevent consensus from emerging. Another delegate expressed the strong hope that agreement would be reached, as the working group cost well over a quarter of a million dollars.