



ICC
Indian Chemical Council

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2. Mr. Peter Kenmore
Co-Executive Secretary
Secretariat of the Rotterdam Convention
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3. Ms. Karmen Krajnc
Chair, CRC-5
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Dear M/s. Cooper and Kenmore,

I am sending this letter to you in response to your e-mail cum letter No. PL36/10 dated 10th July 2009 that conveyed that preparation of internal proposal/DGD for Endosulfan was in progress. In this connection, I would like to bring the following to your notice and also to the notice of CRC members & others.

During the meeting of CRC-5 (23rd – 27th March '09) the CRC member from India submitted a Conference Room Paper (UNEP/FAO/RC/CRC-5/CRP.6) highlighting, among others, the fact that the notification submitted by Sahelian Committee was not submitted as per Article 5 of Rotterdam Convention.

On 17th July 09, I sent to you a letter (a copy of attached) analyzing Article 5 of the Convention and driving home the point further that the Sahelian notification was inadmissible for Annex I and Annex II considerations as per Article 5 of the Convention as it was not submitted within the stipulated time of 90 days. I also sought a copy of an important legal opinion from you that, according to you, was made available at the CRC-5. I have yet to receive your response.

A careful reading of past recommendations/decisions of INC/COP categorically establish the fact that the CRC can not legitimately go ahead and prepare a DGD for Endosulfan on the strength of Sahelian notification.

The Intergovernmental Negotiating Committee (INC) in its report (UNEP/FAI/PIC/INC.7/15) merely proposed that:

“The Interim Chemical Committee must deem a notification valid prior to developing a decision guidance document”

However, when the Conference of Parties (COP) considered this proposal at its second meeting (26 – 30th Sep’2005) it brought in additional elements of caution and adopted a decision that said:

“The Chemical Review Committee must deem a notification and relevant supporting documentation to meet the requirements of the Convention prior to developing a decision guidance document” (DecisionRC-2/2 in UNEP/FAO/RC/COP.2/19).

Thus, the COP decision categorically stipulates that *“the chemical review committee must deem a notification and relevant supporting documents to meet the requirements of the Convention”*.

What are the requirements of the Convention that a notification must meet?

- The first and the foremost is that the notification must meet the requirement of Article 5(1) of the Convention that stipulates 90 days time limit.
- Article 5(3) that makes it clear that a notification can be subjected to criteria in Annex I, (and consequently Annex II criteria) only if it is received as per 5(1) of the Convention.

When a notification fails to meet Article 5(1) and, consequently Article 5 (3) of the Convention, the CRC cannot go ahead with the examining the notification for Annex II criteria.

It must be noted that the term used in COP decision RC-2/2 is **“must deem”** and not **“may deem”**.

Webster’s revised unabridged dictionary defines the term **“deem”** as:

*To be of the opinion
To think
To estimate
To pass judgment*

The term **“must deem”** as used here gives CRC the obligation to think and to determine that the submitted notification meet **requirements of the Convention** (and not merely the requirement of Annex II).

The CRC should ensure that there is absence of evidence to the contrary.

In case of Sahelian notification there exist clear evidence to the contrary. It does not meet the requirements of Article 5(1) and 5(3) of the Convention.

90 days time limit is an important caveat under the Convention. It is both surprising and inexplicable that the Secretariat chose to ignore it while accepting the impugned notification for Annex I verification, and, in the process, undermined the spirit of the Convention.

That the Conference of the Parties (COP) considered 90 days time limit to be a significant requirement could be seen for the following:

The original version of Article 5 as proposed by the Interim Negotiating Committee (INC) read:

“A notification pursuant to paragraph 1 of this article shall be made as soon as possible but not later than 90 days after the date on which the regulatory action has taken effect” (UNEP/FAO/PIC/INC.5/3).

But the Conference of Plenipotentiaries (10-11 September 1998) modified the Article 5 to read:

“..... such notification shall be made as soon as possible, and in any event no later than ninety days after the date on which the final regulatory action has taken effect” (UNEP/FAO/RC/COP.2/19).

Note the revised text in the Article 5 that states *“in any event no later than ninety days”*

It means that the notification for Annex I considerations shall not only be made as soon as possible; but it should not be delayed beyond 90 days.

In its submission to WTO (TN/TE/W/23 of 20th Feb 03), India had identified Article 5 of the Rotterdam Convention, among others, to be containing trade measures. Trade measures lead to trade obligations. Nonobservance and/or contravention of Article 5 in any manner is, therefore, unacceptable.

The mandatory provisions in Article 5(1) and 5(3) cannot be ignored by the Convention’s Secretariat and the Chemical Review Committee.

I must also bring to your notice that the final report of CRC-5(UNEP/FAO/RC/CRC.5/16) carries contradictory and incorrect information about what happened at the CRC-5 meeting.

Paragraph 72 in page 9 of the final report of CRC.5 states:

“...responses to the outstanding questions regarding the notifications from the Sahelian countries would be made available at its next meeting to inform further discussion on whether all the criteria in Annex II had been met”

However paragraph 13 in page 26 of the same report claims:

“The Committee concluded that the notifications of final regulatory action by the Sahelian countries met the information requirements of Annex I and the criteria set out in Annex II of the Convention.”

Both are mutually contradictory. It is shocking that the final report of the CRC should carry such serious contradictions.

It should be said that what’s stated in paragraph 13 in page 26 of the report is incorrect. Paragraph 72 in page 9 (reproduced above) reflects the reality.

Article 7, paragraph 1 of the Rotterdam Convention states:

“For each chemical that the Chemical Review Committee has decided to recommend for listing in Annex III, it shall prepare a draft decision guidance document”

This is also reiterated in COP’s decision RC 1/6 which states:

“..for each chemical it has decided to recommend for listing in Annex III[CRC shall] prepare a draft decision guidance document”.

Clearly, the Convention allows the CRC to begin preparing the draft decision guidance document only after it has decided to recommend a chemical for listing in Annex III.

There was no final decision taken at CRC.5 on the Sahelian notification concerning Endosulfan as it suffered from series of flaws as shown in the Conference Room Paper (UNEP/FAO/RC/CRC.5/ CRP.19).


Paragraph 72 of the final report of the CRC-5 indeed confirms that only the next meeting of the CRC would discuss to know whether the Sahelian notification meets all the criteria of Annex II.

Under the circumstances, it is not all tenable and legitimate to go ahead with internal proposal/DGD for Endosulfan based on Sahelian notification. This must be aborted.

Rotterdam Convention is not a self executing treaty. To be valid for domestic implementation in countries that are Parties to the Convention, all decisions taken in Rotterdam Convention and its subsidiary body (CRC) must be consistent with the provisions of the Convention.

Thanking you,

Yours faithfully



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4. All members of CRC and observers.