

SECTION VI - Treaties

14. The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

The information presented is intended to provide plain English guidance on Australia's rights and obligations for industrial chemicals under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Rotterdam Convention; also known as PIC) and industry requirements for meeting out these obligations. However, persons should refer to text of the Rotterdam Convention, which sets out the provisions and obligations that apply to all Parties. The PIC site is at www.pic.int.

14.1 About the Rotterdam Convention

The Rotterdam Convention puts obligations on the import and export of certain hazardous chemicals. This means that countries that are signatories of the Rotterdam Convention are given the power to make informed decisions on which chemicals they want to receive and to exclude those they cannot manage safely.

Under the Rotterdam Convention, countries nominate chemicals that have been severely restricted or banned in their country, and once approved for inclusion in the Prior Informed Consent (PIC) procedure, these chemicals will be subject to controls in international trade. In addition, a country seeking to export a chemical subject to a ban or severe restriction in its own territory must inform the importing country at the time of first export, and then annually. In such a way, the Rotterdam Convention is about exporting and importing countries sharing responsibility for notification and monitoring to safeguard human health and the environment from the harmful effects of certain hazardous chemicals.

The PIC procedure does not mean globally banning or severely restricting certain chemicals, nor does it mean that an individual country should automatically prohibit its import. It does mean that chemicals listed in the Rotterdam Convention are subject to extensive information exchange, priority attention for national decisions on imports, and obligations related to export controls.

As a Party to the Rotterdam Convention, Australia must ensure that chemicals listed in the Convention are not exported to countries that do not wish to receive them.

14.2 Which Australian Government agencies are responsible for PIC?

The Australian Government Department of the Environment and Heritage (DEH) is the lead agency for the Rotterdam Convention. In addition, for industrial chemicals, DEH is the Designated National Authority (DNA) responsible for international liaison and communication with the PIC Secretariat (the United Nations Environment Programme (UNEP) and the Food and Agriculture Organisation of the United Nations (FAO)).

The National Industrial Chemicals Notification and Assessment Scheme (NICNAS) is the Australian Government regulator of industrial chemicals and is responsible for implementing the obligations of the Rotterdam Convention domestically regarding industrial chemicals.

For pesticides, the Australian Government Department of Agriculture, Fisheries and Forestry is the DNA and is also responsible for implementing Australia's obligations under the Rotterdam Convention for chemicals with an agricultural or veterinary application.

14.3 Where can I get more information about the Rotterdam Convention?

The text of the Rotterdam Convention sets out the provisions and obligations that apply to all Parties.

The international site dedicated to PIC can be accessed at www.pic.int.

14.4 What is covered under the Rotterdam Convention?

The Rotterdam Convention applies to banned or severely restricted chemicals and to severely hazardous pesticide formulations.

Chemicals are subject to the PIC procedure if they are included in Annex III of the Rotterdam Convention.

The term “chemical” is defined in Article 2 of the Rotterdam Convention, and includes substances that are pure, as well as mixtures with other substances. Chemicals can be listed in use categories as either “industrial” or “pesticide”, or in both categories. The category specified in Annex III is the regulated use under the Rotterdam Convention. For example importers or exporters of a listed chemical under the industrial category are required to comply with the import decisions for the industrial use only.

The Rotterdam Convention does not apply to:

- narcotic drugs and psychotropic substances;
- articles;
- radioactive materials;

- wastes;
- pharmaceuticals;
- chemical weapons
- chemicals used as food additives;
- food;
- chemicals imported in quantities not likely to involve a risk provided they are imported for the purpose of research or analysis or by an individual for his or own personal use.

14.5 What are the industrial chemicals subject to the PIC procedure?

The list of chemicals subject to the PIC procedure includes five industrial chemicals (listed in Annex III). Additions to the list depend on a decision by the Conference of the Parties meeting. The first meeting (COP-1) will be held in September 2004.

Industrial Chemical	CAS Numbers
Crocidolite asbestos*	12001-28-4
Polybrominated biphenyls (PBBs):	
Hexabromobiphenyl	36355-01-8
Octabromobiphenyl	27858-07-7
Decabromobiphenyl	13654-09-6
Polychlorinated biphenyls (PCBs)	1336-36-3
Polychlorinated terphenyls (PCTs)	61788-33-8
Tris (2,3-dibromopropyl) phosphate (Tris)	126-72-7

* The amphibole forms of asbestos actinolite, anthophyllite, tremolite and amosite are currently being considered by the Rotterdam Convention for PIC listing.

The PIC website publishes Decision Guidance Documents (DGDs) for each chemical listed in the Rotterdam Convention. The DGDs detail the scope of the chemicals subject to PIC, and provide basic information about the chemical's characteristics and a summary of the reasons why the chemicals were either banned or severely restricted. Copies of DGDs are available at www.pic.int/en/Table7.htm.

14.6 Has Australia notified any banned or severely restricted chemicals?

Under Article 5 of the Rotterdam Convention, a notification of a chemical is made by an individual Party that has made an explicit national hazard/risk based decision to ban or severely restrict the chemical in order to protect human health or the environment within its jurisdiction.

Australia has notified chrysotile asbestos and the amphibole forms of asbestos and as such must meet certain obligations. This includes the provision of Export Notification before the first export in any calendar year to the Designated National Authority of the importing Party. Annex V of the Rotterdam Convention sets out the information to be included in the Export Notification. These obligations cease if the chemical is added to Annex III.

14.7 What are import decisions?

The import decision of a participating country informs whether it consents to the import of the chemicals listed in the Rotterdam Convention.

A final decision may include:

- consent to future importation of the chemical;
- not consent to future importation of the chemical; or,
- consent to future importation of the chemical but subject to specified conditions

An interim response may include:

- an interim decision consenting to import with or without specified conditions; or not consenting to import during the interim period until a final decision;
- a statement that a final decision is under consideration; or,
- a request for further information or assistance in evaluating the chemical.

PIC Circular

Every 6 months, import decisions are formally notified to all Parties in the form of a document called the PIC Circular which can be accessed at <http://www.pic.int/en/ViewPage.asp?id=266>.

The key documents relevant to the PIC procedure are Appendices III and IV. Appendix III contains a current list of the chemical subject to the Rotterdam Convention. Appendix IV contains all the import decisions for chemicals subject to the Rotterdam Convention that have been submitted by parties, as well as a list of those Parties that failed to provide import response. Appendix IV is the official reference for exporters of chemicals that are subject to the Rotterdam Convention.

The PIC website also provides a country-specific import response database in advance of the Circular for information and convenience purposes.

14.8 What do I do if I import, manufacture and/or export PIC chemicals?

Regulatory obligations for importers and/or manufacturers under PIC

Australia's import decision for industrial chemicals listed in Annex III reflects the current regulatory status of that chemical in Australia. There are no additional requirements to the existing import controls.

Initial enquiries for industrial chemicals should be directed to:

Director, Chemicals Policy
 Australian Government Department of the
 Environment and Heritage
 Environment Protection Branch
 GPO Box 787, Canberra ACT, Australia 2601

Tel: +61 2 6274 1841

Fax: +61 2 6274 2060

Industrial Chemical	Australia's Import Decision
<p>Polychlorinated biphenyls</p> <p>Polychlorinated terphenyls</p>	<p>Consent to import subject to specific conditions:</p> <p>Importation is prohibited under Regulation 4AB of the Customs (Prohibited Imports) Regulations 1956, unless the importer is granted permission from the Minister for Justice and Customs.</p> <p>Further information on the administration of this control can be found at the "Industrial Chemicals" link on the Customs website at: www.customs.gov.au/site/page.cfm?area_id=5&nav_id=1340#</p>
<p>Crocidolite asbestos*</p> <p>*Amphibole asbestos (actinolite, anthophyllite, amosite and tremolite asbestos) is being considered for</p>	<p>Consent to import subject to specific conditions:</p> <p>Crocidolite is severely restricted in Australia. There is no mining and future mining would not be approved.</p> <p>The import of asbestos and goods containing asbestos is regulated under Regulation 4C of the Customs (Prohibited Imports) Regulations 1956. The import of chrysotile asbestos is prohibited unless subject to an exemption, or a permission has been granted by the Minister of Employment and Workplace Relations.</p>

PIC listing	Further information on the administration of this control can be found at: customs.gov.au/site/page.cfm?area_id=5&nav_id=1340#Asbestos
Polybrominated biphenyls: Hexabromobiphenyls Octabromobiphenyls Decabromobiphenyls	<p>Interim Decision on import: Consenting to import with specified conditions</p> <p>Hexabromobiphenyl is not listed on the Australian Inventory of Chemical Substances (AICS). Importation and/or manufacture of hexabromobiphenyl, or formulations containing this chemical, are not allowed without a valid assessment certificate/permit from NICNAS.</p> <p>Octabromobiphenyl and decabromobiphenyl were declared as Priority Existing Chemicals (PEC) on 6 July 2004. All manufacturers and/or importers of these chemicals, or formulations containing these chemicals, must apply for assessment to NICNAS.</p> <p>To see particulars of the PEC Notice see July 2004 <i>Chemical Gazette</i> www.nicnas.gov.au/publications/gazette/chemgazettejul2004.htm</p>
Tris-(2,3-dibromopropyl) phosphate	<p>Interim Decision on import: Consenting to import with specified conditions</p> <p>This chemical was declared as a Priority Existing Chemical on 6 July 2004. Manufacturers/and or importers must apply for assessment before introducing this chemical or products containing this chemical.</p> <p>To see particulars of the PEC Notice see July 2004 <i>Chemical Gazette</i> www.nicnas.gov.au/publications/gazette/chemgazettejul2004.htm</p>

Regulatory obligations for exporters under PIC

Exporters should remain informed as to which chemicals are on Annex III ([chemicals subject to the Prior Informed Consent Procedure](#)) and the import decisions ([published in the PIC Circular](#)) for these chemicals to ensure that they do not export a chemical to a country that does not wish to receive it.

Initial enquiries for industrial chemicals should be directed to:

Director, Chemicals Policy
Department of the Environment and Heritage
Environment Protection Branch

GPO Box 787, Canberra ACT, Australia 2601

Tel: +61 2 6274 1841

Fax: +61 2 6274 2060

Industrial Chemical	Information to exporters
<p>Polychlorinated biphenyls</p> <p>Polychlorinated terphenyls</p> <p>Polybrominated biphenyls: Hexabromobiphenyl, Decabromobiphenyl Octabromobiphenyl</p> <p>Tris-(2,3-dibromopropyl) phosphate</p>	<p>New regulations will be in force on 18 August 2004 under the Industrial Chemicals (Notification and Assessment) Regulations (1990) requiring exporters of these chemicals to obtain written authorisation from NICNAS.</p> <p>Exporters are required to complete an export authorisation application form (Form EXP-1).</p>
<p>Crocidolite asbestos</p>	<p>Asbestos and goods containing asbestos are currently regulated under Regulation 4 of the <i>Customs (Prohibited Exports) Regulations 1958</i>.</p> <p>Further information on the administration of this control can be found at the “Asbestos” link on the Customs website at:</p> <p>http://www.customs.gov.au/site/index.cfm?area_id=5&nav_id=1338</p>

Information to accompany exports of PIC chemicals

Article 13 of the Rotterdam Convention outlines the information required to accompany exports of chemicals included in Annex III as well as chemicals that are banned or severely restricted in the exporting country:

- Ensure adequate labelling of the chemical: include information on the hazards and risks posed by the chemical on human health or the environment;
- Provide the importer with a copy of an up-to date safety data sheet in an internationally approved format;

- The information provided should be in the official language of the importing country, as far as is practicable;
- Shipping documents should bear any harmonised system custom code assigned by the World Customs Organisation, where available.

14.9 Compliance and enforcement

The obligations of the Rotterdam Convention for industrial chemicals are implemented under the Act administered by the National Industrial Chemicals Notification and Assessment Scheme (NICNAS).

The Act provides for Australia to comply with obligations under international agreements. Regulations were also made recently for the purposes of Section 106(1) of the Act, to prohibit the export of certain industrial chemicals without the prior authorisation of the Director, NICNAS. These chemicals are listed in Annex III of the Rotterdam Convention:

- Polychlorinated biphenyl (PCB)
- Polychlorinated terphenyl (PCT)
- Polybrominated biphenyl (PBB):
hexabromobiphenyl, decabromobiphenyl, octabromobiphenyl
- Tris (2,3-dibromopropyl) phosphate (Tris)

Pursuant to paragraph 5 of section 106 of the Act, it is an offence to import, manufacture or export industrial chemicals in contravention of an international agreement to which Australia is a Party. The associated penalty is up to \$33,000 for an individual and \$165,000 for a company.

Compliance programs

NICNAS's Innovation and Compliance Team is responsible for processing export authorisation applications and conducting audits of importers, manufacturers and exporters of industrial chemicals.

Exporters, importers and manufacturers are responsible for keeping relevant commercial documents relating to industrial chemicals for at least five years.

Relevant commercial documents could include a commercial invoice providing a description of the goods, orders/confirmations, bills of lading / airway bills, insurance certificate, receipt of purchase of goods, illustrated descriptive material and other records provided to Customs.

Subsection 100G(1) of the Act allows the Director to obtain any information or document from a person, if on reasonable grounds that information or document is believed to be necessary to allow Australia to comply with the Rotterdam Convention's obligations.

The Director's request will specify the information that is required and how it is to be provided. It will also specify the final date that the information must be provided, giving at least 14 days notice of this. Failure to provide the requested information to the Director is an offence. The associated penalty is up to \$6,600 for an individual and \$33,000 for a company.