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Sun Young Oh

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SOUND MANAGEMENT OF CHEMICALS IN DEVELOPING COUNTRIES UNDER THE ROTTERDAM CONVENTION

by Sun Young Oh*

The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (“Rotterdam Convention”) is a multilateral environmental agreement with the ultimate goal of protecting human health and the environment.¹ The Rotterdam Convention seeks to accomplish this by enhancing sound chemical management through the exchange of scientific, technical, economic, and legal information between exporting and importing states.² Fourteen new harmful chemicals and pesticides have been added into Annex III of the Rotterdam Convention,³ which enumerates 41 hazardous chemicals subject to Prior Informed Consent (“PIC”) procedures of the importing countries.⁴ The PIC procedures require the importing country to formally consent before accepting dangerous pesticides and industrial chemicals in order to prevent their exportation.⁵

Many developing countries lack the necessary infrastructure and appropriate environmental regulations to handle hazardous chemicals in an environmentally sound manner.⁶ Effective technical and financial assistance for developing countries is necessary to achieve the Convention’s long-term success.⁷ Since “developing nations are the main recipients of international trade in chemicals that the Rotterdam Convention addresses,”⁸ it is vital that importing nations have the ability to evaluate the safety of the imported chemicals. This may prevent developed countries from exporting dangerous chemicals to developing countries as a way to cheaply dispose of them and avoid environmental regulations.⁹

Even though Articles 11(1)(c) and 16 of the Rotterdam Convention address international cooperation and technical assistance for developing countries to improve their chemicals management, they do not explicitly require developed countries to transfer technical support to developing countries, nor do they provide for specific measures to monitor compliance.¹⁰ Many countries recommend close collaboration with the Secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (“Basel Convention”), because it contains a specific mechanism to support regional assistance to developing countries in managing hazardous wastes.¹¹ The Basel Convention aims to control the transboundary movement of hazardous wastes and utilizes a compliance mechanism to help identify difficulties that arise in the implementation of the Convention.¹²

Building mandatory and binding financial mechanisms is an effective way to ensure that the Rotterdam Convention’s key goals are effectively carried out.¹³ Since the Rotterdam Convention lacks provisions establishing a financial mechanism to promote the capacity-building activities of developing countries, mandatory financial contributions

should be provided by developed countries to secure effective regional technical assistance.¹⁴ Such options were recently studied by the Conference of Parties (“COP”) to the Rotterdam Secretariat.¹⁵ Some countries expressed disappointment with the COP’s lack of flexibility regarding suggestions for financial re-structuring.¹⁶ While a special trust fund has already been established for the Rotterdam Convention, which provides that both parties and non-parties may voluntarily contribute to the fund, the COP failed to suggest how to further enhance the existing fund and implement it successfully.¹⁷ The performance of similar funds such as the Basel Technical Cooperation Trust Fund indicates that voluntary contributions are consistently lower than budgetary needs.¹⁸

In short, exporting countries are only obligated to advise and assist importing nations “upon request and as appropriate,”¹⁹ while training and technical support aid to developing countries is not mandated. Developed nations should be obligated to provide technical assistance for developing countries and sound mechanisms for their implementation at all levels.²⁰ In addition, mandatory financial mechanisms should be maintained in order to promote the successful implementation of the Rotterdam Convention in both developed and developing countries.



ENDNOTES:

- ¹ What is Rotterdam Convention, Rotterdam Convention website, http://www.pic.int/en/viewpage.asp?id_cat=0 (last visited Mar. 8, 2006).
- ² Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Sept. 10, 1998, art. 1, 38 I.L.M. 1734 [hereinafter Rotterdam Convention].
- ³ Press Release, United Nations Environmental Program, Geneva and Rome to Host Rotterdam Convention Secretariat: 14 new Hazardous Chemicals and Pesticides Added to Trade Watch List, (Sept. 24, 2004), available at http://www.unep.org/documents/Rotterdam_COP_conclusion.doc (last visited Mar. 7, 2006).
- ⁴ Rotterdam Convention, *supra* note 2, at Annex III.
- ⁵ Julie B. Truelsen, *Developments in Toxics in 2004: The Ratification of the Stockholm Convention and the Rotterdam Convention*, 2004 COLO. J. INT’L ENVTL. L. & POL’Y 217, 225 (2004).
- ⁶ Paula Barrios, *Rotterdam Convention on Hazardous Chemicals: A Meaningful Step Toward Environmental Protection?* 16 GEO. INT’L ENVTL. L. REV. 679, 733 (2004).
- ⁷ Richard W. Emory, Jr., *Trade and the Environment: Probing the Protections in the Rotterdam Convention on Prior Informed Consent*, 2000 COLO. J. INT’L ENVTL. L. & POL’Y 47, 52 (2000).
- ⁸ Emory, *id* note 7, at 52.
- ⁹ Barrios, *supra* note 6, at 681.
- ¹⁰ Barrios, *supra* note 6, at 734.
- ¹¹ Second Meeting of the Conference of the Parties to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain

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* Sun Young Oh is an S.J.D. candidate, May 2008, at American University, Washington College of Law.

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Hazardous Chemicals and Pesticides in International Trade, Sept. 27-30, 2005, *Regional Delivery of technical assistance*, UNEP/FAO/RC/COP.2/12 (Sept., 2005); *see also* Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Mar. 22, 1989, Art. 11, UN Doc. I.G.80/3, 28 I.L.M. 649.

¹² Introduction, Secretariat of the Basel Convention website, <http://www.basel.int/pub/basics.html>, (last visited Feb. 05, 2006).

¹³ Barrios, *supra* note 6, at 738.

¹⁴ Barrios, *supra* note 6, at 748-49.

¹⁵ Second Meeting of the Conference of the Parties to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain

Hazardous Chemicals and Pesticides in International Trade, Sept. 27-30, 2005, *Study on Possible Options for the Establishment of a Financial Mechanism for the Implementation of the Rotterdam Convention*, UNEP/FAO/RC/COP.2/10 (Sept., 2005) *available at* <http://www.iisd.ca/chemical/pic/cop2/> (last visited Mar. 7, 2006).

¹⁶ Second Meeting, *id.*

¹⁷ Second Meeting, *id.*

¹⁸ Second Meeting, *id.*

¹⁹ Rotterdam Convention, *supra* note 2, at art. 11(1) (c).

²⁰ Barrios, *supra* note 6, at 744.