

# *Trade in Domestically Prohibited Goods*

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## **Executive Summary**

Domestically prohibited goods are products which are banned or severely restricted on the domestic market of the exporting country because they are determined to present risks for human, animal or plant life or health, or the environment, but which may nevertheless be exported. These fall into four general categories: chemicals (including pesticides and fertilisers), pharmaceutical products, consumer products and hazardous wastes. Many developing countries do not have the technical knowledge to deal with imports of DPGs appropriately, and import control procedures in these countries are often not fully developed. Most international agreements assume that some degree of responsibility for these products should fall on the exporters.

Despite the extensive number of both legally binding and voluntary international agreements and instruments relating to trade in DPGs, gaps exist in the coverage of, and information provision on, the export of DPGs. Concerns exist particularly on limited coverage of consumer products, some pharmaceuticals, cosmetics and foodstuffs, such as food additives. Differing memberships in and differences in procedure between the different instruments addressing the issue may also create gaps in information exchange between relevant parties.

This paper gives an overview, by category of DPGs, of the 21 major relevant international agreements and instruments. While relevant regional and plurilateral agreements do exist, they are not addressed here. The categories used are: information exchange mechanisms, voluntary international agreements, legally binding multilateral international agreements, and those for which negotiations are ongoing. The paper also discusses GATT/WTO mechanisms that may provide information on DPGs.

There are many opportunities for States to take action on the export of DPGs – ranging from information exchange to bans on imports. Some of these instruments are better established and better adhered to than others, and some types of DPGs are more comprehensively addressed by international agreements. Chemicals, including pesticides and fertilisers, are particularly well addressed both by existing instruments and by the potential for their expansion, as well as by the negotiation of a new agreement on persistent organic pollutants.

Negotiating the web of existing agreements and instruments is a challenge, but the information exchange and notification procedures that they provide, and the increasing number of provisions for technical assistance, are likely to increase the ability of States to make informed decisions on the import of products which are banned or severely restricted in the exporting State.

## **1. Introduction**

This paper is intended for those trying to find their way through the complex maze of existing agreements and instruments governing trade in domestically prohibited goods. It assumes some knowledge of the issues, trying to provide a roadmap rather than describe the process of driving.

It gives an overview, by category of DPGs, of the 21 major relevant international agreements and instruments. While relevant regional and plurilateral agreements do exist, they are not addressed here. The different instruments are grouped by type into information exchange mechanisms, voluntary international agreements, legally binding multilateral international agreements, and those for which negotiations are ongoing. The paper also discusses GATT/WTO mechanisms that may provide information on DPGs.

Further toward the end of helping unravel the web of existing agreements, the annexes contain tables and lists which categorize those agreements by subject matter and type. A separate annex provides contact information and Internet addresses for existing international agreements for those interested in obtaining further information.

Domestically prohibited goods (DPGs) are products that are banned or severely restricted on the domestic market of the exporting country because they are determined to present risks for human, animal or plant life or health, or the environment, but which may nevertheless be exported. Many developing countries do not have the technical knowledge to deal with imports of DPGs appropriately, and import control procedures in these countries are often not fully developed. Most international agreements assume that some degree of responsibility for these products should fall on the exporters.

DPGs fall into four general categories: chemicals (including pesticides and fertilisers), pharmaceutical products, consumer products and hazardous wastes. The next section of this paper lists and describes agreements which cover these four categories, subdividing the analysis in each case into instruments for information exchange, voluntary agreements, legally binding agreements, and ongoing negotiations.

## **2. International agreements and instruments relevant to the trade in DPGs**

### ***2.1 Chemicals, including pesticides and fertilisers***

More than 153.5 million kilograms of hazardous pesticides were exported from U.S. ports during 1995 and 1996.<sup>1</sup> Most of these went to destinations in the developing world. At least 9.5 million kilos of pesticides forbidden domestically in the U.S. were exported. These figures are conservative estimates since, for nearly two thirds of exports, specific pesticide names were omitted from the shipping records.

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<sup>1</sup> "Exporting Risk: Pesticide Exports from U.S. Ports, 1995-1996", Foundation for Advancements in Science and Education (FASE) Research Report, Spring, 1998.

In many developing country target markets pesticide regulations are lacking or unenforced, and there is insufficient control infrastructure and a lack of trained personnel.<sup>2</sup> Health and safety issues may be exacerbated by a general lack of hazard awareness and a lack of basic health care in rural areas. There is often a lack of protective clothing, or it may be difficult to wear in tropical climates. A shortage of facilities for washing after pesticide application or in the case of accidents is also a problem. Pesticide containers may be reused for storage and drinking. This is a problem compounded by illiteracy, complex labelling and misleading product information.<sup>3</sup>

A lack of management has also resulted in accumulated stocks of outdated and obsolete hazardous chemicals in many developing countries – safe disposal of these is a monumental task to address. Stockpiles are problematic because they are often hard to identify due to inadequate storage conditions, leakage and missing labels. These problems are particularly worrisome in the case of pesticides which are domestically prohibited in the exporting country – the health and environmental risks associated with the product are known, but it is nevertheless exported to a place where its use, handling and storage may be less rigorous.

There are about 70,000 different chemicals on the market and 1,500 new ones being introduced every year<sup>4</sup>, making monitoring and management of these potentially dangerous substances difficult. There has been a great deal of work internationally in information exchange on chemicals and pesticides. Due to overlap between the different schemes, co-ordination has been very important. Chapter 19 of Agenda 21 called for a significant strengthening of both national and international efforts to achieve environmentally sound management of chemicals and proposed six programme areas:

- (a) Expanding and accelerating international assessment of chemical risks,
- (b) Harmonization of classification and labelling of chemicals;
- (c) Information exchange on toxic chemicals and chemical risks;
- (d) Establishment of risk reduction programmes;
- (e) Strengthening of national capabilities and capacities for management of chemicals;
- (f) Prevention of illegal international traffic in toxic and dangerous products.

The agreements and instruments described below all aim to address these priorities in one way or another.

## **2.1.1 Information exchange mechanisms**

### **2.1.1.1 International Register of Potentially Toxic Chemicals (IRPTC)**

The International Register of Potentially Toxic Chemicals (IRPTC) was established by the United Nations Environment Programme (UNEP) in 1976 in response to the need for an international information exchange mechanism on chemicals. The first institution to collect and

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<sup>2</sup> Danielle Knight, “Who benefits, Who suffers?: the global politics of pesticide use in Brazil”, *ZMagazine*, January 1997.

<sup>3</sup> Ibid.

<sup>4</sup> Joint UNEP/FAO News release, Geneva/Rome/Nairobi, 1 September 1998.

process information on hazardous chemicals, IRPTC, now UNEP Chemicals, operates a global network for exchange of information between countries, regions and international organizations, known as the Network of National Correspondents and composed of 138 members from 129 countries. Information on chemicals is presented in the form of data profiles that provide reliable, up-to-date, comprehensive descriptors of the information needed to assess the hazards presented. In addition, IRPTC/UNEP Chemicals provides information on production and consumption, main uses, and waste management, as well as recommendations and legal mechanisms for the control of risks posed by chemicals. It also operates the information exchange procedures under the voluntary FAO Code of Conduct and Amended London Guidelines for the Exchange of Information on Chemicals in International Trade (described below). Other information available from UNEP Chemicals includes Internet and hard-copy clearinghouses on chemicals hazards, pollutant release and transfer register (PRTRs), published inventories of information sources covering international data on chemicals, and critical reviews on chemicals, new chemicals, and national data on existing chemicals. UNEP Chemicals also is responsible for direct work with countries in capacity building, including awareness raising, training, and "Hotline" support for governments.

#### **2.1.1.2 United Nations Consolidated List of Products**

The United Nations Consolidated List of Products whose Consumption and/or Sale have been Banned, Withdrawn, Severely Restricted or not Approved by Governments is prepared jointly by the United Nations, the World Health Organisation (WHO) and UNEP. It was first issued in 1983. The list contains information on regulatory actions taken by 93 governments on 700 pharmaceuticals, agricultural and industrial chemicals and consumer products. The List also contains commercial information on trade names and manufacturers. This reference document is now printed in two volumes on alternate years – with one volume containing information on pharmaceuticals and the other containing information on chemicals (including consumer products). The list devoted to chemicals (including consumer products) was issued in 1998 as issue 7. The List is not intended to be exhaustive, but rather to complement and consolidate information available within the UN system.

#### **2.1.1.3 Intergovernmental Forum on Chemical Safety and Interorganisational Programme for the Sound Management of Chemicals**

In response to Chapter 19 of Agenda 21 (discussed above), the International Conference on Chemical Safety (ICCS) was convened in April 1994. The 114 participating countries established an Intergovernmental Forum on Chemical Safety (ICFS). The ICFS mandate is to provide advice for risk assessment and management of chemicals and to improve the delineation of roles and initiatives for governments and international organizations. It has been designed as a consensus-builder rather than a decision-maker. In 1995, by agreement between FAO, WHO, UNEP, ILO, UNIDO and the OECD, the Interorganisational Programme for the Sound Management of Chemicals (IOMC) was established to co-ordinate the activities of these agencies in this area. At ICFS Forum II in February 1997, the inter-relationship between information exchange and national capacities for sound management of chemicals was underlined. Delegates agreed to recommend a non-binding globally harmonised system for classification and labelling of chemicals and to consider the assessment of chemicals in addition to the 500 that are to be assessed by 2000 for Forum III. A further step forward was the request



by the IFCS that the IOMC compile and harmonise terms and definitions of endocrine-disrupting substances, promote co-ordinated research strategies and processes and identify priorities for and maintain an inventory of research activities.

## **2.1.2 Voluntary international agreements**

### **2.1.2.1 International Code of Conduct on the Distribution and Use of Pesticides**

The International Code of Conduct on the Distribution and Use of Pesticides was adopted by the FAO Conference at its Twenty-third Session in 1985. A primary function of the voluntary Code is to serve as a point of reference, particularly until such time as countries have established adequate regulatory infrastructures for pesticides. Its objectives are to define responsibilities and establish voluntary standards of conduct for all public and private entities engaged in or affecting the distribution and use of pesticides. At its Twenty-fifth Session in 1989, the FAO Conference agreed to introduce provisions for Prior Informed Consent (PIC) procedures to the Code.<sup>5</sup>

The Code was established in response to concerns about the propriety of supplying pesticides to countries that do not have the infrastructure to register them or to ensure their safe and effective use. Some countries were also concerned that they might be importing agricultural commodities with residues of pesticides restricted or prohibited on the home market, but not in the country of export. Because of divergent pest control needs, it is impossible to eliminate all such instances, but nonetheless, it is essential to make every effort to apply pesticides only in accordance with good and recognised practices.<sup>6</sup> Countries without effective pesticide registration processes, or government infrastructure to control pesticides, rely heavily on the pesticide industry to promote safe and proper distribution and use of pesticides. It is stated in the Code that in these circumstances, foreign manufacturers, exporters and importers, as well as local formulators, distributors, advisers and users, must accept some responsibility for safety and efficiency. The Code also states that no company should trade in pesticides without a proper and thorough evaluation of the pesticide.

The Code also recognises that a product not being used or registered in a particular country is not by itself grounds for prohibiting its export. Developing countries' climatic, ecological, agronomic, social, economic and environmental conditions, and thus their pest problems, are usually different from those in pesticide manufacturing and exporting countries. The government of the exporting country, therefore, cannot judge the suitability, efficacy or safety of the pesticide under the conditions in the country where it may ultimately be used. Such a judgement must be made by the responsible authority in the importing country in consultation with industry and other government agencies, in light of available scientific evaluation and a detailed knowledge of the domestic conditions.

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<sup>5</sup> The PIC procedures are outlined below in the discussion of the Amended London Guidelines. Also discussed below is the Rotterdam Convention, a new instrument which, when it comes into force, will make the PIC procedure legally binding for 22 pesticides, as well as 5 industrial chemicals.

<sup>6</sup> Preface, *International Code of Conduct on the Distribution and Use of Pesticides*.

### **2.1.2.2 Amended London Guidelines for the Exchange of Information on Chemicals in International Trade**

The Amended London Guidelines for the Exchange of Information on Chemicals in International Trade were adopted by the UNEP Governing Council in 1987, and amended in 1989. The Guidelines are general in nature and are aimed at enhancing the sound management of chemicals through the exchange of scientific, technical, economic and legal information. They provide a mechanism for importing countries to formally record and disseminate their decisions regarding importation of banned or severely restricted chemicals. And they outline the shared responsibilities of importing and exporting countries and exporting industries in ensuring that these decisions are heeded. Two procedures exist under the Guidelines: a mechanism for the exchange of information on banned or severely restricted chemicals in international trade, and a Prior Informed Consent (PIC) procedure (included in 1989). The PIC procedure, also part of the FAO Code, is implemented jointly by FAO and UNEP. The importance of technical and financial assistance to enhance decision-making and training in the safe use of chemicals is also highlighted.

Under the Guidelines, each State designates a national governmental authority (or authorities) competent to perform the related administrative functions. As of 30 June 1998, the FAO and UNEP Chemicals had registered 227 designated national authorities (DNAs) from 155 countries. The DNA is authorised to communicate with DNAs of other States and with the relevant international organizations, to exchange information, to make and communicate decisions regarding chemicals included in the PIC procedure and to submit reports at the request of States or organizations or on its own initiative. UNEP Chemicals maintains a register of DNAs, as well as co-ordinating the network of DNAs, developing recommendations on practices and procedures, maintaining liaison with other concerned organizations, and reviewing implementation of the Guidelines. It also disseminates notifications from States that have taken “control actions” to ban or severely restrict a chemical. Notification allows competent authorities in other States to assess the risks associated with the chemical and to make their own decisions, taking into consideration local environmental, public health, economic and administrative conditions and existing information on toxicology, safety and regulatory aspects.

The PIC procedure operates in addition to information exchange and export notification. Countries electing to participate in the voluntary PIC procedure may formally record their decisions regarding future imports of particular chemicals banned or severely restricted in the exporting countries.<sup>7</sup> All exporting countries are expected to respect the decisions of importing countries, meaning shipments can be made only after prior informed consent by the importer (with some exceptions).

UNEP Chemicals informs DNAs of decisions taken by participating importing countries and make these available to industry and other interested parties. Decision Guidance Documents

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<sup>7</sup> Chemicals include: (a) agricultural chemicals, including pesticides for agricultural, household, public health or other use; (b) industrial chemicals; and (c) consumer product chemicals. Chemicals such as narcotic drugs and psychotropic substances, radioactive materials, wastes, chemical weapons, pharmaceuticals, food and food additives are excluded from the scope of the Convention, as are chemicals imported in reasonable quantities for research or analysis or by individuals for personal use.

(DGDs) are prepared for each chemical identified for inclusion in the PIC procedure. They provide summary data of toxicological and environmental characteristics, known usage, possible exposure routes, measures to reduce exposure, and any domestic regulatory actions taken. Importer DNAs must submit decisions on whether, or under what conditions, they will accept imports. If a DNA does not respond to a notification of a control action within 9 months, exporters may ship the chemical provided that it is registered in the importing country, it has been imported before, or explicit consent has been given.

Notification information is also included in the UN Consolidated List. Semi-annually, UNEP Chemicals formally notifies all Governments of the status of the decisions by importing countries and provides a full list of DNAs in the PIC Circular. Information is also updated monthly in the PIC database.

According to the Guidelines, potential importing States may request from exporting States information on sound management, including appropriate precautionary information. States of import should, on the basis of notification and information provided, take the necessary measures to ensure that users are provided with the same information. As far as practicable, precautionary information is supposed to be provided in the principal language or languages of the State of import and area of intended use, and be accompanied by suitable pictorial and/or tactile aids and labels.

### **2.1.2.3 Code of Ethics on the International Trade in Chemicals**

The UNEP Code of Ethics on the International Trade in Chemicals, concluded in 1994, is a voluntary instrument for industry and other private sector parties. It sets standards of conduct for environmentally sound management of chemicals in international trade. The Code was distributed in 1994 to 185 industry and business associations and 77 non-governmental organizations worldwide, inviting them to subscribe. Governments of all States and relevant intergovernmental organizations were also invited to promote the Code to the private sector. The Code calls on private sector parties to help ensure the safety of chemicals throughout their whole life cycle, to develop safer packaging and clear and concise labelling, to end production and trade in chemicals with unacceptable risks, to reduce the use of hazardous chemicals, and to take other steps to promote chemical safety, such as testing and assessment, quality assurance, safety information, and education and training for safety purposes. The principles and guidance set out in the Code apply globally but are flexible enough to allow for some regional or national differences in application.

Private sector parties adhering to the Code take on a voluntary commitment to help achieve the objectives of the Amended London Guidelines. There are also procedures to monitor voluntary compliance with the Code's standards of conduct, and UNEP has prepared a status report that reviews progress in this area.<sup>8</sup> As of 1 July 1998, 7 associations and councils of private sector parties, such as the European Chemical Industry Council (CEFIC), had notified UNEP of their decisions to adhere to the Code. An additional 16 Governments and organizations provided UNEP with information concerning promotion of the Code.

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<sup>8</sup> <http://irptc.unep.ch/ethics/english/rep-en1.htm>

## 2.1.3 Legally binding international agreements

### 2.1.3.1 Montreal Protocol on Substances that Deplete the Ozone Layer

In the Vienna Convention on the Protection of the Ozone Layer (1985), governments made a commitment to protect the ozone layer. The Convention's most important instrument, the Montreal Protocol on Substances that Deplete the Ozone Layer was agreed in 1987 and has been amended three times so far – in London in 1990, in Copenhagen in 1992 and recently, in Montreal in 1997.<sup>9</sup> The Protocol aims to reduce and eventually eliminate emissions of man-made ozone depleting substances. The final agreement contains clauses to cover the special circumstances of several groups of countries, particularly developing countries with low consumption rates that do not want the Protocol to hinder their development. The Protocol recognises the needs of developing countries, allowing a grace period for phase-out as well as providing support for Parties to meet the approved incremental costs of phase-out.<sup>10</sup> But the Protocol is flexible and can be strengthened as the supporting scientific evidence accumulates, without having to be completely renegotiated. In the London Amendment, as a result of the 1989 assessments, the Parties agreed to a complete phase-out of most controlled substances by the year 2000 and added some new chemicals (Annex B). In 1992 (Copenhagen) they agreed to accelerate the phase-out to 1995 and to include control measures for additional chemicals, including hydrochlorofluorocarbons (HCFCs) (Annex C) and methyl bromide (Annex E).

At present, there are 95 chemicals controlled by the Protocol.<sup>11</sup> Developed countries are to phase out halons by 1994; CFCs, HBFCs, carbon tetrachloride, and methyl chloroform by 1996, methyl bromide by 2005; and HCFCs by 2030. Developing countries are to phase out HBFCs by 1996; CFCs, halons and carbon tetrachloride by 2010; methyl chloroform and methyl bromide by 2015; and HCFCs by 2040. This will ultimately lead to the elimination of trade in these chemicals among Parties. Furthermore, the Protocol imposes the general obligation to ban exports of controlled substances, except methyl bromide, to non-Parties. However, if the non-Parties comply with the objectives of the Protocol, then export to them is allowed.

The London Amendment provided for the creation of a Financial Mechanism to assist developing countries, comprised of a Multilateral Fund and other multilateral, regional and bilateral co-operation. The Fund meets the incremental costs of the Parties operating under Article 5 (developing countries) to implement the control measures of the Protocol, as well as financing all clearing house functions, i.e. country studies, technical assistance, information, training and costs of the Fund Secretariat.

At the Ninth Meeting of the Parties (September 1997), an amendment was adopted requiring Parties to implement import/export-licensing systems in order to assist in compliance assessment

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<sup>9</sup> As of 2 December 1998, 169 countries had ratified the Vienna Convention, 168 had ratified the Montreal Protocol, 127 had ratified the London Amendment, 85 had ratified the Copenhagen Amendment, and 3 had ratified the Montreal Amendment.

<sup>10</sup> The Multilateral Ozone Fund, established in 1991, meets incremental costs approved by the Parties by grant or concession, costs of country studies, technical co-operation, information exchange and its secretariat costs.

<sup>11</sup> Chlorofluorocarbons: CFCs, halons, hydrobromofluorocarbons, HBFCs, other fully halogenated CFCs, carbon tetrachloride, 1,1,1 trichloroethane, methyl chloroform; Hydrochlorofluorocarbons: HCFCs, hydrobromofluorocarbons, HBFCs, methyl bromide.

and prevention of illegal trafficking (Decision IX/8). Illegal trade in CFCs is currently estimated to be about 30,000 tonnes.<sup>12</sup> This illegal trade consists primarily of new CFC production in industrialised countries exported in the guise of recycled CFCs, or as exports to developing countries. Decision IX/9 recommends adoption of regulatory measures on import and export of products, equipment, components and technology whose production requires controlled (Annex A and B) substances. Other requirements under the Protocol which are relevant to the export of DPGs include the obligation to provide the Secretariat with statistics on production of controlled substances, as well as import and export to/from any country. Parties must also inform the Secretariat of types, quantities and destinations of exported controlled substances.

Current issues, addressed at the Tenth Meeting of the Parties in Cairo (November 24-25 1998)<sup>13</sup>, include how to make policies to protect the ozone layer consistent with efforts to reduce emissions of greenhouse gases. There are several ozone-safe replacement gases, such as hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs), which contribute to global warming and are therefore targeted for reduction under the 1997 Kyoto Protocol. Furthermore, global warming may slow the ozone layer's healing process by causing the stratosphere to become even colder. A process for co-ordinating the work of the scientific and technology and economic assessment panels on ozone with similar panels and committees linked to the Climate Change Convention was agreed on in Cairo. The Meeting in Cairo also recommended new measures to limit the export of new and used products and equipment that require CFCs or other controlled substances (e.g. refrigerators). Acknowledging the widespread nature of this problem, the Parties recommended that each country identify the items it does not want to be imported – a list of these will be maintained by the Secretariat and communicated to all Parties on a regular basis.

Unfortunately, there are still many Parties who have not ratified the Amendments – which means that although they supported their adoption, they are not formally committed to the phase-outs contained therein. For example, only 85 countries have ratified the Copenhagen Amendment, which contains commitments on methyl bromide. This is a powerful insecticide used for soil fumigation of high value crops and has been banned in some countries because of other highly toxic properties. There remains a high risk that its use will expand to other countries and its application to other products.

### **2.1.3.2 Convention Concerning Safety in the Use of Chemicals at Work**

The Convention Concerning Safety in the Use of Chemicals at Work (ILO Convention No. 170) and its accompanying Recommendation (No. 177) were developed at the International Labour Organisation General Conference in 1990, and the Convention came into force in 1993. They represent international efforts to upgrade the national environment, health and safety measures and harmonise regulatory standards on chemicals. They emphasise the need to establish a coherent national policy of chemical safety ranging from the classification and labelling of chemicals to the control of their use. Particular emphasis is placed on roles and responsibility of the competent authority, suppliers and employers, as well as duties and rights of workers. The Convention covers all chemical elements and compounds, natural or synthetic, and applies to all

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<sup>12</sup> K.M. Sarna, "Protection of the Ozone Layer", *Linkages Journal*, Vol. 3, No. 3, 28 July 1998.

<sup>13</sup> For a discussion of other issues raised in Cairo, see <http://www.unep.ch/ozone/press-rel-122.htm>

branches of economic activity in which chemicals are used. It has been ratified by 8 countries. When some or all uses of a chemical are prohibited for reasons of occupational safety or health in an exporting member State, this fact and the reasons for it must be communicated by the State to any importing country (Part VII, Article 19).

### **2.1.3.3 Prevention of Major Industrial Accidents Convention**

The Prevention of Major Industrial Accidents Convention (ILO Convention No. 174) and its accompanying Recommendation (No. 181) were developed in 1993 and came into effect in 1997. The objective of the Convention is to protect workers, the public and the environment from major industrial accidents, in particular by preventing major accidents involving hazardous substances and limiting the consequences of such accidents. It applies to ‘major hazard installations’<sup>14</sup> except for nuclear installations, radioactive materials processing, military installations or non-pipeline transport outside the site of an installation. It has been ratified by 4 countries. An exporting member State which domestically prohibits the use of a hazardous substance, technology or process as a potential source of a major accident must make this information available to any importing country (Part VI, Article 22).

### **2.1.3.4 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade**

In September 1998, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was adopted. During the official signing ceremony, 62 countries signed the Convention, which will remain open for signature until September 1999. FAO/UNEP will act as a joint Secretariat for the Convention. The “PIC Convention” builds on the experience gained since 1990 in implementing the voluntary PIC procedure under the joint FAO/UNEP programme. The Convention will initially cover 22 pesticides and 5 industrial chemicals.<sup>15</sup> The negotiations were completed in only two years – two years before the deadline set by Rio – an indication of the issue’s importance. Governments have agreed to continue implementation of the voluntary PIC procedure, but using the new procedures established by the Convention, until the Convention formally enters into force.<sup>16</sup> This is aimed at avoiding a break in implementation of the PIC procedure.

Under the Convention, export of covered chemicals can only take place according to the procedure of Prior Informed Consent (PIC), based on the voluntary PIC procedure in effect since 1989. All decisions taken by Parties must be trade neutral; if a party will not consent to accept imports, it must also stop domestic production for domestic use and imports from non-parties. The Convention includes information exchange provisions and provides for a national decision-making process for importers. Each Party will designate one or more national authorities to

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<sup>14</sup> Those installations producing, processing, handling, using, disposing of or storing, permanently or temporarily, hazardous substances.

<sup>15</sup> Chemicals such as narcotic drugs and psychotropic substances, radioactive materials, wastes, chemical weapons, pharmaceuticals, food and food additives are excluded from the scope of the Convention, as are chemicals imported in reasonable quantities for research or analysis or by individuals for personal use. This is also true of the FAO/UNEP voluntary PIC procedure.

<sup>16</sup> The Convention will enter into force when fifty countries have ratified it.

carry out the administrative functions of the Convention. The information exchange provisions include:

- A requirement to inform Parties of a domestic ban or severe restriction on a chemical;
- A mechanism for developing countries or economies in transition to inform Parties when they experience problems with a severely hazardous pesticide due to conditions of use in the country;
- A requirement that Parties exporting a banned or severely restricted chemical not included on the PIC list inform the importing country of plans to export before the first shipment and annually thereafter;
- A requirement for an exporter of chemicals for occupational purposes to ensure that the most up-to-date information and safety data is sent to the importer in an internationally recognised format; and
- PIC chemicals (those included in the Convention's Annex III) and other domestically banned or severely restricted chemicals that are exported are subject to labelling requirements that ensure adequate availability of information on risks and/or hazards to human health or the environment.

Some provisions of the Convention were significantly watered down during the final rounds of negotiation. For example, labelling of exports is not required to be 'equally stringent' as domestically, but rather shall ensure 'adequate availability of information'.

The voluntary PIC procedures have already helped to raise awareness and to show that some pesticides can be removed from the market without hampering agricultural production – the Convention has a major role to play in the future in this area. Technical assistance for developing countries will also be promoted under the Convention with a view to developing their infrastructure and capacity for safe management of pesticides and chemicals. Implementation and enforcement will be pivotal to the Rotterdam Convention's success, as will financial and technical support to developing countries. The COP will oversee implementation by both commercial and government enterprises. A Chemicals Review Committee will be established to review notifications and nominations from Parties, and to make recommendations to the Conference of the Parties on which chemicals should be covered. It is likely that more substances will be added to the PIC Convention in the future.<sup>17</sup> Chemicals that may be nominated include those that have been banned or severely restricted for health or environmental reasons by participating parties as well as severely hazardous pesticide formulations that present a hazard under conditions of use in developing countries or those with economies in transition.

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<sup>17</sup> Inclusion of substances will be decided by the COP.

## 2.1.4 Ongoing negotiations

### 2.1.4.1 International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants

Seven of the chemicals addressed by the Rotterdam Convention are persistent organic pollutants (POPs). POPs resist degradation in the environment and accumulate in animal body fat. Concentrations increase in higher links of the food web – a phenomenon known as bioaccumulation. The effects of POPs may include fertility and embryo development effects, damage to the nervous system and cancer. These problems are particularly pronounced in polar areas, where global weather patterns dictate that substantial quantities of the world's POPs are deposited. In response to the results of an assessment by the IOMC, at the Nineteenth Session of UNEP's Governing Council, a decision was made to take international action on the development of a global, legally-binding instrument<sup>18</sup> to reduce the risks to health and environment from 12 recognised POPs.<sup>19</sup>

The first session of the International Negotiating Committee (INC-1) for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (POPs) was held in Montreal in 1998. 94 governments were present along with UN bodies, intergovernmental organizations and representatives of civil society. The POPs treaty will build on other international treaties like Rotterdam and regional treaties such as the Protocol to the Convention on Long-Range Transboundary Air Pollution (LRTAP). (LRTAP, which covers 16 POPs, was completed under the UN Economic Commission for Europe (UNECE) and adopted in June 1998.) Negotiations on POPs are expected to conclude in the year 2000. The major issues to be resolved in the negotiations include the problem of abandoned stockpiles of POPs, and the need for strong provisions on financial and technical assistance. It is also important to establish better information on sources and emissions of POPs, particularly in the cases of by-product substances such as dioxins and furans. Health issues also arise; for example the major remaining use of DDT, an insecticide long prohibited in OECD countries, is to control malarial vectors.

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<sup>18</sup> The Governing Council also called for a number of immediate measures in general awareness raising on POPs, information exchange, information and expertise on alternatives, identification of PCBs and capacity to destroy them, identification on sources of release of dioxins and furans, and development of criteria for additional POPs.

<sup>19</sup> Pesticides: aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, mirex, toxaphene. Industrial chemicals: hexachlorobenzene (also a pesticide), PCBs. Unintended by-products: dioxins, furans.



**Table 1: International Agreements and Instruments Relevant to the Trade in DPGs: Chemicals, including pesticides and fertilisers**

Voluntary Instruments		Legally Binding Agreements					
International agreement or instrument	International Code of Conduct on the Distribution and Use of Pesticides (FAO)	Amended London Guidelines for the Exchange of Information on Chemicals in International Trade (UNEP)	Code of Ethics on International Trade in Chemicals (UNEP)	Montreal Protocol on Substances that Deplete the Ozone Layer (UNEP)	Convention Concerning Safety in the Use of Chemicals at Work, "Chemicals Convention No. 170, (ILO)	Prevention of Major Industrial Accidents Convention No. 174 (ILO)	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP)
<b>Date of adoption and entry into force</b>	adopted 28 November 1985, amended November 1989	adopted May 1987, amended 1989	adopted April 1994	Adopted 1987; came into force 1 January 1989	1990, 4 Nov 1993	1993, 1997	11 September 1998
<b>Number of countries that have adopted or ratified</b>	amendments adopted by consensus by the 25th Session of the FAO Conference	227 Designated National Authorities from 155 countries and the EU	private sector participants; 7 associations and councils	169 Parties, London Amendment 127 Parties, Copenhagen Amendment 85 Parties, Montreal Amendment 3 Parties	8 Parties	4 Parties	62 signatories
<b>Product or substance coverage</b>	banned or severely restricted pesticides	banned or severely restricted chemicals	chemicals	ozone-depleting substances	all chemicals	all major hazard installations	22 pesticides and 5 chemicals

Legally Binding Agreements							
Voluntary Instruments							
International agreement or instrument	International Code of Conduct on the Distribution and Use of Pesticides (FAO)	Amended London Guidelines for the Exchange of Information on Chemicals in International Trade (UNEP)	Code of Ethics on International Trade in Chemicals (UNEP)	Montreal Protocol on Substances that Deplete the Ozone Layer (UNEP)	Convention Concerning Safety in the Use of Chemicals at Work, "Chemicals Convention No. 170, (ILO)	Prevention of Major Industrial Accidents Convention No. 174 (ILO)	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP)
<b>Procedures</b>	voluntary standards of conduct, PIC procedure introduced in 1989 amendment and administered jointly with UNEP and the Amended London Guidelines	PIC procedure, voluntary exchange of information, Decision Guidance Documents (DGD)	private sector participants voluntarily commit to help achieve the objectives of the Amended London Guidelines	controls on production and consumption	principles to ensure the safe use of chemicals in the work place, systems and criteria for classification of hazardous chemicals	principles for the prevention of major accidents involving hazardous substances and limiting consequences of such accidents	PIC procedure, information exchange provisions, process for national decision-making

## **2.2 Pharmaceutical Products**

Pharmaceuticals are a second category of DPGs. Pharmaceutical formulations which are banned or severely restricted in the developed world are often exported to the developing world. The advertising and marketing to promote these drugs in the developing world is rarely accompanied by the research information that led to restrictions. In one classic example, Lomotil, an effective anti-diarrhoea medicine sold only by prescription in the U.S. because it is fatal in amounts just slightly over the recommended doses, was sold over the counter in Sudan. The packages proclaimed that it was used by astronauts during the Gemini and Apollo space missions and recommended it for use by children as young as 12 months.<sup>20</sup> Indeed, studies have shown that pharmaceuticals exported to the developing world are typically labelled with a wider variety of indications while the warnings and contradictions are in fine print.<sup>21</sup>

In an analysis of the German pharmaceutical industry, the BUKO Pharma-Kampagne<sup>22</sup> looked at exports of 1409 pharmaceutical formulations to 26 developing countries in 1991-92. 53% of the pharmaceuticals exported were prohibited for domestic use in Germany and did not meet criteria on efficacy, rational drug combination, adequate clinical testing, acceptable risk/benefit ration/adequacy of dosage and dosage form.

### **2.2.1 Information exchange mechanisms**

#### **2.2.1.1 United Nations Consolidated List of Products**

The United Nations Consolidated List of Products, as discussed above, includes information on regulatory actions taken by governments on pharmaceuticals, agricultural and industrial chemicals and consumer products. The list devoted to pharmaceuticals was issued in 1997 and covers regulatory action taken by 77 Governments on 368 pharmaceutical products.

### **2.2.2 Voluntary international instruments**

#### **2.2.2.1 Certification Scheme on the Quality of Pharmaceutical Products moving in International Commerce**

In 1969, the World Health Organisation Assembly endorsed guidelines for Good Practices in the Manufacture and Quality Control of Drugs comprising internationally recognised and respected standards. They provide the basis for the WHO Certification Scheme on the Quality of Pharmaceutical Products moving in International Commerce, adopted in 1975. The Scheme requires each participating Member State, upon application by a commercially interested party, to attest to the competent authority of another participating Member State that: (a) a specific product is authorised to be placed on the market within its jurisdiction or, if it is not thus

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<sup>20</sup> *Mother Jones*, November 1979.

<sup>21</sup> CUTS Briefing Paper No. 8, September 1996/revised January 1998.

<sup>22</sup> <http://www.epo.de/bukopharma/index.html>

authorised, the reason why that authorization has not been accorded; (b) the production facility in which the product is produced is subject to inspections at suitable intervals to establish that the manufacturer conforms to WHO recommended guidelines; and (c) all submitted product information, including labelling, is currently authorised in the certifying exporting country.

The Scheme, as subsequently amended in 1988, is applicable to finished dosage forms of pharmaceutical products intended for human beings or food-producing animals, as well as to active ingredients. A total of 141 Member States have informed the WHO of their wish to participate through DNAs. Notifications are announced in WHO publications.<sup>23</sup> A Member State may choose to participate solely to control the import of pharmaceutical products and active substances. A Member State intending to use the Scheme to support the export of pharmaceutical products would determine by self-evaluation whether it has the prerequisite assessment capacity. The Scheme contains no provision for external inspection or assessment, either of a competent national authority or of a manufacturing facility. However, a Member State may approach WHO, or a well-recognised Drug Regulatory Authority, to delegate consultants to act as advisors in national inspections and inspector training activities.

## **2.2.3 Legally binding international agreements**

### **2.2.3.1 Single Convention on Narcotics, the Convention on Psychotropic Substances and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances**

The UN International Drug Control Programme in Vienna administers three conventions addressing narcotic and psychotropic substances: the 1961 Single Convention on Narcotics the 1971 Convention on Psychotropic Substances and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.<sup>24</sup> The 1961 and 1971 Conventions address the control of the licit supply of narcotic drugs and psychotropic substances. Narcotic drugs include opium and its derivatives, manmade narcotics, and cannabis and cocaine. Psychotropic substances are primarily hallucinogens, as well as some stimulants and depressants. As of mid-1995, 115 substances were covered by the Narcotics Convention and 105 by the Psychotropic Substances Convention. The UN Commission on Narcotic Drugs has responsibility to determine which drugs are subject to controls. Both Conventions classify drugs into four schedules according to addictive properties, therapeutic value and risks from abuse. The Conventions require licensing for manufacture, trade, distribution, import and export. They also give Parties the right to notify prohibitions or restrictions of imports of substances covered by the Convention, decisions other Parties must respect.

The 1988 Convention aims to prevent and combat drug abuse through the control of the illicit supply of narcotic drugs and psychotropic substances and, to this end, to prevent the trade in and diversion of materials and equipment to their production. Essentially, this Convention

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<sup>23</sup> These notifications are published in the monthly *WHO Pharmaceutical Newsletter*, and an updated consolidated list is published annually in the *Newsletter* and is available from the WHO.

<sup>24</sup> The Single Convention on Narcotics was adopted in 1961 and entered into force 1964 with a 1972 Protocol that came into force in 1975. The Convention on Psychotropic Substances was adopted in 1971 and entered into force 1976. The Convention Against Illicit Traffic was adopted in 1988 and entered into force in 1990.

supplements the measures of the earlier conventions that applied to illicit drugs particularly by covering precursors – chemicals essential to their manufacture. Governments can prohibit or severely restrict import or export of precursors, as well as require import/export authorizations.

**Table 2: International Agreements and Instruments Relevant to the Trade in DPGs: Pharmaceutical products**

	<b>Voluntary Instruments</b>	<b>Legally Binding Agreements</b>		
<b>International agreement or instrument</b>	<b>Certification Scheme on the Quality of Pharmaceutical Products Moving in International Trade (WHO)</b>	<b>Single Convention on Narcotics (UN)</b>	<b>Convention on Psychotropic Substances (UN)</b>	<b>Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, (UN)</b>
<b>Date of adoption and entry into force</b>	adopted 1975	1961, 1964; amended by 1972 Protocol, 8 Aug 1975	1971, 16 Aug 1976	1988, 11 Nov 1990
<b>Number of countries that have adopted or ratified</b>	139 countries participate through Designated National Authorities	150 Parties, amended 130 Parties	134 Parties	106 Parties
<b>Product or substance coverage</b>	pharmaceutical products	115 narcotic drugs	105 psychotropic substances	narcotic drugs and psychotropic substances
<b>Procedures</b>	certificates for specified products requested from the exporting country by the importing authority	control system of licit narcotic drugs	control system of licit psychotropic substances	control in traffic of illicit narcotic drugs and psychotropic substances

### **2.3 Consumer products**

Limited coverage exists on the third category of DPGs, consumer products. However, the export of banned or severely restricted products in this category may pose serious problems to human, animal or plant life or health, or the environment. For example, an unknown number of children were affected when over 2.4 million children’s pyjamas treated with a carcinogenic fire retardant called Tris were exported from the U.S. after being forced off the domestic market by the Consumer Product Safety Commission (CPSC).<sup>25</sup>

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<sup>25</sup> *Mother Jones*, November 1979.

## 2.3.1 Information exchange mechanisms

### 2.3.1.1 United Nations Consolidated List of Products

The United Nations Consolidated List of Products, as discussed above, also contains information on regulatory actions taken on consumer products. The list devoted to chemicals (including consumer products) was issued in 1998.<sup>26</sup>

### 2.3.1.2 Codex Alimentarius

The Codex Alimentarius is a collection of food standards adopted by the Codex Alimentarius Commission, the principle organ of the Joint FAO/WHO Food Standards Programme, and approved in 1963. The Commission has 156 member countries, representing 97% of the world's population. Codex Alimentarius includes standards for all foods and has established 237 commodity food standards. These standards address hygienic and nutritional attributes, food additives, pesticide residues, contaminants, labelling and sampling and analysis methods. In addition to the commodity food standards, Codex has: established 41 hygienic and technological practice codes; evaluated 196 pesticides; established 3274 maximum residue limits for pesticides; and evaluated 760 food additives, 25 food contaminants and 54 veterinary drugs. Codex helps member countries to create food legislation and implementation controls. Member States must notify the Secretariat as to whether or not they accept standards. If a government decides not to accept the standard, or to accept it conditionally, it must also notify the Secretariat of its reasons. This establishes a record for exporters of which countries are holding to standards different from the international norm. Note that while Codex standards are thus voluntary, any country wishing to impose higher standards must, under the WTO SPS Agreement, only do so with "scientific justification", including some scientific studies and a risk assessment.<sup>27</sup>

## 2.3.2 Ongoing Negotiations

### 2.3.2.1 Biosafety Protocol

The Convention on Biological Diversity (CBD) was adopted in 1992 and entered into force on 29 December 1993. There are 174 Parties to the Convention.<sup>28</sup> Article 19.3 of the CBD obliges the Parties to consider the need for a Biosafety Protocol and the different safety assurance systems that such a protocol might recommend or mandate. This protocol would set out procedures for safe transfer, handling and use of living modified organisms (LMOs) that may adversely effect biodiversity. At CBD-COP-1 in 1994, an Open-ended Ad Hoc Group of Experts on Biosafety was established. COP-2, in 1995, established an Open-ended Ad Hoc Working Group on Biosafety (BSWG) to elaborate the need for and modalities of a Protocol. BSWG-5 was held in August 1998 in Montreal, Canada. Another meeting was held in February 1999 in Cartagena to finalise the Protocol prior to an extraordinary meeting of the COP to adopt the Protocol. However, talks were suspended when the governments were unable to finalise the text

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<sup>26</sup> United Nations Consolidated List of Products, Issue 7.

<sup>27</sup> SPS Agreement, Article III (3).

<sup>28</sup> As of August 1998.

of the Protocol at BSWG-6. They will be resumed no later than the Fifth Conference of the Parties to the CBD (May, 2000).

The text coming out of BSWG-5 was considerably shorter than previous versions and narrowed the options considerably. However 13 articles of the draft remained entirely bracketed. The Protocol contains articles on application of an advanced informed agreement procedure (AIA – similar in concept to PIC); notification, risk assessment and management; unintentional transboundary movements and emergency measures; handling, transport, packaging and labelling; information sharing; capacity-building; illegal traffic; and liability and redress. Some fundamental questions about the nature of the Protocol remain – will it be an information exchange mechanism serving primarily to facilitate biotrade or an instrument regulating safety in the transport of LMOs in the spirit of the precautionary principle? More specific contentious issues concern the provisions on liability and redress for damages caused by imports or transport of LMOs or products of biotechnology. Several developed countries (most likely to be the exporters held liable) suggested deleting the article, but most developing countries (most likely to be the compensated importers) are in favour of it. Such a provision has no precedent in other MEA. Still unresolved is the basic question of whether the Protocol will cover only LMOs or also the products thereof.<sup>29</sup> In discussions on the AIA and notification procedures, fundamental questions also were raised about the distribution of responsibilities between exporters and importers. Another unresolved question is the Protocol's relationship to the World Trade Organisation and its agreements – this underlying tension is held by many to be one of the prime culprits in the failure of BSWG 6 in Cartagena.

## **2.4 Hazardous wastes**

Annual world-wide production of wastes hazardous to people or the environment due to toxic, poisonous, explosive, corrosive, flammable, eco-toxic, or infectious properties is estimated to reach 400 million tonnes.<sup>30</sup> About 10 percent of total transboundary movements of this waste are North-South shipments. In the celebrated 'case of the *Karin B*', an Italian national working in Nigeria obtained a product import licence and substituted shipments of thousands of tonnes of highly toxic and radioactive wastes, including 150 tonnes of PCB contaminated wastes. These were imported in five ships over a several month period in 1987-88 – the *Karin B*, registered in Germany, was later found to have illegally dumped 2,100 tonnes of toxic waste in Nigeria.<sup>31</sup> The agreements and instruments described below seek, among other things, to address the issue of importers' informed capacity to deal with such shipments

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<sup>29</sup> The Protocol text refers to LMOs – *living* modified organisms. Some want to restrict this definition to organisms intended for introduction into the environment. Others argue for a broader definition which would include agricultural commodities and products of LMOs, such as tomato paste made from genetically modified tomatoes.

<sup>30</sup> Basel Convention Secretariat, <http://www.unep.ch/basel/index.html>.

<sup>31</sup> CUTS briefing paper No. 11, November 1996/revised January 1998.

## 2.4.1 Legally binding instruments

### 2.4.1.2 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted in 1989 and entered into force on 5 May 1992. The Convention strictly regulates the transboundary movements of hazardous wastes<sup>32</sup> and provides obligations to its Parties to ensure that such wastes are managed and disposed of in an environmentally sound manner. The main principles of the Basel Convention are the reduction of the transboundary movements of hazardous wastes to minimum levels consistent with environmentally sound management; treatment and disposal of hazardous wastes as close as possible to their source of generation; and the reduction and minimization of hazardous waste generation at source. To achieve these goals, the Convention aims to control the transboundary movement of hazardous wastes, monitor and prevent illegal trafficking, provide assistance for environmentally sound management, promote management co-operation between Parties, and develop Technical Guidelines for management. There are 121 Parties to the Convention.<sup>33</sup>

More than 100 Parties to the Convention have notified the Secretariat of their intention to exercise the right to ban the import of hazardous wastes. Under the Convention, Parties shall prohibit export of hazardous wastes or other wastes to those Parties who have notified their intention not to import such wastes. To discourage ‘cheating’ on the Convention and encourage non-Parties to ratify the Convention, Parties are also bound by an obligation to prohibit hazardous wastes export to or import from a non-Party. However the Convention does allow Parties to conclude other agreements with non-Parties, provided that they are based on rules not less environmentally sound than those of the Convention. Such hazardous wastes transfers as are permitted are subject to the PIC procedure. The Parties also agree under the Convention to establish regional or sub-regional centres for training and technology transfers on the management of hazardous wastes and other wastes and the minimization of their generation.

COP-3 in 1995 made the controversial decision III/1, banning hazardous waste exports for final disposal and recycling from Annex VII countries (OECD, European Community and Liechtenstein) to non-Annex VII countries. The controversy arose because the ban included exports intended for recovery and recycling. The decision must be endorsed by two-thirds of the COP-3 parties to enter into force. However, at COP-4 in February 1998, the Parties in effect modified the ban. They adopted List A (Annex VIII), defining as hazardous (and therefore including under the ban) wastes containing arsenic, lead, mercury, asbestos, and dozens of other chemicals and substances. And they adopted List B (Annex IX), defining as not hazardous (and therefore exempted from the ban) those wastes that can be safely recycled or re-used, including scrap iron, steel or copper, certain electronic assemblies, non-hazardous chemical catalysts, and many ceramics solid plastics, and paper and textile wastes.

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<sup>32</sup> Excluding radioactive wastes, which are covered by the International Atomic Energy Agency international control system.

<sup>33</sup> As of 17 June 1998. The notable exception is the United States of America.



Basel is generally accepted to have been very helpful in the reduction of international trade in hazardous wastes. Although the potential impact of decision III/1 on some recycling industries was very large and some developing countries had fears about the loss of access to a potential source of secondary raw materials, the COP-4 lists are considered to go far towards resolving these issues. However, criticisms remain of the failure of the ban to address the significant and growing South-South trade in hazardous wastes.

## **2.4.2 GATT/WTO Instruments**

### **2.4.2.1 Notification System on the Export of Domestically Prohibited Goods**

The export of DPGs was discussed in the GATT in the early 1980s. In November 1982 at the 38<sup>th</sup> Session of GATT Contracting Parties, the Parties decided to: "...to the maximum extent feasible, notify GATT of any goods produced and exported by them but banned by their national authorities for sale on their domestic markets on grounds of human health and safety."<sup>34</sup> The Notification System on the Export of Domestically Prohibited Goods was in effect from 1983 to 1990. The decision taken to establish this system is still in force, although the system no longer functions. A total of 50 notifications were received over the 7-year notification period; 36 of the notifications were for general prohibitions of the export of DPGs and only 14 mentioned specific DPGs.<sup>35</sup> A shortcoming of the notification system was the lack of a clear definition of DPGs.

In a decision of 19 July 1989, the Parties to the GATT decided to establish a Working Group on the Export of Domestically Prohibited Goods and Other Hazardous Substances. This Working Group submitted a draft decision on DPGs in July 1991 that was not adopted. With the creation of the World Trade Organisation (WTO), DPGs were placed on the agenda of the Committee on Trade and Environment (CTE) as Item 7. Nigeria submitted two proposals and a draft decision<sup>36</sup> on DPGs to the CTE in hopes of presenting results at the WTO Ministerial Conference in Singapore in 1996. However, to date no decision has been made by the CTE on DPGs. Several Secretariat papers have been written on the issue, and many developing countries have expressed the desire to resurrect the DPG notification procedure in some format. The EC has also expressed willingness to endorse such a move.<sup>37</sup> However, the lack of a precise definition of DPGs is still a sticking point, and the possibility that other organizations are better placed to deal with the issue gives many Members pause. It may be that the issue of DPGs has not yet been resolved in the CTE because some Members are treating the agenda of the CTE as a 'package' and are holding more easily resolved issues hostage to difficult ones.

### **2.4.2.2 WTO Agreement on Technical Barriers to Trade**

The WTO Agreement on Technical Barriers to Trade, which entered into force in 1995, recognises the right of Member States to adopt measures such as technical regulations, standards, testing and certification procedures for the protection of human, animal, plant life or health, or

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<sup>34</sup> BISD 29S/19

<sup>35</sup> WT/CTE/W/43, Table 1.

<sup>36</sup> WT/CTE/W/14 and WT/CTE/W/32.

<sup>37</sup> PRESS/TE 25.

the environment, or to meet consumer interests. Such measures usually relate to product character or package labelling. These measures, however, must not create unnecessary barriers to trade. The TBT Agreement requires notification to the WTO Secretariat when (a) a Member enacts regulation concerning a good for which a positive relevant international standard does not exist or the technical content of the proposed regulation does not accord with that of the relevant international standard or (b) if the regulation will have a significant effect on trade with Members. Urgent issues of safety, health, environmental problems or national security must be notified immediately by indicating the products covered and the objective. TBT thus provides Members with timely information on technical regulations and conformity assessment procedures applied to imports.

Products covered in the TBT Agreement can fit into more than one category of DPG. Notifications received in 1995 included notifications on chemicals, food labelling, food additives, and wastes<sup>38</sup>. However, the TBT Agreement is not designed to provide information on domestic production or exports. Therefore in terms of providing useful information on the export of DPGs, TBT notifications have limited value. They identify restrictions on the import of DPGs but do not elaborate on their domestic production or export. Furthermore, restrictions only have to be notified if they stand to significantly effect the trade of other Members or if they are not covered by other standards. Thus, a good might be domestically banned and exported but not be notified. In fact, in all of the 1995 and 1996 TBT notifications reviewed in a WTO study<sup>39</sup>, only one (TBT notification 95.102 by the Netherlands) covers a situation where a DPG may be exported.<sup>40</sup>

#### **2.4.2.3 WTO Agreement on Sanitary and Phytosanitary Measures**

The WTO Agreement on Sanitary and Phytosanitary Measures (SPS) also entered into force in 1995. It has a more restricted scope and applies only to measures aiming to protect human, or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease ridden organisms in foods, beverages or feedstuffs. Procedures are similar to those of the TBT Agreement, and the reservations about the usefulness of SPS notifications in the context of the export of DPGs are the same as for TBT.

#### **2.4.2.4 Decision on Notification Procedures for Quantitative Restrictions**

The Decision on Notification Procedures for Quantitative Restrictions (QRs) (December 1995) requires notification to the Secretariat of quantitative restrictions and changes thereof. Amongst QRs that must be notified are Import and Export Prohibitions, Prohibitions Except Under Defined Conditions, and Export Restrictions. Although many of these notifications apply to goods that are sold and used freely in domestic markets, they may nevertheless provide information on the export of DPGs. However, although QRs may provide information on the

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<sup>38</sup> However, radioactive wastes are usually considered to be outside the scope of DPGs.

<sup>39</sup> A Review of the Information Available in the WTO on the Export of Domestically Prohibited Goods. WT/CTE/W/43.

<sup>40</sup> 95.102 “Draft Order on Coatings Containing Polycyclical Aromatic Hydrocarbons.”

prohibition of exports of DPGs, they do not provide information in instances where the export of DPGs is allowed.<sup>41</sup>

**Table 3: International Agreements and Instruments Relevant to the Trade in DPGs: Hazardous Wastes**

	<b>Legally Binding Agreements</b>
<b>International agreement or instrument</b>	<b>Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (UNEP)</b>
<b>Date of adoption and entry into force</b>	1989, 5 May 1992
<b>Number of countries that have adopted or ratified</b>	121 Parties and the European Union
<b>Product or substance coverage</b>	hazardous substances as defined in Annexes I, II, and III.
<b>Procedures</b>	identify chemicals included in PIC procedures through the information exchange system

### 3. Conclusion

In the 21 different instruments and mechanisms addressed above, there are many opportunities for States to take action on the export of DPGs – ranging from information exchange to bans on imports. Some of these instruments are better established and better adhered to than others, and some categories of DPGs are more comprehensively addressed by international agreements. Chemicals, including pesticides and fertilisers, are particularly well addressed by both existing instruments and the potential for their expansion, as well as by the negotiation of a new agreement on POPs.<sup>42</sup>

The gaps created by differing membership to different agreements can be problematic. As has been proposed by Nigeria, resurrecting and making more precise the notification requirements at the WTO could serve to fill the gaps and strengthen the network of international agreements. However, WTO notification would not undermine implementation of other instruments, as they would remain a source of technical expertise and provide their own notification procedures.

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<sup>41</sup> WT/CTE/43, para. 26.

<sup>42</sup> Of course, chemicals also pose a vast variety of health and environmental problems, so the number of instruments may merely be proportionate to the potential harm.

Parties were encouraged to join existing international agreements in the GATT 1991 draft decision, which also stipulated that exports need not be notified under GATT if they were already notified under another international agreement. However, little progress has been made on the issue of DPGs in the GATT/WTO since it was first raised there in 1982. It may not be realistic to hope for resurrection of the notification procedure, especially in the current climate, where the WTO is reluctant to focus on issues that might be addressed under another's domain.

This paper has tried to give some understanding of the web of existing agreements and instruments, showing where each applies and how each works. It is hoped that this will simplify the task of those, particularly in developing countries, charged with managing the import of products that are banned or severely restricted in the exporting State.

## **Annex 1: International Instruments and Initiatives**

### *Information exchange mechanisms dealing with domestically prohibited goods*

1. International Register of Potentially Toxic Chemicals (IRPTC)/UNEP Chemicals, established 1976
2. United Nations Consolidated List of Products Whose consumption and/or Sale Have Been Banned, Withdrawn, Severely Restricted or not Approved by Governments, first issued 1983
3. Intergovernmental Forum on Chemical Safety (ICFS), 1994
4. Interorganisational Programme for the Sound Management of Chemicals (IOMC), 1995
5. Codex Alimentarius, FAO, 1962

### *International agreements and instruments dealing with trade in domestically prohibited goods*

#### Voluntary international instruments

6. Amended London Guidelines for the Exchange of Information on Chemicals in International Trade, UNEP, adopted 1989
7. Code of Ethics on International Trade in Chemicals, UNEP, adopted 1994
8. International Code of Conduct on the Distribution and Use of Pesticides, FAO, adopted 1985
9. Certification Scheme on the Quality of Pharmaceutical Products Moving in International Trade, WHO, adopted 1975

#### Legally binding international agreements

10. Montreal Protocol on Substances that Deplete the Ozone Layer, UNEP, 1989
11. Basel Convention on the Control of Transboundary Movements of hazardous Wastes and their Disposal, UNEP, 1992
12. Convention Concerning Safety in the Use of Chemicals at Work, ILO, 1990
13. 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, UN, 1990
14. 1971 Convention on Psychotropic Substances, UN, 1976
15. 1961 Single Convention on Narcotics, UN, 1964, as Amended by 1972 Protocol, 1975
16. Convention Concerning the Prevention of Major Industrial Accidents, ILO, 1993
17. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998
18. Persistent Organic Pollutants, UNEP, to be developed
19. Biosafety Protocol, UNEP/CBD, to be developed
20. WTO Agreement on Technical Barriers to Trade, 1995
21. WTO Agreement on Sanitary and Phytosanitary Measures, 1995

## Annex 2: Contact information for the instruments and agreements

### *Chemicals, including pesticides and fertilisers*

#### *Information exchange mechanisms dealing with domestically prohibited goods*

- International Register of Potentially Toxic Chemicals (IRPTC)/UNEP Chemicals

<http://irptc.unep.ch/>

Mr. James B. Willis, Director  
UNEP Chemicals  
15 chemin des Anémones  
1219 Châtelaine, Geneva  
Switzerland  
tel. +41 22 917 81 11/83  
fax. +41 22 797 34 60  
jwillis@unep.ch  
irptc@unep.ch

- Intergovernmental Forum on Chemical Safety (IFCS)

<http://www.ifcs.ch>

Dr. Judy A. Stober, Executive Secretary  
Intergovernmental Forum on Chemical Safety  
World Health Organisation  
1211 Geneva 27  
Switzerland  
tel. +41 22 791 36 50/43 33  
fax. +41 22 791 48 75  
ifcs@who.ch

- Interorganisational Programme for the Sound Management of Chemicals (IOMC)

<http://www.who.org/iomc/index.htm>

Dr. Judy A. Stober, Head of the Secretariat  
IOMC  
World Health Organisation  
1211 Geneva 27  
Switzerland  
tel. +41 22 791 36 50 / 35 81  
fax. +41 22 791 48 75  
iomc@who.ch

*Voluntary international instruments*

- International Code of Conduct on the Distribution and Use of Pesticides

[http://www.fao.org/waicent/FaoInfo/Agricult/AGP/AGPP/Pesticid/Code/PM\\_Code.htm](http://www.fao.org/waicent/FaoInfo/Agricult/AGP/AGPP/Pesticid/Code/PM_Code.htm)

Niek Van der Graaff, Chief  
Plant Protection Service (AGPP), Pesticide Management Unit  
Food and Agriculture Organisation  
Viale delle Terme di Caracalla  
00100 Rome  
Italy  
tel. +39 6 570 55757 / 52753 / 53441  
fax. +39 6 570 56347  
Niek.VanderGraaff@fao.org

- Amended London Guidelines for the Exchange of Information on Chemicals in International Trade

<http://irptc.unep.ch/pic/longuien.htm>

Mr. James B. Willis, Director  
UNEP Chemicals  
tel. +41 22 917 81 11/83  
fax. +41 22 797 34 60  
jwillis@unep.ch  
irptc@unep.ch

- PIC procedure

[http://www.fao.org/waicent/FaoInfo/Agricult/AGP/AGPP/Pesticid/Code/PM\\_Code.htm](http://www.fao.org/waicent/FaoInfo/Agricult/AGP/AGPP/Pesticid/Code/PM_Code.htm)

Niek Van der Graaff, Chief  
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<http://irptc.unep.ch/pic/>

UNEP Chemicals  
tel. +41 22 917 81 72  
fax. +41 22 797 34 60  
esobakina@unep.ch or atuxen@unep.ch

- Code of Ethics on International Trade in Chemicals

<http://irptc.unep.ch/ethics/>

UNEP Chemicals  
esobakina@unep.ch or atuxen@unep.ch

*Legally binding international agreements*

- Montreal Protocol on Substances that Deplete the Ozone Layer

<http://www.unep.org/unep/secretar/ozone/issues.htm>

Mr. K.M. Sarma, Executive Secretary  
The Secretariat for the Vienna Convention and the Montreal Protocol  
P.O. Box 30552,  
Nairobi,  
Kenya  
tel. +254-2 62-1234/62-3851  
fax. +254-2 52-1930 /62-3913  
Madhava.Sarma@unep.org

- Convention Concerning Safety in the Use of Chemicals at Work

[http://www.ilo.org/public/english/90travai/cis/ilo\\_standards/c170.htm](http://www.ilo.org/public/english/90travai/cis/ilo_standards/c170.htm)

International Occupational Safety and Health Information Centre (ILO-CIS)  
1211 Geneva 22  
Switzerland  
tel. +41 22 799 67 40  
fax. + 41 22 799 85 16  
cis@ilo.org

- Convention Concerning the Prevention of Major Industrial Accidents

[http://www.ilo.org/public/english/90travai/cis/ilo\\_standards/c174.htm](http://www.ilo.org/public/english/90travai/cis/ilo_standards/c174.htm)

International Occupational Safety and Health Information Centre (ILO-CIS)  
cis@ilo.org

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

<http://irptc.unep.ch/pic/h2.html>



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UNEP Chemicals  
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Mr Niek Van der Graaff, Chief  
Plant protection Service,  
Plant Production & Protection Division,  
FAO  
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Rome 00100, Italy  
+39 6 5705 3441  
+39 6 5705 6347  
niek.vandergraaff@fao.org

*Ongoing negotiations*

- Persistent Organic Pollutants

<http://irptc.unep.ch/pops/>

UNEP Chemicals  
tel. +41 22 979 91 93  
fax. +41 22 797 34 60  
pops@unep.ch

***Pharmaceutical products***

*Voluntary international instruments*

- Certification Scheme on the Quality of Pharmaceutical Products Moving in International Trade

<http://www.who.int/dmp/cspage.htm>

World Health Organisation  
Division of Drug Management & Policies  
1211 Geneva 27  
Switzerland  
fax: +41 22 791 07 46  
dmp@who.ch

- 1961 Single Convention on Narcotics, 1971 Convention on Psychotropic Substances & 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

<http://www.undcp.org/index.html>

United Nations International Drug Control Programme  
Vienna International Centre  
PO Box 500  
A-1400 Vienna  
Austria  
tel. +43-1-26060 0  
fax. +43-1-26060 5866  
undcp\_hq@undcp.org

### ***Consumer products***

#### *Information exchange mechanisms*

- Codex Alimentarius

<http://www.fao.org/WAICENT/FAOINFO/ECONOMIC/ESN/codex/default.htm>

Secretariat of the Joint FAO/WHO Food Standards Programme  
Food and Agriculture Organisation of the United Nations  
Viale delle Terme di Caracalla  
00100 Rome, Italy  
tel. +39(06)5705.1  
fax. +39(06)5705.4593  
codex@fao.org

#### *Ongoing negotiations*

- Biosafety Protocol

<http://www.biodiv.org/biosafety.html>

Secretariat of the Convention on Biological Diversity  
World Trade Centre  
393 St Jacques Street, Office 300  
Montréal, Québec H2Y 1N9  
Canada  
tel. +1 (514) 288-2220  
fax. +1 (514) 288-6588  
secretariat@biodiv.org

International register on Biosafety <http://irptc.unep.ch/biodiv/>

### ***Hazardous wastes***

#### ***Legally binding instruments***

- Basel Convention on the Control of Transboundary Movements of hazardous Wastes and their Disposal

<http://www.unep.ch/basel/index.html>

Secretariat of the Basel Convention (SBC)  
Geneva Executive Centre  
15 chemin des Anémones, Building D  
1219 Châtelaine, Geneva  
Switzerland  
tel. +41 22 979 91 11  
fax. +41 22 797 34 54

### ***GATT/WTO Instruments***

- WTO Agreement on Technical Barriers to Trade

<http://www.wto.org>

- WTO Agreement on Sanitary and Phytosanitary Measures

<http://www.wto.org/wto/goods/sps.htm>