

Explanatory Statement 22 of 2022

2022 Amendments to Annex III of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Convention)

Practical and legal effect

1. The proposed minor treaty action is the amendment of Annex III of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (the Convention). The amendments would add two new chemicals: (i) perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds, and (ii) decabromodiphenyl ether (decaBDE), in Annex III of the Convention.
2. The chemicals listed in Annex III include pesticides and industrial chemicals that have been banned or severely restricted for health or environmental reasons by two or more Parties to the Convention and that the Conference of the Parties has decided to subject to the Convention's Prior Informed Consent (PIC) procedure.
3. The listing of these chemicals does not require Australia to ban or phase out their use. The PIC Procedure is a mechanism for formally communicating the decisions of importing Parties, known as Import Responses, as to whether they wish to receive future shipments of chemicals listed in Annex III of the Convention, and for ensuring compliance with these decisions by exporting Parties. The Convention is described further in **Attachment A**.
4. Pursuant to Article 10 of the Convention, Australia must advise the Convention Secretariat of an Import Response. It is proposed that Australia consents to the import of these chemicals subject to requirements applied under Australian regulations.
5. Pursuant to Article 11 of the Convention, Australia is obliged to ensure that Australian exports comply with the Import Responses of other Parties as of six months after such decisions are conveyed in the PIC Circular, a document published biannually by the Secretariat to the Convention (the next to be issued in December 2022). For Parties that have not transmitted a final Import Response, any export must be preceded by an export notification as described in Article 11(2) of the Convention.
6. The additional administrative burden for any Australian company wishing to import or export these chemicals in the future is expected to be minimal. Available data suggests that decaBDE was last imported in 2017, while data for PFOA indicates it has not been imported for over a decade. The principal requirement is the submission of an import/export permit application for PFOA and decaBDE to the Australian Industrial Chemicals Introduction Scheme (AICIS; Department of Health and Aged Care). For industrial chemicals, the Department of Health and Aged Care also requires submission of shipping documentation for verification purposes.
7. It is estimated that permit application forms will take approximately one hour to complete and submit with the appropriate documents. These applications are

processed rapidly by the relevant Commonwealth agencies (within 10 business days).

8. These permits will attract fees.
 - a. For industrial chemicals, permit fees administered by AICIS are outlined below:
 - \$2,395 for an annual export authorisation permit to a party to the Rotterdam Convention that has given consent in an import response;
 - \$4,780 for an annual export authorisation permit to a party to the Rotterdam Convention that has not provided an import response or not given consent in an import response;
 - \$2,395 for an annual export authorisation permit to a country that is not a party to the Rotterdam Convention
 - \$4,780 for an annual import authorisation permit.
9. The amendments to Annex III of the Convention would have a negligible practical, legal and financial effect within Australia, as they are procedural. Similar amendments have been dealt with by the Joint Standing Committee on Treaties (JSCOT) as minor treaty actions, since Australia ratified the Convention in 2004. Minor amendments to Australian legislation will be required which will not create significant new legal obligations within Australia.
10. The Office of Best Practice Regulation advised the Annex III amendments are unlikely to have a more than minor regulatory impact (OBPR22-02840).

Nature and timing of proposed treaty matter

11. During the tenth meeting of the Conference of Parties to the Convention (COP10; 6 - 17 June 2022), the listing of perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds and decabromodiphenyl ether (decaBDE) in Annex III was adopted by consensus decision. A summary of these chemicals is presented in **Attachment B**.
12. According to Article 22(5) of the Convention, amendments to Annex III enter into force automatically for each Party on the date specified in the decision. The Secretariat has communicated the decision to Parties, with a specified date of 22 October 2022, for entry into force.
13. Australia's Import Response to the Secretariat is due no later than nine months after receiving the decision, in line with Article 10 of the Convention. Therefore, the deadline for Australia's response is 21 July 2023.

Reasons for Australia to take the proposed action relating to the treaty matter

14. The chemicals referred to above are hazardous chemicals and meet the requirements for listing in Annex III of the Convention. Support for the listing is consistent with Australia's support for the Convention and the global information sharing regime it enables.

Implementing legislation

15. Relevant Australian domestic legislation controlling these industrial chemicals, and the changes which will be required to this legislation due to the listing of PFOA and decaBDE, are described in **Attachment C**. The legislation is summarised below:

- Sections 71 and 73 of the *Industrial Chemicals (General) Rules 2019*;
- Schedule 3 under the *Customs Tariff Act 1995*.

Attachments

A – Overview of the Rotterdam Convention

B – Chemicals listed in Annex III of the Rotterdam Convention at COP10

C – Changes to legislation used to implement the Rotterdam Convention in Australia

Chemicals Management Branch
Environment Protection Division
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ATTACHMENT A

Overview of the Rotterdam Convention

The Rotterdam Convention (the Convention) is a multilateral treaty that promotes shared responsibility and cooperation on the international trade of certain hazardous chemicals, to protect human health and the environment. The Convention supports Parties with the exchange of information on hazardous chemicals and their potential risks. The aim is to inform and improve national decision making. Australia has been a Party to the Convention since 2004, and is legally obliged to adhere to its obligations.

The Convention covers pesticides and industrial chemicals that have been banned or severely restricted for health or environmental reasons by Parties. Chemicals listed in Annex III of the Convention are subject to the Prior Informed Consent (PIC) procedure. This means that countries must decide whether to allow import of these chemicals, and under what conditions. A decision to list a chemical in Annex III of the Convention requires a decision by consensus of the Conference of the Parties (COP), which usually meets biennially. Listing a chemical in Annex III does not result in a ban or restriction on its use.

The PIC procedure does not include articles that contain the listed chemicals.

ATTACHMENT B

Chemicals listed in Annex III of the Rotterdam Convention at COP10

PFOA is used in the production of fluoroelastomers and fluoropolymers that are used as surfactants and surface treatment agents in the manufacture of articles like non-stick kitchenware and food processing equipment, protective coating for textiles and paper, lubricants in the automotive, electronics, construction and aerospace industries, and firefighting foams for extinguishing liquid-fuel fires.

DecaBDE is used as a flame retardant in plastics for electronic products and textiles.

Both chemicals are also listed under Annex A of the Stockholm Convention on Persistent Organic Pollutants (POPs), a multilateral treaty that aims to protect human health and the environment by eliminating or restricting the use of hazardous chemicals. Australia is currently undertaking domestic action to enable ratification of the listings of these chemicals on the Stockholm Convention. Once this domestic action is finalised, the import, export, manufacture, and use of these chemicals would be prohibited in Australia.

ATTACHMENT C

Changes to legislation needed to implement the Rotterdam Convention in Australia

Australia currently meets its Convention obligations in relation to industrial chemicals through the *Industrial Chemicals Act 2019* and the *Industrial Chemicals (General) Rules 2019*.

Minor amendments to Australian legislation would be required as a result of adding PFOA, its salts and PFOA-related compounds, and decaBDE, to the industrial chemicals category in Annex III of the Convention.

The addition of these chemicals to Annex III would be regulated through amendments to:

- *Industrial Chemicals (General) Rules 2019*
 - Section 71 - Introduction of certain industrial chemicals subject to conditions
 - Section 73 - Export of certain industrial chemicals subject to conditions
- *Customs Tariff Act 1995*
 - Schedule 3 – Classification of goods and general and special rates of duty.

(Specific Harmonised System Codes are applied to Annex III chemicals by the World Customs Organisation, requiring minor technical amendments to this Act)

State and territory legislation controlling hazardous waste, environmental protection and/or occupational health and safety legislation for the control of hazardous substances in the workplace may apply to these chemicals in some states or territories. There is no conflict with any such state or territory legislation and the proposed Commonwealth legislative amendments.