



# Lao's notifications to the Rotterdam Convention involving Cypermethrin. Are they valid?

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## **Brief facts about Cypermethrin**

Cypermethrin is a synthetic pyrethroid insecticide used for pest control in agricultural, veterinary and household settings. Cypermethrin is a generic insecticide registered and used in over 150 countries since 1980s. Its global market is estimated to be over **\$2.5 bn**. India and China are the major producers and exporters of Cypermethrin.

The WHO classifies pesticides into four main categories based on their acute toxicity: extremely hazardous, highly hazardous, moderately hazardous and slightly hazardous. Cypermethrin comes under the category of pesticides that are "moderately hazardous".

In terms of median lethal dose measured by LD<sub>50</sub>, Cypermethrin is less toxic to humans than Aspirin (acetylsalicylic acid), a commonly used pain killer.

## **About the notifications by Lao PDR**

On 31<sup>st</sup> May 2021, the Lao People's Democratic Republic (Lao PDR) submitted two notifications to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention). Their notifications proposed two formulations of the insecticide Cypermethrin (10% EC and 35% EC) be included in Annex III (PIC list) of the Rotterdam Convention claiming that these were considered to be severely hazardous pesticide formulations (SHPF) under the condition of use in their country.

These notifications will come up for review by the Chemical Review Committee (CRC) at the forthcoming meeting in Rome (23<sup>rd</sup> – 26<sup>th</sup> September 2025).

According to the Rotterdam Convention, a developing country or a country with economy in transition can propose an SHPF for listing in Annex III of the Rotterdam Convention in order to make it subject to the PIC procedure.

**Are these notifications by the Lao PDR valid for review/acceptance by the CRC of the Rotterdam Convention?**

**No.** There are cogent reasons as to why these notifications are not valid for review by the CRC. Some of them are explained below.

**What is the Rotterdam Convention?**

The "**Rotterdam Convention on Hazardous Chemicals and Pesticides in International Trade**" is a legally binding multilateral agreement. Being an international agreement, it is governed by the international law.

As expressly given in the title, the Rotterdam Convention concerns only chemicals and pesticides in the international trade. It doesn't concern those in illicit and unlawful trade- through smuggling.

The World Customs Organization (WCO) has defined "smuggling" as "*Customs offence consisting in the movement of goods across a Customs frontier in any clandestine manner, thereby evading Customs control.*"

The illicit trade remains outside the realm of legitimate international trade.

It is settled in international law that multilateral agreements must be observed strictly "intra vires the agreement," meaning "within the scope and power granted by the multilaterally agreed text of the agreement itself". This principle ensures that the actions taken under the agreement are consistent with its provisions.

**What is International Trade?**

"**International trade**" is generally understood as legal exchange of trade of goods and services between countries. Essentially, international trade covers selling and buying of products and services across international borders in conformity with existing national and international laws that govern the trade.

International trade doesn't include illicit trade.

Illicit trade encompasses a wide range of unlawful activities including smuggling, counterfeiting, money laundering, etc., says the World Customs Organization.

According to the WTO, illicit trade harms societies and impedes economic growth and development. It also undermines legitimate business activity. It fosters corruption and denies government potential tax revenue needed to invest in the society.

Illicit trade involves illegal production, transport, distribution and sale of goods across the border. Often, they may be spurious or fake.

Illicit pesticide trade involving spurious, counterfeit and unregistered pesticide pose threat to public health and environment.

Illicit trade of any kind is strictly beyond the purview of the Rotterdam Convention.

Rotterdam Convention concerns export and import of chemicals and pesticides. Illicit trade arising from smuggling cannot come under export and import.

Article I of the Rotterdam Convention expressly states "*the objective of this Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade.....by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties.*"

*According to Article 2(f) of the Rotterdam Convention, "Export" and "import" mean, in their respective connotations, the movement of a chemical from one Party to another Party...."*

Note the term "*movement of a chemical from one Party to another Party*"

Illicit trade is not from one Party to another Party.

Illicit trade through smuggling involves non-state actors.

By no stretch of imagination "export and import" shall encompass illicit cross border trade from smuggling.

When illicit pesticide trade from smuggling is rampant in a country, final regulatory action under the Rotterdam Convention would not lead to any a significant decrease in the quantity of pesticide used.

**Were Cypermethrin formulations (10% and 35% EC) notified by the Lao PDR registered in the country?**

**No.** The notifications submitted to the Rotterdam Convention categorically state that the two formulations of Cypermethrin were neither registered nor allowed to be used in any manner in the Lao PDR.

Investigations show that the Cypermethrin formulations sold in the Lao PDR were smuggled from Thailand.

Addressing such illicit trade from the smuggling calls for strict surveillance by the country's customs and vigilance department. Rotterdam Convention cannot be used to address this problem in the Lao PDR or other countries that are "parties" to the Convention.

Deliberate illegal trade of pesticides is often committed by organized criminal groups, as defined under international law in the *Convention Against Transnational Organized Crime and the Protocols Thereto*, 2004, observed the FAO/WHO in their report "Guidance note on addressing illegal trade of pesticides".

Social scientists define smuggling and illicit trade as the purposeful movement of goods across the border in contravention to the domestic and international legal frameworks. This activity is well organised from initial production to final consumption.

Smuggled pesticides are often substandard and/or spurious. Use of such pesticides can pose significant threat to the safety of user, environment and consumer as they have not been evaluated and approved by the registration authority. Therefore, they cannot form the basis for any regulatory decision at the Rotterdam Convention potentially impacting the trade and use of authentic products, globally.

### **Intentional misuse of pesticides.**

The Rotterdam Convention in **Annex IV, Part 3(e)** states that "*intentional misuse is not in itself an adequate reason to list a formulation in Annex III of the Convention*".

Smuggling does not happen accidentally. It is an organised crime and intentional activity.

When use of a pesticide or its formulation is not legitimate in a country but is smuggled in and used, it should be construed as "intentional misuse" under Annex IV, Part 3(e) of the Rotterdam Convention.

### **Implementation of the Rotterdam Convention**

The text of the Rotterdam Convention should be implemented and guided by the legal maxim '*expressio unius est exclusio alterius*' which means that if an international agreement mentions certain things, anything not mentioned is presumed to be excluded.

The Rotterdam Convention concerns international trade, not illicit trade.

Neither the Secretariat of the Rotterdam Convention nor the CRC can read into the Convention's provisions that were intentionally omitted by the original drafters of the Convention and subsequently accepted by the Conference of Parties (COP).

Illicit international trade in chemicals and pesticides is not a part of Rotterdam Convention.

Illicit international trade (from smuggling) being a violation of law, is *ultra vires* the Rotterdam Convention.

If the Cypermethrin notifications submitted by the Lao PDR are accepted for review by the CRC at the next meeting (23<sup>rd</sup> – 26<sup>th</sup> September 2025), it would set a bad and

questionable precedence.

## Conclusion

In view of the aforesaid reasons, the notifications involving Cypermethrin formulations submitted by the Lao PDR require to be set aside by the CRC. Reviewing the notifications related to illicit trade by the CRC is beyond the scope and powers granted by the Convention. In fact, such notifications to the Rotterdam Convention, if any, should always be held to be void *ab initio* (legally invalid from the very beginning).

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