

Restoring Procedural Integrity in the Rotterdam Convention

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What is procedural integrity?

Procedural integrity refers to the practice that proves constant adherence to an agreed procedure to support the legitimacy of a collective decision-making process. Procedural integrity is of paramount importance in all the international treaties.

The WTO and the Rotterdam Convention

The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention) is an international treaty with 165 countries as Parties. It is jointly administered by the UNEP and FAO. The Rotterdam Convention applies to certain industrial chemicals and pesticides in the international trade. The World Trade Organization (WTO) deals with the rules of international trade. A majority of Parties to the Rotterdam Convention are also Members at the WTO. Therefore, the text of Rotterdam Convention has been carefully drafted balancing the rights and the obligations of the member countries to maintain predictability, integrity, impartiality, non-discrimination and reciprocity mindful of the WTO's legal framework that governs the international trade. The WTO rules require that trade related environmental measures are not applied in a manner which would constitute "a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail" and is not "a disguised restriction on international trade".

Procedural integrity in the Rotterdam Convention:

Procedural integrity is critical in determining the success and sustainability of Rotterdam Convention that deals with certain chemicals in the international trade. When the procedural integrity is not maintained, the credibility of the Rotterdam Convention erodes. Investigating into the complaints on compromised procedural integrity falls within the assigned responsibilities of the newly established Compliance Committee of the Rotterdam Convention

Though the Rotterdam Convention has been in operation since 2004, the Compliance

Committee (under Article 17) became functional only in the year 2022. In the absence of the Compliance Committee, several final regulatory notifications that manifestly failed to meet the procedural requirements of the Rotterdam Convention were accepted by the Convention' s Secretariat and sent to the Chemical Review Committee (CRC) over the past two decades.

India' s earlier protest:

In the year 2009, India' s member at the Chemical Review Committee had placed a Conference Room Paper (CRP) raising objections against the CRC being asked to review the notifications of final regulatory actions that did not meet the procedural requirements of the Rotterdam Convention. These included the following.

1. Notifications of final regulatory actions that were not truly final (Article 2(e)) and that required subsequent regulatory actions by the notifying Party.
2. Notifications that were submitted to the Convention' s Secretariat beyond the time limit of 90 days (Article 5.1).

Source: CRP bearing no. UNEP/FAO/RC/CRC.5/CRP.6 dated 26th March 2009 submitted by Dr. G K Pandey, CRC Member from India.

Definition of the Final Regulatory Action as given in Article 2(e)

*"Final regulatory action" means **an action taken by a Party, that does not require subsequent regulatory action by that Party**, the purpose of which is to ban or severely restrict a chemical; (Emphasis added)*

This means any final regulatory action that received subsequent regulatory action would not qualify to be considered as "final regulatory action". The regulatory action should truly be final.

Time limit for submitting notifications as given in Article 5.1

*Each Party that has adopted a final regulatory action shall notify the Secretariat in writing of such action. Such notification shall be made as soon as possible, and **in any event no later than ninety days** after the date on which the final regulatory action has taken effect, and shall contain the information required by Annex I, where available". (Emphasis added)*

This means that the notification of the final regulatory action **shall not be submitted to the Secretariat later than 90days**. Ideally, belated notifications received by the Secretariat should not be sent to the CRC for review.

In response to the above referred CRP, the Secretariat of the Rotterdam Convention informed that such complaints could only be addressed by the Compliance Committee after its formation.

Compliance Committee

Now that a 15-member Compliance Committee has been formed by the Conference of Parties (COP) and functional from the year 2022. The notifications of final regulatory actions that fail to meet the requirements of Article 2(e) and Article 5.1 require to be challenged and referred to the Compliance Committee. The purpose is to protect the procedural integrity of the Rotterdam Convention and to maintain the balance between the rights and the obligations.

As per the mandate given to the Compliance Committee, a Party that is affected by another Party' s failure to comply with the obligations of the Rotterdam Convention can write to the Party concerned seeking consultation for a resolution. In the event of failure to resolve the issue, the affected Party can write to Secretariat seeking resolution involving the Compliance Committee. This is, in a way, similar to the dispute settlement mechanism in the WTO.

Course correction. The way forward

The past wrongs can' t set precedence for the future actions. True, the past wrongs can' t be corrected. But repeating them would further weaken the credibility and sustainability of the Rotterdam Convention.

With the Compliance Committee in place now, the Parties have the opportunities to take measures leading to course corrections. The Compliance Committee has a crucial role to play in assisting the Parties to resolve the grievances and restore the much -needed procedural integrity in the Rotterdam Convention.

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