

EXPORTS OF DOMESTICALLY PROHIBITED GOODS

ACTIVITIES OF OTHER ORGANIZATIONS IN RELATED FIELDS

Note by the Secretariat

Introduction

1. The subject of Exports of Domestically Prohibited Goods has been included in the regular work programme of GATT (BISD 29S/19). The latest report on the subject was presented at the November 1988 Session of the CONTRACTING PARTIES (SR.44/2, pages 2-7). Subsequently, at the Ministerial meeting of the Trade Negotiations Committee held in Montreal in December 1988, some delegations emphasized the importance they attached "to the need for early action in GATT to bring under control trade in domestically prohibited goods and other hazardous substances". In the light of this, the Chairman of the TNC suggested in his statement at the conclusion of the meeting that the GATT Council "be requested to take an early appropriate decision for the examination of the complementary action that may be necessary in GATT, having regard to the work that is being done by other international organizations".

2. To assist further examination, this note updates the information contained in the note prepared by the secretariat in 1985 on the activities of other organizations in the fields covered by the subject (DPG/W/1). It will be revised, as necessary, to take into account any further information and comments that may be received from the relevant organizations.

3. The main organizations of which work has been covered include:

- I. United Nations Environmental Programme (UNEP);
- II. Food and Agricultural Organizations (FAO);
- III. World Health Organization (WHO);
- IV. United Nations General Assembly.

Reference has also been made to the work being undertaken in the International Labour Organization (ILO) and by the United Nations Centre on Transnational Corporations (UNCTC). The note also reviews briefly the work that is being done by the Organization for Economic Co-operation and Development (OECD), particularly as the approach to the issues taken by developed countries in co-operating among themselves, has provided a useful basis for the work in this area of other international organizations for promoting co-operation on a wider basis.

4. The information is presented in four parts. The first two parts describe the work of international organizations on products which are banned or severely restricted in countries where they are produced on grounds that they are dangerous to human health, and safety, and to the environment. In particular, Part I deals with dissemination and exchange of information on actions taken to control sale and distribution of such products, and on scientific reports prepared to explain the risks to human health and environment, involved in their use. Part II deals with the aspects of the work of these organizations, relating to specifically international trade in such products. It describes briefly the exchange network which has been developed for notification of exports of banned or severely restricted products and the work that is under progress for developing guidelines with a view to bringing under control exports of such products. The information contained in the two parts is closely related and its separate presentation has been attempted only with a view to bring out more clearly work which has a more direct bearing on international trade aspects.

5. Part III of the paper describes the work that is being done, mainly by the UNEP on "illegal traffic in toxic and dangerous products and wastes" and on "control of transboundary movement of hazardous wastes".

6. Part IV contains some concluding observations.

#### PART I

##### WORK ON EXCHANGE AND DISSEMINATION OF INFORMATION ON GOVERNMENTAL ACTIONS BANNING OR SEVERELY RESTRICTING SALE AND DISTRIBUTION OF PRODUCTS

#### A. UNEP - Work in the area of chemicals

##### (a) Exchange of information for evaluating hazards associated with particular chemicals

7. The main objective of the International Register of Potentially Toxic Chemicals (IRPTC) which was established in 1976, is to facilitate access to existing data on chemicals and their effects on human beings and their environment, and to provide basic data for evaluating the hazards associated with particular chemicals.

8. Towards this end, it has established a network of 118 national correspondents covering 111 governments. They provide information on new or planned legislation to control chemicals, as well as regulations, recommendations, studies and reports, and on accidents and incidents involving chemicals.

In particular the IRPTC:

- (i) has developed central files containing relevant information on health and environmental hazards posed by chemical substances. (Data profiles on over 600 chemicals of international significance, prepared by IRPTC staff assisted by consultants or network partners, are available for consultation by experts seeking information.);
- (ii) has issued a Legal File in 1983 (updated in 1986), containing information on legal and administrative limitations, bans and regulations placed on potentially toxic chemicals in the producing countries. (This has taken the form of a compendium of data on 550 chemicals supplied by twelve countries and six international organizations. The file is continuously being updated.);
- (iii) publishes a Bulletin two times yearly, containing information on new or proposed regulations, evaluations, reports and safe use instructions for chemicals, which is widely distributed with the aid of its national correspondents;
- (iv) provides a query response service on chemical products covered by the Register.

(b) Exchange of information on banned or severely restricted chemicals

9. The UNEP Governing Council have also in June 1987 adopted the London Guidelines for the Exchange of Information on Chemicals in International Trade. Under these Guidelines, States having taken a control action to ban or severely restrict a chemical should notify directly or indirectly (i.e. by letter to other participating national authorities with copy to IRPTC, or to IRPTC for transmission to other national authorities) the designated national authorities in other countries of the action to give authorities in other countries the opportunity to assess the risks associated with the chemical and to make timely and informed decisions.

10. As at 31 October 1988, seventy-four countries had designated their national authorities for the implementation of the provisional scheme.

B. FAO - Work in the area of pesticides

Exchange of information

11. FAO has established a system for exchange of information under the International Code of Conduct on the Distribution and Use of Pesticides which was adopted in 1985.

12. The Code which is voluntary in nature, lays down standards for all public and private entities engaged in the distribution and use of pesticides. It notes that there is an increasing concern about the propriety of supplying pesticides which are banned or severely restricted particularly to developing countries which have no system for registration and have not been able to develop their safe and effective use. To enable the countries to decide whether imports of such pesticides should be allowed, taking into the account their toxicological effects, the reasons for which they have been banned and the local public health, economic, environmental and administrative conditions, it has established a system for exchange of information. Under this system, the governments of pesticide-exporting countries which take action to ban or severely restrict the use or handling of a pesticide in order to protect health or the environment domestically, are expected to notify, directly or indirectly, the designated national authorities in other countries of the action it has taken.

13. The minimum information to be notified should indicate:

- the identity (common name, distinguishing name and chemical name) of the pesticide;
- a summary of the control action taken and of the reasons for it - if the control action bans or restricts certain uses but allows other uses, such information should be included;
- the fact that additional information is available, and the name and address of the contact point in the country of export to which a request for further information should be addressed.

C. WHO - Work in the area of chemicals and pharmaceutical products

14. The WHO work that may be considered as of direct relevance to the issues covered by the note, relates to:

- (i) that done by the organization in collaboration with UNEP and ILO, under the International Programme on Chemical Safety (IPCS) to disseminate information and guidance on the safe use of chemicals; and
- (ii) that done by it for dissemination and exchange of information on safety and efficacy of drugs.

(a) Work in the area of chemical safety

15. One of the main objectives of the IPCS is to carry out and disseminate evaluations of the risks to human health and the environment from exposure to chemicals, mixture of chemicals or combination of chemicals and physical and biological agents. The evaluations carried out under the programmes

provide scientific basis for countries in adopting their chemical safety regulations. The results of the evaluations are published in the following forms:

- (i) Environmental Health Criteria, which are, *inter alia*, designed to assist regulatory authorities in elaborating policies for the safe use of chemicals;
- (ii) Health and Safety Guides, which summarize for the benefit of administrators, managers and other interested members of the public in non-technical language the various aspects of using chemicals safely and avoiding health hazards;
- (iii) International Chemical Safety Cards, summarizing essential product identity data and health and safety information on chemicals for use at the "shop floor" level by workers.

(b) Dissemination of information on safety and efficacy of drugs

16. Under the Drug Action Programme, the WHO brings out periodically Pharmaceutical News Letter, by which Health Ministers of member States are informed of decisions to prohibit or limit the availability of drugs already in use. In addition, evaluated information on drugs, is published for wider circulation in "WHO Drug Information"

D. United Nations Secretariat's Consolidated List of products banned, severely restricted and/or not approved by governments

17. The United Nations Secretariat plays a co-ordinating rôle by disseminating information collected from various international and other organizations by publishing, periodically, a Consolidated List of products "which are banned, withdrawn, severely restricted and/or not approved by governments". It is being prepared in pursuance of a Resolution adopted in 1982, which, *inter alia*, noted that continued exports of such products, was causing "damage to the health and environment" and suggested that publication of such a Consolidated List would assist "many developing countries (which) lack the necessary information and expertise to keep with the developments in the field".

18. The third version of the List, which was published in 1988 contains over 600 products relating to which some ninety-three countries have taken restrictive regulatory actions for health, safety and environmental reasons. Under the collaboration arrangements which were formalized in 1985 the WHO collects, screens and processes the information relating to regulatory measures taken by governments on pharmaceutical products and on the reasons (health related and environmental) for which they were taken; the UNEP/IRPTC perform similar functions relating to chemical products. The United Nations secretariat co-ordinates these inputs, and ensures that the relevant information available in other organizations (e.g. FAO and ILO etc.) is utilized in preparing the List.

19. The Consolidated List is divided into two parts. In Part one, the information on restrictive regulatory decisions is presented separately for the following five product groups:

- (i) Pharmaceuticals (mono-competent products);
- (ii) Pharmaceuticals (combination products);
- (iii) Agricultural chemicals;
- (iv) Industrial chemicals;
- (v) Consumer products.

20. For each of the products listed under the group, the List contains information on:

- (i) product name;
- (ii) its scientific and common names and synonyms; and
- (iii) brief descriptions of the legislative or regulatory action taken.

21. The last heading indicates, in respect of each country taking regulatory action, effective date of the action, the grounds for the decision and an indication if action applies also to exports.

22. The Explanatory Notes to the List emphasize that:

"It should be noted that decisions taken by a limited number of Governments on a specific product may not be representative of other Governments' positions, particularly in view of differing risk-benefit considerations. It is also important to realize that all pharmaceutical and chemical products are potentially harmful if not correctly used. In addition, the fact that a given product is not listed as regulated by a country does not necessarily mean that it is permitted in that country; it may mean that the relevant regulatory decision has not been communicated to the United Nations, WHO or UNEP, or that, in the case of pharmaceuticals and pesticides, for example, which are frequently subject to compulsory registration procedures, the product has not been submitted for registration. The efficacy of products listed is not addressed, but is an aspect that may be crucial when a Government is considering regulatory action."

23. The criteria on the basis of which products have been classified as (i) banned; (ii) severely restricted; (iii) withdrawn; and (iv) voluntarily withdrawn, have been developed in consultation with the governments (see Annex I). The Explanatory Notes to the List however state that even though the adoption of the criteria has significantly facilitated screening of the information, governments' interpretation of the criterion "severely restricted" in particular, continue to vary widely, leading to considerable unevenness in reporting on national restrictive regulatory measures.

24. The Explanatory Notes further clarify that:

- the list does not include many widely used industrial chemicals to which occupational exposure limits have been assigned by national authorities, and on which information is available in ILO and UNEP/IRPTC publications;
- food additives are also outside the scope of the List, since the FAO/WHO Codex Alimentarius deals with them;
- consumer products are only included when they are hazardous because of their chemical composition;
- psychotropic and narcotic substances scheduled under one of the international conventions are included only where a government is controlling a substance more rigorously than required under the relevant international convention;
- with regard to agricultural and industrial chemicals, it should be noted that regulations often refer to chemical groups, such as arsenic compounds, rather than to specific chemicals.

25. Part two of the Consolidated List presents commercial information, including data on trade names, relating to a large proportion of the products covered in Part one. It provides an easy method to cross-reference trade names with recognized common scientific names, under which the regulatory data are presented.

#### E. Work of other organizations

26. Other organizations active in this area of work include the International Labour Office (ILO) and the United Nations Centre on Transnational Corporations (UNCTC). ILO's work is concentrated on the International Occupational Safety and Health Hazard Alert System, intended to disseminate information on safety and health hazards found to be associated with the working environment, and on various aspects of the protection of workers against the effects of harmful or potentially harmful products. UNCTC contributed to the information provided by specialized agencies to the UN Secretariat, in drawing up the Consolidated List, by collecting such information as relevant trade names and transnational manufacturers of and distributors of particular chemicals identified by the secretariat as toxic and hazardous.

PART II

WORK DONE FOR DISSEMINATION OF INFORMATION ON EXPORTS OF PRODUCTS  
BANNED OR SEVERELY RESTRICTED AND FOR DEVELOPING GUIDELINES AND  
CERTIFICATION SCHEMES TO BRING UNDER CONTROL TRADE IN SUCH PRODUCTS

A. OECD

(a) Banned or severely restricted chemicals

27. In April 1984, the OECD Council adopted a recommendation and guiding principles on information exchange related to export of banned or severely restricted chemicals. These were prepared by an expert group established under the OECD Special Programme on the Control of Chemicals. The principles underlying these documents have been incorporated into much of the work undertaken by UNEP in the area of chemicals and by FAO in relation to pesticides, described later in this Part.

28. The OECD recommendation and principles, while laying the primary responsibility for the protection of human beings and the environment from hazards associated with imported chemicals on importing countries, recommend that if any banned or severely restricted chemical is exported, information be provided from the exporting country to the importing country, including non-OECD members, to enable the latter to make "timely and informed decisions" concerning the chemical.

29. "Banned or severely restricted" includes any chemical subject to a control action to ban, or severely restrict, the use of the chemical in order to protect human health or environment domestically; or to refuse required authorization for the first-time use on the grounds that such use would endanger human health or the environment.

30. If such a product is exported, the importing country should be informed (if possible, before exportation takes place):

- that such an export is expected or imminent;
- of the identity or chemical specification of the chemical;
- of the description of the control action taken by the exporting country; and
- if supplementary information is available and the contact point for such supplementary information.

31. Such information would be on a one-time basis at the time of the first export following the control action.



(b) Consumer products

32. The OECD Committee on Consumer Policy has been operating an informal notification procedure on safety measures concerning hazardous products since 1973. This procedure, which covers new product safety regulations, product bans and recalls, and research projects, has generated more than 500 notifications since its creation. It is currently undergoing a thorough revision in order to further improve its effectiveness, by a strengthening of the commitment of member countries and by the establishment of certain guidelines for the practical handling of notifications. This process should be finalized by the end of 1989.

33. The Council Recommendation Concerning the Safety of Consumer Products of 1979 and Recall Procedures for Unsafe Products Sold to the Public of 1981, calls on governments of member countries to ensure that those goods that are banned or withdrawn from sale within their territories because they are inherently so hazardous that they present a severe and direct danger to life, health or safety of any consumer of those goods, are not exported to other countries and urges governments to consider the desirability of seeking powers to prohibit export of dangerous goods, where such powers do not yet exist. Following this Recommendation, several of the general product safety laws introduced in a number of countries also refer to the prohibition of the export of products banned on domestic markets. The Committee is expected to take a brief review of these developments in the near future.

B. UNEP

(a) Notification of exports of banned or severely restricted chemicals

34. The London Guidelines, which call upon countries to notify the designated authorities in other countries the control actions taken by them to ban or severely restrict a chemical, provide further that if an export of such a chemical takes place the exporting country should ensure that necessary steps are taken to provide the designated national authority of the importing country with the original notification regarding control action, and alert it to the fact that an export of the chemical concerned will occur, or is occurring.

(b) Development of procedures for prior informed consent (PIC)

35. In adopting the London guidelines, the Governing Council requested the Executive Director to convene an Ad Hoc Working Group to develop modalities that would provide exports of certain chemicals which are considered to be hazardous to public health and the environment could be made only after "prior informed consent" (PIC) has been obtained.

(c) Form of PIC Modality

36. At its first meeting in Dakar in September 1988, the Working Group agreed on the general form of a PIC modality. Under this modality, States



having taken a control action to ban or severely restrict<sup>1</sup> a chemical would submit to the International Register of Potentially Toxic Chemicals (IRPTC) a list of all national control actions taken, providing not only the minimum information required under the London Guidelines presently, but also information concerning alternative measures, such as integrated pest management measures for pesticides, non-chemical alternatives and impact mitigation measures.

(d) Identification of chemicals to which PIC procedures should apply

37. On the basis of such submissions, IRPTC would develop a list of all chemicals banned or severely restricted by ten or more countries, to be circulated, with chemical information sheets, to countries which have indicated their wish to participate in the "Prior Informed Consent" procedure. The countries would then make a determination regarding whether they wish to continue use and importation of these chemicals, to discontinue or to allow use and importation only under specified conditions, or to request information or assistance in evaluating chemicals on the list. Preliminary estimates indicate that this list would be comprised of approximately forty chemicals.

38. Chemicals banned or severely restricted by five or more countries, but by less than ten, would be submitted to an informal consultation to determine whether they meet the definitions of banned or severely restricted; those chemicals that meet the definitions would be circulated as an addition to the original list for a determination by participating importing countries regarding their future use and importation. Estimates indicate that such a procedure would add approximately fifty chemicals to the list.

39. Subsequently, each additional chemical which is the subject of a notification of a final government control action and which meets the definitions of banned or severely restricted will be notified to each participating importing country for a decision as to whether that country wishes to continue to use and import the chemical.

40. Such information should be provided when the first export following the control action occurs, and should recur in the case of any significant development of new information or conditions surrounding the control action. It is the intention that, in so far as possible, the information should be provided prior to export.

41. Importing countries participating in the PIC procedures would send their replies to IRPTC for further dissemination. Even if a country does not make a response, the chemical should not be exported without the explicit consent of the importing country, unless it is a pesticide which

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<sup>1</sup>It was proposed in the Working Group to reconsider the definitions of "banned or severely restricted". Various options for defining these terms are under consideration in the Working Group.

is registered in the importing country or is a chemical - the use or importation of which has been allowed by other governmental action of the importing country.

42. It is anticipated that with regard to pesticides IRPTC would collaborate with FAO in the implementation of the PIC procedures.

43. The second meeting of the Working Group, to finalize the PIC procedures and its work for presentation to the UNEP Council is expected to be held in New York from 13-17 February 1989.

C. FAO - Notification of export of banned or severely restricted chemicals

44. The FAO International Code of Conduct on the Distribution and use of Pesticides (see paragraphs 11-12) also provides that if export of a banned or severely restricted pesticide, notified under the Information Exchange System established according to its provisions, takes place, the exporting country shall "ensure that necessary steps are taken to provide the designated authority of the country of import with relevant information". The minimum information to be provided for this purpose should be:

- a copy of, or reference to, the information provided at the time of the notification of control action;
- an indication that an export of the chemical concerned is expected or is about to occur.

45. At the 1987 Session of the FAO Conference, a number of countries, while reviewing the experience of the implementation of the Code, considered that it may be desirable to incorporate in it the concept of "prior informed consent". In this context it may be mentioned UNEP's Ad Hoc Working Group (referred to in paragraph 34 above) is giving consideration to the future co-operation between the UNEP and FAO Secretariats which could be established for the development of PIC procedure and its insertion in the FAO Code of Conduct and in the London Guidelines.

D. WHO - Certification scheme on the quality of pharmaceutical products moving in international trade

46. A large number of countries permit domestic sales and imports of pharmaceutical products only after their drug authorities are satisfied on examination of the analytical data submitted by the company and the laboratory tests carried out by them, about their therapeutical and safety qualities. The manufacturers' plants at which such products are produced are also inspected periodically to ensure that adequate standards of cleanliness and quality control are maintained.

47. The drugs intended for exports are not always subjected to the same control procedures as is applicable to those produced for the home market. This places a number of developing countries, which have not been able to

develop effective statutory control systems for prior registration of pharmaceutical products and laboratory facilities for drug analysis, in a disadvantageous situation, as drugs which have not be registered or have been refused registration as well as those which are substandard or spurious are exported to them.

48. To assist such countries WHO has evolved a certification scheme, under which an importing country may request the exporting country that pharmaceutical products exported to it should be accompanied by a certificate issued by a competent authority in the exporting country, which, inter alia, states that the exported pharmaceutical product:

- (a) is authorized for sale or distribution within the exporting member State (if not, the reasons therefore should be indicated);
- (b) the manufacturing plant in which it is produced is subject to inspection at suitable intervals and that the manufacturer conforms to requirements for good practices in the manufacture and quality control, as recommended by WHO.

49. At present, 118 countries participate in the scheme and have designated authorities which would be responsible for issuing the certificate or to make a request that products imported should be accompanied by such a certificate.

50. The scheme further calls on the designated authorities in the exporting country, to provide, if requested by the importing country's authority, additional information regarding the control exercised in the exporting country and on the implementation of the requirements relating to good manufacturing practices in the country.

51. The coverage of the scheme - which has been in operation since 1976 - was extended in 1988 to cover, apart from medicines intended for human use, veterinary products administered to food-producing animals presented in their finished dosage form, as well as "starting material" (basic drugs) used in their manufacture.

### PART III

#### WORK RELATING TO TOXIC AND OTHER HAZARDOUS WASTES

##### A. Illegal traffic in toxic and dangerous products and wastes

52. In December 1987, the General Assembly adopted Resolution 42/183, requesting the Secretary-General to prepare a comprehensive report on the question of illegal traffic in toxic and dangerous products and wastes, that is, traffic in contravention of national legislation and relevant international legal instruments - as well as traffic not carried out in

compliance with internationally-accepted guidelines and principles in this field, and its impact on all countries, in particular developing countries, for submission to the General Assembly at its Forty-Fourth Session.

53. A preliminary report was presented to ECOSOC at its second regular session of 1988. ECOSOC requested the Secretary-General, in preparing the report to the Forty-Fourth Session, to focus on a quantitative and geographical assessment - by region of origin and of destination - of the illegal traffic in toxic and dangerous products and wastes; a classification of types of toxic and dangerous products and wastes according to their nature, potential toxicity and the probability of their being traded or dumped; and to submit conclusions and recommendations on different mechanisms that can be devised to monitor and control illegal traffic.

54. UNEP's work in this field is on two fronts: first, in gathering information to assist the Secretary-General in the preparation of the report; and second, in developing mechanisms in the context of the Global Convention on Control of Transboundary Movements of Hazardous Wastes (see paragraphs 55-58 below), to address the question of control of illegal traffic in such wastes.

B. Elaboration of a Global Convention on Control of Transboundary Movement of Hazardous Wastes

55. By Decision 14/30 of 17 June 1987, the Governing Council of UNEP approved the Cairo Guidelines and Principles for the Environmentally Sound-Management of Hazardous Wastes. By the same Decision, it authorized the Executive Director of UNEP to convene a working group of legal and technical experts with a mandate to prepare a Global Convention on Control of Transboundary Movements of Hazardous Wastes, to be ready for signature, if possible, by early 1989. UNEP was to base its work on the Cairo Guidelines and on work already undertaken by other international organizations and bodies in particular the OECD.

56. Pursuant to that Decision, the Ad Hoc Working Group of Legal and Technical Experts has met four times, with more meetings planned before the Diplomatic Conference, to be convened in Basel from 20-22 March 1989.

57. The aim of the UNEP draft Convention is, in the short term, to place strict controls on transboundary movement of hazardous wastes; its long-term goal is to reduce to a minimum their transboundary movement and ensure that such movement is only permitted when it is equally or more environmentally sound to dispose of waste far rather than close to where it is generated. The Convention seeks to establish requirements that wastes which are internationally transported are moved and ultimately disposed of under the most environmentally-safe conditions available. The draft Convention contains obligations aiming at the long-term major reduction in the generation of hazardous wastes, thus eliminating the need for their movement.

58. Some of the most difficult problems being dealt with by the Ad Hoc Working Group include, inter alia:

- (i) The principle of prior informed consent to the importation of hazardous wastes. The draft of the Convention is based on this principle. If accepted by the diplomatic conference in Basel, it would represent the first time that the principle of prior informed consent has been adopted in global environmental law as a binding requirement. At the most recent meeting of the Working Group, there was also extensive discussion regarding broadening the control mechanisms to prohibit exports of hazardous wastes to non-Parties or imports from non-Parties unless subject to an agreement or arrangement which provides for procedures no less stringent than those stipulated in the Convention. A firm consensus, however, is yet to be reached on this point.
- (ii) Criteria for allowing transboundary movement of wastes. There is general agreement among the members of Ad Hoc Working Group to a requirement that each contracting party ensures that hazardous wastes that are exported from its territory are managed in a manner no less environmentally sound than those that are subject to disposal within its territory. The group has also debated a requirement that contracting parties should permit the transboundary movement of hazardous wastes only in cases where:
  - (a) the country of export has not the technical capacity and necessary facilities capable to dispose of the hazardous wastes in an environmentally-sound manner; or
  - (b) the hazardous wastes are required as a raw material for recycling or recovery industries in the country of import; or
  - (c) for geographical limitations it is less risky for reasons of protecting human health and environment to dispose of the hazardous wastes in the country of import than in the country of export.

A further provision whereby export would be allowed if the hazardous wastes have undergone pre-treatment to the extent possible with the technical capacity and treatment facilities available in the country of export was also discussed. The precise language of these texts, however, remains to be articulated.

- (iii) Modalities of assistance to developing countries in checking notifications and testing shipments. In this regard, the Working Group agreed that one of the responsibilities of the Convention Secretariat would be to assist contracting parties, upon request, in identifying means for the monitoring of transboundary movements of hazardous wastes and the verification of the

conformity of such movements in accordance with the provisions of the Convention. The Group also discussed the possibility that the Convention Secretariat offer to contracting parties export and import assistance in identifying consultants to assess and, as appropriate, verify the nature of and/or disposal facilities, if either of these countries has reason to believe that the proposed movement or disposal would not be carried out in an environmentally sound manner.

59. Other questions to which Ad Hoc Working Group is paying attention include:

- (i) the definition of hazardous wastes to be covered by the Convention;
- (ii) action in cases of emergencies;
- (iii) illegal traffic in hazardous wastes;
- (iv) the issue of the lack of the required infrastructure especially in developing countries;
- (v) the question of responsibility of States with respect to liability and compensation and non-compliance with the Convention;
- (vi) the means of ensuring that receiving sites or facilities are environmentally sound;
- (vii) the issues of dependent territories and ships carrying flags of convenience;
- (viii) the obligations with respect to transit countries;
- (ix) the allocation of the burden of proving whether particular wastes do not possess any of the hazardous characteristics; and
- (x) the financial arrangements required for the implementation of the Convention.

60. The diplomatic conference to adopt the Global Convention on Control of Transboundary Movements of Hazardous Wastes is scheduled to be held from 20-22 March 1989.

#### PART IV

#### CONCLUDING OBSERVATIONS

61. It would appear from the above description of the work done by other international organizations that considerable emphasis has been placed on development and improvement in systems for exchange of information on



products which are banned, severely restricted or withdrawn from sale, in the markets of the exporting countries on the grounds that they are dangerous to public health, safety and the environment. All these systems, while admitting that it is to the importing country to adopt measures aimed at protection of human health and the environment, seek to ensure the provision of information from authorities or firms in exporting countries to enable importing countries to make informed judgments on banned or severely restricted products, that are entering trade. Such systems for exchange of information seem to have been relatively well developed in relation to three important product groups (viz. chemicals, pesticides and pharmaceuticals). For other product groups, particularly for consumer products, even though the UN Consolidated List contains some information, the work is at a relatively preliminary stage.

62. In addition to developing systems for exchange of information, effort is being made by some of these organizations to elaborate principles and guidelines which both exporting and importing countries might wish to adopt to bring trade in such products under control. These include, inter alia:

- (i) prior notification to the designated authorities in the importing countries that chemicals or pesticides which are being exported are banned or severely restricted in the exporting country to enable them to decide whether the products should be imported or not;
- (ii) the elaboration of a concept of "prior informed consent" (PIC) under which an exporting country would permit exports of certain identified chemicals, pesticides, etc. which are banned or severely restricted in ten or more countries only if the importing country consents to imports being made; and
- (iii) the prohibition, where feasible and appropriate, of exports of goods which are considered to be inherently so hazardous that they present a severe and direct danger to human life, or health and safety of consumers.

ANNEX I

Criteria for the Inclusion of Pharmaceutical and  
Chemical Products in the Consolidated List

A. Pharmaceutical products<sup>1</sup>

(i) "Banned product"

A product that has been withdrawn from use and/or sale nationally in one or more countries by order of the competent national authority, having regard to its safety in relation to its intended use.

(ii) "Voluntary withdrawal"

A product that has been withdrawn from use and/or sale nationally in one or more countries by voluntary action of the manufacturer, having regard to its safety in relation to its intended use.

(iii) "Severely restricted"

A product containing:

- (a) a substance that is controlled more rigorously than is provided for under the 1981 Single Convention on Narcotic Drugs or the 1971 Convention on Psychotropic Substances or that is subjected to analogous control at the national level before it has been considered for international scheduling;
- (b) a substance that may be incorporated in pharmaceutical dosage forms only within specific limits determined by statute;
- (c) a substance that is approved by a competent national authority and is subsequently subjected to restrictions that exclude its use in a substantial proportion of the potential target population of patients, having regard to its safety. A substance which from the outset has been severely restricted in its indications having regard to the known balance of safety and efficacy is excluded.

(iv) "Non-approved"

A product that has been formally submitted for registration by a manufacturer to a national competent authority and which has been rejected on grounds of safety.

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<sup>1</sup>Products which are in illicit trade only would not be considered.

B. Chemical products

(i) "Banned"

A product that has been prohibited for all uses nationally in one or more countries by final government regulatory action because of health or environmental reasons.

(ii) "Withdrawn"

A product formerly in commerce that has been withdrawn for all uses nationally in one or more countries by final voluntary action of the manufacturer because of health or environmental reasons.

(iii) "Severely restricted"

A product for which virtually all uses have been prohibited nationally in one or more countries by final government regulatory action because of health or environmental reasons, but for which certain specific uses remain authorized.