

ORGANISATION FOR ECONOMIC  
CO-OPERATION AND DEVELOPMENT

RESTRICTED

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Environment Directorate

To: National Delegations  
(copy to national repre-  
sentatives at the  
Consultation on PCBs)

NCP/CO/PCB/72.2

Or. Eng.

NOTIFICATION AND CONSULTATION PROCEDURE  
ON MEASURES FOR CONTROL OF SUBSTANCES  
AFFECTING MAN OR HIS ENVIRONMENT

Consultation on Polychlorinated Biphenyls

Issues for Discussion

(Note by the Secretariat)

1. Under the Environment Committee, through its Sector Group on Unintended Occurrence of Chemicals in the Environment, PCBs were recognised as a priority investigation with regard to control of escape of chemicals into the environment. This investigation was launched at the beginning of 1972 and information has been collected on the production, use, trade in PCB-containing products and probable discharge into the environment of these chemicals. Furthermore, the Sector Group will be examining in November the feasibility of substitution or control and the desirability that governments adopt a common policy towards control of the use of the chemicals involved.

2. Under the Notification and Consultation Procedure and after the date of initiation of the Sector Group investigation, the Organisation has received four notifications\* stating that certain governments, namely that of the United States, Japan, Norway and Sweden, either have taken, or are proposing to take, legislative action. In producing countries (i.e. the United States and Japan) this action is based on agreements with manufacturers to limit the supply of PCBs to certain specified types of use, namely those where the chemical is contained in a closed circuit and can be recovered for regeneration or for destruction. The investigation mentioned in paragraph 1 has revealed that although in the OECD Member countries there are only a small number of manufacturers engaged in the production

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\* 8/NCP/ENV/72.1 United States }  
13/NCP/ENV/72.1 Norway } Tabled at Consultation  
16/NCP/ENV/72.1 Sweden } Meeting for reference  
17/NCP/ENV/72.1 Japan }

of PCBs, the action taken at today's date still leaves several sources of supply uncontrolled.

3. The investigation referred to above has also disclosed that there appears to be little trade of PCBs from outside the GAO membership and finally, that the chemicals are used in a wide diversity of applications and dispersed through manufactured products, such as paints, wrapping papers, copying papers, electrical condensers, etc. The problem of control of use of these chemicals would, therefore, in practice appear to be at choice:

- (a) their control at the point of original supply, coupled with agreement on specified uses; or
- (b) the introduction of a complex and extensive series of regulations dealing with a large number and a considerable range of manufactured goods.

4. In view of the fact that unilateral action is being taken in certain member countries and that this action appears to be based on the principle of control of supply of the chemicals at source, and taking into account one of the "Guiding Principles Concerning International Economic Aspects of Environmental Policies" which states that governments should set common standards for polluting products (C(72)123, Annex 1, paragraph 10), it was considered appropriate by the Secretary-General, following a request by the United States Delegation, to convene a consultation meeting since clearly:

- (a) Regulation with regard to these chemicals affects the conditions of trade, not necessarily solely in the trade of PCBs themselves, but also trade in various PCB-containing products and capital goods whose design characteristics may have to change;
- (b) The situation could readily become very complicated if different policies were to be adopted in different countries as between:
  - (i) control exercised at the point of original supply of PCBs;
  - (ii) control exercised on the manufactured PCB-containing products;
  - (iii) no control;

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- (c) The interests of certain countries that do not produce PCBs and do not wish to contaminate their environment through the use of imported PCB-containing products are involved; without effective control in importing countries, there is already evidence that these products are appearing as an undesired component in the environment.

5. The problem for consideration by the consultation meeting is not whether PCBs merit government action as a chemical to be designated as undesirable in the environment within policies of governments, since there is ample evidence to sustain such policy. The issue is whether in view of the fact that four Member countries have taken positive steps to limit the use of this chemical means that for effective and efficient control it is desirable that all governments should adopt comparable policies with regard to the use of these chemicals.

6. In this context it should be noted that it is primarily the trading value of the products in which PCBs are incorporated which represents the major trading issue; the trade in bulk PCBs being a relatively small item in the overall production of the chemical industry. Secondly, the uniform approach would ensure that the product standards became the same throughout the OECD Member countries, and presumably this would not in general result in a serious disturbance of the pattern of trade. Nevertheless certain special aspects, such as paint formulation in small companies, may present a special problem.

7. If countries were to come to a general agreement on a common policy regarding control at source, this would imply:

- (a) An acceleration and development of the Environment Committee's Sector Group work on ways and means of implementing control so that agreements could be reached between Member governments; and
- (b) Immediate measures would be needed to avoid undue production and unnecessary accumulation of these products in the hands of wholesalers during the inevitable transition period for negotiation and legislation.

8. If countries do not come to an agreement on a common policy regarding control at source of the bulk PCBs those countries introducing unilateral controls could still implement such controls under Article 20(b) of the GATT<sup>1</sup>. It is however well known that uncoordinated recourse to this article may lead to the creation of non-tariff barriers to trade and to complex

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1. Article 20(b) of the GATT:

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General Exceptions:

"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) .....
- (b) necessary to protect human, animal or plant life or health"

administrative problems which would probably give rise to costly procedures such as product quality control in all countries involved.

9. In the light of the above considerations, and in particular the fact that two PCB-producing countries have enacted or intend to enact legislation with respect to the control of PCBs at source, and that two non-PCB producing countries have enacted legislation regarding the restricted use of PCBs, delegates to the consultation meeting are invited to consider:

- (a) the desirability of establishing a common policy framework throughout the OECD membership regarding the acceptable uses of PCBs under specific conditions (closed systems, recovery of PCBs for regeneration or destruction), thus avoiding post hoc need to harmonise disparate regulations in different countries;
- (b) in particular the willingness of OECD PCB-producing countries to exercise governmental control at the source of production of the PCB (for example as to inventory or sales to manufacturers for only certain allowed uses) to the satisfaction of all OECD member countries, as opposed to alternative measures dealing with a variety of manufactured products containing PCBs in varying amounts;
- (c) the need for and administrative feasibility of inter-governmental agreement to limit stockpiling of PCBs during the transition period required for reaching effective legislation;
- (d) what steps can be taken by PCB producing countries which have not yet negotiated with their respective manufacturers to prevent deterioration of the environment during the transition period.

1. PCBs are used in a large number of products including the following: dielectrics in transformers and condensers; heat transfer fluids; industrial fluids such as hydraulic liquids, lubricating and cutting oils, plasticisers for a variety of products such as textile coatings, printing inks, and copying paper, glues, adhesives, sealants, plastics, rubber products, etc.....