



United Nations  
Environment Programme

Food and Agriculture Organization  
of the United Nations

Distr.: General  
9 June 2004

Original: English

**Rotterdam Convention on the Prior  
Informed Consent Procedure for Certain  
Hazardous Chemicals and Pesticides in  
International Trade  
Conference of the Parties  
First meeting  
Geneva, 20–24 September 2004  
Item 8 (b) of the provisional agenda\***

**Matters stipulated by the Conference  
of Plenipotentiaries for action by the  
Conference of the Parties at its first  
meeting: discontinuation of the  
interim PIC procedure**

## **Discontinuation of the interim prior informed consent procedure**

### **Note by the secretariat**

#### **I. Introduction**

1. At its seventh session, the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade considered issues associated with the discontinuation of the interim prior informed consent procedure. In decision INC-7/7, the Committee requested the secretariat to prepare a paper on such issues setting out options and their consequences, advantages and disadvantages in relation to the prior informed consent procedure (UNEP/FAO/PIC/INC.7/15, annex I).

2. At its eighth session, the Intergovernmental Negotiating Committee considered a note prepared by the secretariat on issues associated with the discontinuation of the prior informed consent (PIC) procedure (UNEP/FAO/PIC/INC.8/16). The Committee took note of a report by a working group established to consider this topic and agreed to examine the issue further at its ninth session.

\* UNEP/FAO/RC/COP.1/1.

3. At its ninth session, the Intergovernmental Negotiating Committee considered a note prepared by the secretariat to facilitate follow-up to the work accomplished by the working group (UNEP/FAO/PIC/INC.9/18). The Committee made progress in its examination of these issues and adopted recommendations to be presented to the Conference of the Parties at its first meeting (UNEP/FAO/PIC/INC.9/21, annex III).
4. Annexed to the present note is a paper that provides a brief overview of the discussions of the Intergovernmental Negotiating Committee at its eighth and ninth sessions on issues associated with the discontinuation of the interim PIC procedure and how they have been addressed in preparing for the first meeting of the Conference of the Parties. These issues were discussed in notes prepared for those sessions by the Secretariat (FAO/UNEP/PIC/INC.8/16 and FAO/UNEP/PIC/INC.9/18) that set out specific issues and provided a framework for their discussion by the Negotiating Committee.
5. The issues set out in chapter IV (“The transition period”), of each of the two notes are the subject of a separate paper for this meeting concerning possible transitional arrangements for a transition period (UNEP/FAO/RC/COP1/25).
6. A number of the issues set out in chapter III (“Making the transition – Interim PIC to convention PIC”) of the two notes are the subject of separate papers for this meeting. These are: Composition of the PIC regions (UNEP/FAO/RC/COP1/4); composition of the chemical review committee (UNEP/FAO/RC/COP1/17) and procedures developed by the interim chemical review committee (UNEP/FAO/RC/COP1/27).
7. Chapter three of the present note addresses the remaining issues as characterised by the working groups established at the eighth and ninth sessions of the Intergovernmental Negotiating Committee and reflected in the reports of those sessions (FAO/UNEP/PIC/INC.8/19 and FAO/UNEP/INC.9/21, annex III). These are:
  - (a) Inclusion of chemicals in annex III that were included in the interim PIC procedure before the date of the first meeting of the Conference of the Parties, but are not yet listed in annex III to the Convention;
  - (b) Obligations in relation to imports of chemicals listed in annex III;
  - (c) Obligations in relation to exports of chemicals listed in annex III;
  - (d) Notifications of final regulatory action and proposals for severely hazardous pesticide formulations;
  - (e) Notifications of final regulatory action and proposals for severely hazardous pesticide formulations submitted by non-Parties that participate in the interim PIC procedure.
8. The primary focus of the Intergovernmental Negotiating Committee discussions relevant to the issues included in this paper involved how best to carry over the progress made in the collection and dissemination of notifications of final regulatory actions, proposals for severely hazardous pesticide formulations and import responses submitted during the interim PIC procedure to the Convention PIC procedure.
9. The following terms used in the present note should be understood as described in the following subparagraphs:
  - (a) The “original PIC procedure” means the voluntary PIC procedure contained in the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade and the FAO International Code of Conduct on the Distribution and Use of Pesticides, in effect until the date on which the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was opened for signature;
  - (b) The “interim PIC procedure” means the original PIC procedure as changed to bring it into line with the procedure established by the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, with effect from the date on which the Convention was opened for signature;
  - (c) The “Convention PIC procedure” means the PIC procedure as described in the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, which has become mandatory for the Parties to the Convention now that the Convention has entered into force;

(d) The “transition period” means the time between the entry into force of the Convention and the date on which the interim PIC procedure will be terminated, during which time the interim PIC procedure and the Convention PIC procedure will operate in parallel (as described more fully in UNEP/FAO/RC/COP1/25).

## II. Background

10. The original PIC procedure was established by the UNEP Governing Council at its fifteenth session (decision 15/30 of 25 May 1989), and the FAO Conference at its twenty-fifth session (resolution 6/89 of 29 November 1989). UNEP and FAO jointly implemented the original PIC procedure, which operated until the adoption of the Rotterdam Convention by the Conference of Plenipotentiaries on the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade on 10 September 1998.

11. The Conference of Plenipotentiaries identified work to be performed during the interim period between the adoption of the Convention and the first meeting of the Conference of the Parties. It adopted a resolution on interim arrangements, which changed the original PIC procedure to a voluntary interim PIC procedure closely resembling the procedure set out in the Convention text. In paragraph 13 of this resolution, it was decided that the interim PIC procedure would cease to operate on a date to be specified by the Conference of the Parties at its first meeting. The Rotterdam Convention entered into force on 24 February 2004.

## III. Making the transition – interim PIC to Convention PIC

12. In its discussion of the issues surrounding discontinuation of the interim PIC procedure the Negotiating Committee agreed that the progress achieved under the interim PIC procedure should be maintained and the experience gained in its application retained. This section reviews some of the key issues that will need to be considered by the Conference of the Parties in moving from the interim PIC procedure to the Convention PIC procedure.

### A. Inclusion of chemicals in annex III that were included in the interim PIC procedure before the date of the first meeting of the Conference of the Parties, but are not yet listed in annex III to the Convention

13. In accordance with article 8 of the Convention, the Conference of the Parties must decide at its first meeting to list these chemicals in annex III, provided that it is satisfied that all the requirements for listing in that annex have been fulfilled. Apart from the four chemicals (binapacryl, ethylene dichloride, ethylene oxide and toxaphene) identified on the basis of notifications of control actions submitted by States and regional economic integration organizations participating in the original PIC procedure, all of the chemicals added to the interim PIC procedure have met the requirements of the Convention PIC procedure.

#### *Issue for consideration by the Conference of the Parties*

14. The Intergovernmental Negotiating Committee agreed that all chemicals included in the interim PIC procedure prior to the entry into force of the Convention but not yet listed in annex III could be added to annex III. This would build on the progress achieved under the interim PIC procedure, facilitate a smooth transition between the interim PIC procedure and the Convention PIC procedure and avoid any discrepancies between the two procedures during the transition period. They noted that the additions to annex III could be made irrespective of whether the States or regional economic integration organizations providing the original notifications are Parties at the time of the first meeting of the Conference of the Parties and independent of any decision made by the Parties at that meeting on the composition of the PIC regions. The Conference of the Parties will consider the addition to Annex III of the individual chemicals identified during the interim PIC procedure under agenda item 6 b).

*In accordance with the conclusion of the Working Group (see UNEP/FAO/INC.9/18, annex I, para. 17), the Conference of the Parties is invited to consider that:*

15. In deciding which of the chemicals identified during the interim PIC procedure are to be added to annex III of the Convention, “there would be no distinction made among these chemicals in terms of whether or not the States and regional economic integration organizations providing the original notifications are Parties to the Convention at the time of the first meeting of the Conference of the Parties and is independent of any decision that the Conference may take concerning distribution and membership of PIC regions.”

## **B. Obligations in relation to imports of chemicals listed in annex III**

### **1. Chemicals that are listed in annex III**

16. In article 10, paragraph 7, the Convention provides that each Party shall, no later than the date of entry into force of the Convention for that Party, transmit to the secretariat import responses for each chemical listed in annex III. This article also provides that a Party need not resubmit import responses it provided under the Amended London Guidelines or the International Code of Conduct.

*Issue for consideration by the Conference of the Parties*

17. The working group considered that the import responses for chemicals listed in Annex III of the Convention submitted during the interim PIC procedure and distributed by the secretariat through the semi-annual PIC Circular would have no status under the Convention PIC procedure unless the Conference of the Parties decided otherwise. With reference to Article 10, it also noted that a Party would not need to resubmit import responses it had provided under the interim PIC procedure.

18. At present, in accordance with article 10, the secretariat distributes a compilation of all import responses and cases of failure to transmit a response through the PIC Circular every six months (June and December). PIC Circular XIX (June 2004), the first PIC Circular after entry into force of the Convention, contained a synopsis of all import responses for chemicals listed in Annex III submitted during the original and interim PIC procedures up to 30 April 2004.

*On the basis of the discussions of the working group (UNEP/FAO/INC.9/18, annex 1, paras. 18 and 20), the Conference of the Parties is invited to note:*

19. That import responses for chemicals listed in Annex III of the Convention contained in PIC Circular XIX (June 2004) do not need to be resubmitted by Parties upon entry into force of the Convention for them.

### **2. Chemicals subject to the interim PIC procedure but not yet listed in annex III**

20. The working group identified a related question, i.e., whether a Party would need to resubmit a response regarding future import for a chemical if it was listed in Annex III at a date later than the entry into force of the Convention for that particular Party. This applies to those chemicals that were identified during the interim PIC procedure but that will only be included in Annex III of the Convention by a decision at the first meeting of the Conference of the Parties.

*Issue for consideration by the Conference of the Parties*

21. The working group considered that if there was agreement that there is no need to resubmit import responses for chemicals listed in Annex III that were submitted during the interim PIC procedure, then PIC Circular XIX (June 2004) could also provide the reference point regarding the status of import responses for chemicals added during the interim PIC procedure but not yet included in Annex III.

*On the basis of the discussions of the working group (UNEP/FAO/INC.9/18, annex 1, paras. 21-23), the Conference of the Parties is invited to note:*

22. That import responses for chemicals subject to the interim PIC procedure but not yet listed in Annex III of the Convention that are contained in PIC Circular XIX (June 2004) do not need to be resubmitted by Parties upon entry into force of the Convention for them should the Conference of the Parties decide to include those chemicals in Annex III of the Convention.

## **C. Obligations in relation to exports of chemicals listed in Annex III**

23. The working group noted that in parallel to the situation regarding import responses for chemicals listed in Annex III, there are no provisions in the Convention for the recognition of "cases of failure to transmit a response" that occurred under the interim PIC procedure.

### **1. Chemicals that are listed in Annex III**

24. In article 10, paragraph 7, the Convention provides that each Party shall, no later than the date of entry into force of the Convention for that Party, transmit import responses for each chemical listed in Annex III to the secretariat. It also provides that a Party need not resubmit import responses it has provided under the Amended London Guidelines or the International Code of Conduct.

25. In article 10, paragraph 10, the Convention provides that the Secretariat shall inform all Parties of responses it has received and also of any cases of failure to transmit a response. In accordance with this provision, PIC Circular XIX (June 2004) contained a comprehensive list of import responses for chemicals listed in Annex III as well as a list of those Parties that failed to provide an import response for those chemicals as of 30 April 2004.

26. This is a significant development that should be noted. For those Parties for which the Convention entered into force as of 30 April 2004, PIC Circular XIX, in line with the requirements of article 10, paragraph 10, of the Convention, represents the first time that the secretariat has informed all Parties of cases of failure to transmit an import response by Parties under the Convention PIC procedure. It may be noted in this regard that cases of failure to transmit a response are subject to the provisions of article 11, paragraph 2, on obligation of exporters.

27. For any other States or regional economic integration organizations for whom the Convention will enter into force after 30 April 2004, PIC Circular XX (December 2004) will represent the first time that the secretariat informs all Parties of cases of failure to transmit an import response for chemicals under the Convention PIC procedure.

## **2. Chemicals subject to the interim PIC procedure but not yet listed in annex III**

28. In document UNEP/FAO/INC.9/18, paragraph 17, it was noted that there are no provisions in the Convention for the recognition of “cases of failure to transmit a response” that occurred under the interim PIC procedure. This may have implications for certain Parties as a result of the obligations that arise under article 11, paragraph 2, particularly for those chemicals subject to the interim PIC procedure which are listed in annex III as a result of the first meeting of the Conference of the Parties.

29. The problem is one that will be unique to those Parties at the first meeting of the Conference of the Parties which have not submitted import responses for the chemicals not yet listed in annex III. The Conference of the Parties will decide whether to amend the Convention to include those chemicals in Annex III of the Convention and a date on which any such amendment will enter into force for Parties. Parties will then be obliged to provide import responses as per article 10, paragraph 2.

*The Conference of the Parties is invited to consider the Intergovernmental Negotiating Committee’s recommendation (UNEP/FAO/INC.9/21, annex III, para. 2) that:*

30. Parties be given up to nine months from the date of the first meeting of the Conference of the Parties [alternatively, a deadline for each chemical could be agreed by the Conference of the Parties in its consideration of individual chemicals]<sup>1</sup>, to provide a response in line with article 10, paragraph 2. After that period, exporting Party obligations under article 11 would only take effect six months after the exporting Party received information from the secretariat under article 10, paragraph 10, that the importing Party had failed to transmit a response, and would then apply for one year.

## **D. Notifications of final regulatory action and proposals for severely hazardous pesticide formulations**

31. In article 5, paragraph 2, the Convention provides that at the date the Convention enters into force for them, Parties need not resubmit their notifications of final regulatory action if they have previously submitted them under the Amended London Guidelines or the International Code of Conduct. In document UNEP/FAO/INC.9/18, paragraph 23, it is noted that the Convention is silent regarding proposals for severely hazardous pesticide formulations that may have been submitted in accordance with article 6 under the interim PIC procedure. It is further noted in paragraph 24 of the same document that notifications of final regulatory actions or proposals for severely hazardous pesticide formulations submitted during the interim PIC procedure will have no status under the Convention PIC procedure unless the Conference of the Parties decides otherwise.

32. At present, in accordance with articles 5 and 6, the secretariat, through the PIC Circular, circulates synopses of all verified notifications and summaries of all verified proposals for severely hazardous pesticide formulations submitted during the six-month period between each issuance of the PIC Circular.

<sup>1</sup> The proposed alternative in brackets is intended to reflect the fact that the Conference of the Parties will decide on a date for the entry into force of the amendments to Annex III.

33. PIC Circular XIX (June 2004) contained a full synopsis of all the notifications of final regulatory action for banned or severely restricted chemicals and proposals for severely hazardous pesticide formulations submitted under the interim PIC procedure as of 30 April 2004. This included those notifications verified to contain all the information required by Annex I of the convention, those which did not meet the requirements of Annex 1, as well as a single proposal for a severely hazardous pesticide formulation verified to contain all the information required by part 1 of Annex IV.

**1. Notifications of banned or severely restricted chemicals**

34. PIC Circular XIX (June 2004) could serve as a point of reference for the Conference of the Parties in that notifications submitted during the interim PIC procedure and included in this Circular would not need to be resubmitted. This would parallel the approach taken in the transition from the original PIC procedure to the interim PIC procedure, when a synopsis of all the notifications submitted under the original PIC procedure was published in appendix V of PIC Circular X (December 1999).

**2. Proposals for severely hazardous pesticide formulations**

35. In recognition of the differing circumstances for severely hazardous pesticide formulations, the Intergovernmental Negotiating Committee proposed (UNEP/FAO/INC.9/21, annex III, para. 3) as follows:

“The Secretariat shall consult with each relevant designated national authority (in writing) concerning their proposals for a severely hazardous pesticide formulation that had been submitted during the interim period. Unless notified otherwise by the relevant designated national authority, each proposal for a severely hazardous pesticide formulation is deemed, by a decision at the first meeting of the Conference of the Parties, to be resubmitted for the purposes of the Convention.”

36. As of 30 April 2004, only one proposal for a severely hazardous pesticide formulation had been received by the Secretariat. This was the basis for decision INC-10/4, which provides for the inclusion of dustable powder formulations containing a combination of benomyl at or above 7 per cent, carbofuran at or above 10 per cent and thiram at or above 15 per cent in the interim PIC procedure. It is anticipated that these formulations will be included in Annex III at the first meeting of the Conference of the Parties.

37. It was also agreed by the Intergovernmental Negotiating Committee that when notifications or proposals had been the basis of the entry of a chemical into the interim PIC procedure, they would be adopted regardless of whether they were from a Party or a non-Party (see paragraph 40 of the present note, below). Senegal, the country which proposed inclusion of these formulations, ratified the Rotterdam Convention on 20 July 2001.

38. As there were no proposals for severely hazardous pesticide formulation pending review or evaluation, no action was taken by the secretariat to contact designated national authorities.

*On the basis of the discussions of the working group (UNEP/FAO/PIC/INC.9/18, annex I, para. 36) the Conference of the Parties is invited to note:*

39. That PIC Circular XIX (June 2004) could provide a reference point regarding the status of notifications of final regulatory actions and proposals for severely hazardous pesticide formulations submitted under the interim PIC procedure, and that the notifications and proposals contained in PIC Circular XIX would not need to be resubmitted by Parties upon entry into force of the Convention for them.

**E. Notifications of final regulatory action and proposals for severely hazardous pesticide formulations submitted by non-Parties that participate in the interim PIC procedure**

40. In recognition of the proposal that all the chemicals which are included in the interim PIC procedure should be included in Annex III to the Convention at the first meeting of the Conference of the Parties, the working group proposed that the underlying notifications or proposals should be deemed acceptable regardless of whether they came from Parties or non-Parties. This is related to the discussion in chapter III A of the present note concerning the inclusion of chemicals in Annex III that were included in the interim PIC procedure before the date of the first meeting of the Conference of the Parties, but are not yet listed in Annex III and to the proposed transitional arrangements considered in document UNEP/FAO/RC/COP.1/25.

41. In accordance with article 8 of the Convention, the Conference of the Parties must decide at its first meeting to list chemicals identified during the interim PIC procedure in Annex III, provided that it is satisfied that all the requirements for listing in that annex have been fulfilled. The Intergovernmental Negotiating Committee agreed that all the chemicals included in the interim PIC procedure prior to the entry into force of the Convention but not yet listed in Annex III could be added to Annex III. The Conference of the Parties will consider the addition to Annex III of the individual chemicals identified during the interim PIC procedure under item 6 (b) of the provisional agenda (UNEP/FAO/RC/COP.1/1).

*In accordance with the discussion of the working group (see UNEP/FAO/INC.9/18, para. 39), the Conference of the Parties is invited to note that:*

42. “Where notifications and proposals from States and regional economic integration organizations which are not Parties to the Convention at the time of the first meeting of the Conference of the Parties have contributed to the preparation of decision guidance documents and to decisions to include chemicals in the interim PIC procedure, they would be recognized as an adequate basis for including the chemicals concerned in annex III.”

#### **IV. Suggested action by the Conference of the Parties**

43. The Conference of the Parties, building on the work of the Intergovernmental Negotiating Committee, may wish to note in the report of its first meeting the points set out in the annex to the present note.

## Annex

The Conference of the Parties may wish to note its understanding of the following points in the report of its first meeting.

**A. Inclusion of chemicals in Annex III to the Convention that were included in the interim PIC procedure before the date of the first meeting of the Conference of the Parties but are not yet listed in Annex III**

That in deciding which of the chemicals identified during the interim PIC procedure are to be added to Annex III to the Convention, no distinction is made among those chemicals in terms of whether or not the States and regional economic integration organizations providing the original notifications are Parties to the Convention at the time of the first meeting of the Conference of the Parties. This is also independent of the decision that the Conference may take concerning distribution and membership of PIC regions.

**B. Obligations in relation to imports of chemicals listed in Annex III**

**1. Chemicals that are listed in Annex III**

That import responses for chemicals listed in Annex III of the Convention contained in PIC Circular XIX (June 2004) do not need to be resubmitted by Parties upon entry into force of the Convention for them.

**2. Chemicals subject to the interim PIC procedure but not yet listed in Annex III**

That import responses for chemicals subject to the interim PIC procedure but not yet listed in Annex III of the Convention contained in PIC Circular XIX (June 2004) do not need to be resubmitted by Parties upon entry into force of the Convention for them should the Conference of the Parties decide to include these chemicals in Annex III to the Convention.

**C. Obligations in relation to exports of chemicals listed in Annex III**

**1. Chemicals that are listed in Annex III**

For those Parties for which the Convention had entered into force as of 30 April 2004, PIC Circular XIX, in line with the requirements of article 10, paragraph 10, of the Convention, represented the first time that the secretariat informed all Parties of cases of failure to transmit an import response by Parties under the Convention PIC procedure.

For any other states or regional economic integration organizations for whom the Convention will enter into force after 30 April 2004, PIC Circular XX (December 2004) will represent the first time that the secretariat informs all Parties of cases of failure to transmit an import response for chemicals under the Convention PIC procedure.

**2. Chemicals subject to the interim PIC procedure but not yet listed in Annex III**

Parties would be given up to nine months from the date of the first meeting of the Conference of the Parties, or a date to be decided by the Conference of the Parties in its consideration of individual chemicals, to provide a response in line with article 10, paragraph 2. After that period, exporting Party obligations under article 11 would only take effect six months after the exporting Party received information from the secretariat under article 10, paragraph 10, that the importing Party had failed to transmit a response, and would then apply for one year.

**D. Notifications of final regulatory action and proposals for severely hazardous pesticide formulations**

That PIC Circular XIX (June 2004) will provide a reference point regarding the status of notifications of final regulatory actions and proposals for severely hazardous pesticide formulations submitted under the interim PIC procedure, and that the notifications and proposals contained in PIC Circular XIX do not need to be resubmitted by Parties upon entry into force of the Convention for them.

**E. Notifications of final regulatory action and proposals for severely hazardous pesticide formulations submitted by non-Parties that participate in the interim PIC procedure**

That where notifications and proposals from States and regional economic integration organizations which are not Parties to the Convention at the time of the first meeting of the Conference of the Parties have contributed to the preparation of decision guidance documents and to decisions to include chemicals in the interim PIC procedure, they will be recognized as an adequate basis for including the chemicals concerned in Annex III.

---