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**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**

Matters stipulated by the Conference of Plenipotentiaries for action by the Conference of the Parties at its first meeting

Transitional arrangements

Note by the secretariat

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 the issues associated with the discontinuation of the interim prior informed consent procedure. In decision 7/7 the Committee requested the secretariat to prepare a paper on the issues associated with the discontinuation of the interim PIC procedure and decided that it should include, among other matters, the date on which the interim PIC procedure should be discontinued, the nature of transitional measures; the possible need for measures for the treatment of States and regional economic integration organizations that participate in the interim prior informed consent procedure but which are not party to the Convention after the discontinuation of transitional measures; and measures to decide on the validity of notifications of final regulatory action, proposals regarding severely hazardous pesticide formulations and responses regarding future imports submitted during the original and interim prior informed consent procedure by States or regional economic integration organizations that participated in the interim procedure, but are not Parties when the Convention enters into force (UNEP/FAO/PIC/INC.7/15, annex I).

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

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 procedure including the need for transitional measures (UNEP/FAO/PIC/INC.8/16). The Committee took note of the report of the working group established to consider this topic and agreed to continue its examination of the issue at its ninth session.

3. At its ninth session the 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 Negotiating Committee made progress in its examination of these issues and adopted recommendations to the first meeting of the Conference of the Parties (UNEP/FAO/PIC/INC.9/21, annex III).

4. Annexed to the present note is a paper that sets out the results of the working groups discussions at the eighth and ninth sessions of the Negotiating Committee on possible transitional arrangements as well as the post transition period, for consideration by the Conference of the Parties.

Introduction

5. This paper is focused on the transition period identified in paragraph 13 of the resolution on interim arrangements. It is divided into sections. Section I on the nature of transitional measures sets out the possible role of participating States, including the status of their notifications of final regulatory actions and proposals for severely hazardous pesticide formulations during the transition period as well as guidance to the Chemical Review Committee; Section II on the length of the transition period proposes a date for the termination of the transition period; Section III on the post transition period sets out briefly a proposal for managing information from non-Parties after the interim PIC procedure has ceased to operate.

6. The following terms have been used in the present note:

(a) 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;

(b) 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 will become mandatory for the Parties to the Convention once the Convention enters into force;

(c) 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;

(d) “Participating States” are those States and regional economic integration organizations that are not Parties to the Convention during the transition period.

Background

7. The Conference of Plenipotentiaries that adopted the Convention in September 1998 considered the work to be performed during the interim period between the adoption of the Convention and the first meeting of the Conference of the Parties. The Conference 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.

8. In paragraph 13 of its resolution on interim arrangements, the Conference of Plenipotentiaries 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. During this period the interim PIC procedure would operate in parallel to the Convention PIC procedure. For the purposes of discussion, this period has been named the transition period.

I. Nature of the transitional measures

9. The Intergovernmental Negotiating Committee, at its seventh session, gave wide support to a period of transition from the interim PIC procedure to the Convention PIC procedure, once the Convention comes into force. The aim of the transition period would be to retain the accomplishments and experience gained in the application of the interim PIC, while providing incentives for States and regional economic integration organizations to adhere to the Convention. The transition period would allow non-Parties that participated in the interim PIC procedure, but were not Parties at the time of the first meeting of the Conference of the Parties, to continue to participate in operational processes of the Convention procedure while preparing for ratification or accession.

10. The Committee noted that the length of the transition period will have a direct impact on the nature of the transitional measures, a long transition period could be a disincentive for ratification. While there is a desire to encourage States and regional economic integration organizations to ratify or accede to the Convention, the Negotiating Committee recognized that Parties and non-Parties to the Convention cannot continue to have the same rights and privileges for an unlimited period after entry into force of the Convention. It was also agreed that the actions of non-Parties (including participating States) cannot result in obligations on Parties following entry into force of the Convention. The transitional measures should define the role and position of non-Parties during the transition period, with the understanding that only Parties would enjoy the full benefits associated with the Convention.

11. The Committee recognized that there will be costs during the transition period associated with the maintenance of the interim PIC procedure, related primarily to the participation of developing countries and countries with economies in transition that are not Parties to the Convention. Other costs would relate to the maintenance and operation of parallel systems for handling information from Parties and non-Parties.

A. Role of participating States

12. The Conference of the Parties may wish to consider the following proposal of the working group concerning the role of participating States during the transition period (UNEP/FAO/PIC/INC.9/18, annex I, paragraph 48):

“The secretariat would maintain two lists that clearly distinguish between Parties to the Convention and those States or regional economic integration organizations which have not yet ratified or acceded to the Convention, but which are participating under the interim PIC procedure. All participating States would be treated equally with no distinction between those that had signed the Convention and those that had not;

“Participating States would attend meetings of the Conference of the Parties and the Chemical Review Committee as observers, in line with the rules of procedure adopted at the first meeting of the Conference of the Parties;

“The list of designated national authorities would include participating States. Participating States would benefit from information exchange activities under article 14 of the Convention, as well as receive the PIC Circular and decision guidance documents;

“Participating States would receive copies of decision guidance documents for any new chemicals added to annex III during the transition period and would be requested to provide an import response. Import responses from participating States and cases of failure on their part to provide a response would be included in the PIC Circular;

“Both exporting Parties and exporting participating States would be requested to observe the import decisions of participating States and Parties and continue to provide them with export notifications in line with article 12 of the Convention;

“Participating States should be encouraged to provide voluntary contributions to the operation of the Convention;

“Participating States would be eligible for technical assistance for capacity-building in accordance with article 16 of the Convention directed towards enabling them to ratify and implement the Convention.”

B. Status of notifications and proposals submitted by participating States

13. In its consideration of this issue, the Negotiating Committee agreed that the actions of non-Parties (including participating States) cannot result in obligations on Parties following entry into force of the Convention.

14. The Conference of the Parties may wish to consider the following proposal of the working group on how to manage notifications and proposals submitted during the transition period (UNEP/FAO/PIC/INC.9/18, annex I, paragraph 50):

“In the interest of information exchange, a synopsis of all verified notifications and summaries of all verified proposals submitted by both Parties and participating States, as of the date of entry into force of the Convention and during the transition period, would be included in the appropriate issues of the PIC Circular.”

15. The Conference of the Parties may also wish to consider the following recommendation from the Negotiating Committee (UNEP/FAO/PIC/INC.9/21, annex III, part 4).

“Verified notifications and proposals from participating States submitted to the secretariat as at the date of entry into force of the Convention and included in the first PIC Circular distributed after the entry into force of the Convention (PC Circular XIX, June 2004), would remain eligible for consideration by the Chemical Review Committee during the transition period.

“Two notifications, each from a Party from a different region, would trigger review by the Chemical Review Committee and, if appropriate, development of a decision guidance document and subsequent recommendation to the Conference of the Parties as per Article 5 and in line with decision INC-7/6.

“In the situation where the notifications include one from a Party and another from a participating State or two participating States (included in the above-mentioned PIC Circular), a review by the Chemical Review Committee may be initiated and, if appropriate, a decision guidance document developed. However, any associated recommendation on inclusion, or otherwise, in Annex III may not be forwarded to the Conference of the Parties until the participating State(s) becomes a Party.

“A proposal for a severely hazardous pesticide formulation from a Party would initiate a review by the Chemical Review Committee and, if appropriate, development of a decision guidance document and subsequent recommendation to the Conference of the Parties as per Article 6 and in line with decision INC-7/6.

“A proposal from a participating State may initiate a review by the Chemical Review Committee and, if appropriate, the development of a decision guidance document. However, any associated recommendation on inclusion, or otherwise, in Annex III may not be forwarded to the Conference of the Parties until the participating State becomes a Party.

“In setting their priorities in reviewing chemicals, the Chemical Review Committee should consider the following:

“(a) Priority should be given to chemicals supported by notifications from two Parties and any proposal for a severely hazardous pesticide formulation by a Party;

“(b) Where a chemical is supported by a notification or proposal from a participating State, the likelihood and timeliness of ratification by that participating State.”

II. Length of the transition period

16. The Convention was opened for signature in September 1998. By the first meeting of the Conference of the Parties in September 2004, States and regional economic integration organizations participating in the interim PIC procedure will have had a full six years to ratify or accede to the Convention.

17. There will be costs during the transition period associated with the maintenance of the interim PIC procedure, primarily related to the participation of developing countries and countries with economies in transition that are not Parties to the Convention. Other costs would relate to the maintenance and operation of parallel systems for handling information from Parties and non-Parties.

18. The working group established by the Intergovernmental Negotiating Committee proposed a transition period of two years from the date of entry into force for the Convention (UNEP/FAO/PIC/INC.9/18, annex I, paragraph 47).

19. The Conference of the Parties may wish to consider a transition period of two years from the date of entry into force for the Convention with the result that the interim PIC procedure would cease to operate on 24 February 2006. During this transition period the interim PIC procedure for participating States would operate in parallel to the Convention PIC procedure for Parties.

III. Post-transition period – discontinuation of the interim procedure

20. Based on the results of the discussions in the working group, the proposal of the Negotiating Committee (UNEP/FAO/PIC/INC.9/21, annex III, paragraph 5) was that:

“As of the end of the transition period, import responses and the list of national contact points from non-Parties will be retained but not updated nor circulated by the secretariat. This information will only be retained on the Rotterdam Convention web site. It will carry a clear caveat including addressing the date of publication, absence of updates and the lack of liability accepted for the use of potentially outdated information.”

21. The Conference of the Parties may wish to consider this recommendation and decide on whether to continue to retain this information, and for how long after the end of the transition period.

IV. Suggested action by the Conference of the Parties

22. In its decisions on the length of the transition period and the nature of the transitional arrangements and post transition arrangements, the Conference of the Parties may wish to consider the proposals and recommendations forwarded by the Intergovernmental Negotiating Committee as set out in this note.

23. The Conference of the Parties may also wish to consider the text of the draft decisions on the nature of the transitional arrangements and post transition arrangements and the length of the transition period annexed to this note.

Annex I

Draft decision for consideration by the Conference of the Parties on the nature of the transition period

The Conference of the Parties,

Recalling that, in its resolution on interim arrangements, the Conference of Plenipotentiaries on the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade at Rotterdam, the Netherlands, in September 1998, recognized the need for a transition period from the interim prior informed consent procedure to the Convention prior informed consent procedure,

Recalling also that, in paragraph 13 of this resolution on interim arrangements, the Conference of Plenipotentiaries decided that the interim prior informed consent procedure should cease to operate on a date to be specified by the Conference of the Parties at its first meeting,

Considering the deliberations of the Intergovernmental Negotiating Committee on issues associated with the discontinuation of the interim prior informed consent procedure and the transition period, as reflected in the notes by the secretariat on issues associated with the discontinuation of the interim prior informed consent procedure¹, and on the report of 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 on the work of its ninth session² and other related documents,

Noting in particular the recommendations relating to the discontinuation of the interim prior informed consent procedure and the transition period set forth in paragraphs 36 and 48 of annex I to the note by the secretariat on issues associated with the discontinuation of the interim prior informed consent procedure³, and the draft proposals relating to the transition period set forth in paragraph 2 of annex III to the note by the secretariat on the report of 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 on the work of its ninth session⁴,

Desiring to retain the accomplishments and experience gained in the application of the interim prior informed consent procedure while maintaining incentives for States and regional economic integration organizations to ratify or otherwise accede to the Convention,

Noting the need to clarify and define the nature of the transition period, and the role and position of non-Parties in connection with the Convention during this period,

Noting that the length of the transition period has been decided separately in decision [1/...], and that certain other issues associated with the discontinuation of the interim prior informed consent procedure are addressed in decision [1/...],

Decides that the transition period shall be defined and operated in accordance with the following provisions:

¹ UNEP/FAO/PIC/INC.7/12 and UNEP/FAO/PIC/INC.9/18

² UNEP/FAO/PIC/INC.9/21

³ UNEP/FAO/PIC/INC.9/18

⁴ UNEP/FAO/PIC/INC.9/21

Role of participating States⁵

1. The secretariat shall maintain two lists that clearly distinguish between Parties to the Convention and those States or regional economic integration organizations which have not yet ratified or acceded to the Convention but which are participating in the interim prior informed consent procedure during the transition period.
2. All participating States shall be treated equally with no distinction between those that have signed the Convention and those that have not.
3. Participating States may attend meetings of the Conference of the Parties and the Chemical Review Committee as observers.
4. The list of designated national authorities shall include participating States.
5. Participating States shall benefit from the information exchange activities of Article 14 of the Convention, as well as receiving the PIC Circular and decision guidance documents; participating States shall receive copies of decision guidance documents for any new chemicals added to annex III during the transition period and are requested to provide an import response; import responses from participating States and cases of failure on their part to provide an import response shall be included in the PIC Circular.
6. Both exporting Parties and exporting participating States are requested to observe the import decisions of participating States and Parties and to continue to provide export notifications pursuant to article 12 of the Convention.
7. Participating States are encouraged to provide voluntary contributions to the operation of the Convention.
8. Participating States are eligible for technical assistance for capacity-building in accordance with article 16 of the Convention directed towards enabling them to ratify and implement the Convention.

Status of notifications and proposals submitted by participating States

9. Verified notifications and proposals from participating States submitted to the secretariat as of 30 April 2004 and included in PIC Circular XIX distributed on 12 June 2004, shall remain eligible for consideration by the Chemical Review Committee during the transition period.
10. Two notifications, each from a Party from a different prior informed consent region, shall trigger review by the Chemical Review Committee and, if appropriate, development of a decision guidance document and subsequent recommendation to the Conference of the Parties as per article 5 of the Convention.
11. Where the two notifications include one from a Party and another from a participating State or two participating States (included in the above-mentioned PIC Circular), a review by the Chemical Review Committee may be initiated and, if appropriate, a decision guidance document developed. However, any associated recommendation on inclusion, or otherwise, in Annex III may not be forwarded to the Conference of the Parties until the participating State(s) becomes a Party.
12. A proposal for a severely hazardous pesticide formulation from a Party shall trigger review by the Chemical Review Committee and, if appropriate, development of a decision guidance document and subsequent recommendation to the Conference of the Parties as per article 6 of the Convention.
13. Where a proposal for a severely hazardous pesticide formulation is from a participating State, a review by the Chemical Review Committee may be initiated and, if appropriate, a decision guidance document developed. However, any associated recommendation on inclusion, or otherwise, in Annex III may not be forwarded to the Conference of the Parties until the participating State becomes a Party.
14. In setting priorities for reviewing chemicals, the Chemical Review Committee should consider the following:

⁵ Participating States are those States and regional economic integration organizations that are not Parties to the Convention during the transition period.

(a) Priority should be given to chemicals supported by notifications from two Parties and any proposal for a severely hazardous pesticide formulation by a Party;

(b) Where a chemical is supported by a notification or proposal from a participating State, the likelihood and timeliness of ratification by that participating State.

Post-transition period – discontinuation of the interim procedure

15. At the end of the transition period, import responses and the list of national contact points from non-Parties shall be retained but not updated nor circulated, by the secretariat. The information will only be retained on the Convention web site with a clear caveat to include addressing the date of publication, absence of updates and the lack of liability accepted for the use of potentially outdated information.

Annex II

Draft decision for consideration by the Conference of the Parties on the length of the transition period

The Conference of the Parties,

Recalling that, in paragraph 13 of the Resolution on Interim Arrangements, the Conference of Plenipotentiaries on the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade at Rotterdam, the Netherlands, in September 1998, decided that the interim prior informed consent procedure would cease to operate on a date to be specified by the Conference of the Parties at its first meeting,

Recalling that the Convention was opened for signature in September 1998,

Noting that decision [1/...] defines the nature of the transition period and the activities of which it will consist, and that decision [1/....] addresses certain other issues associated with the discontinuation of the interim prior informed consent procedure,

Recognizing that there are benefits to continuing the transition period beyond the first session of the Conference of the Parties, in particular in order to retain the accomplishments and experience gained during the operation of the interim prior informed consent procedure,

Noting also that there are costs associated with the continuation of the transition period, including those that relate to the maintenance and operation of parallel systems for handling information from Parties and non-Parties,

1. *Decides* to establish a transition period of two years from 24 February 2004, the date of entry into force of the Convention;
 2. *Also decides* that during this transition period the interim prior informed consent procedure for participating States will operate in accordance with the provisions of decision [1/...] and in parallel with the Convention prior informed consent procedure for Parties;
 3. *Further decides* that the interim prior informed consent procedure will cease to operate on 24 February 2006.
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