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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

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REVIEW OF ISSUES RELEVANT TO THE IMPLEMENTATION OF THE EXISTING,
VOLUNTARY PIC PROCEDURE

Note by the Secretariat

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INTRODUCTION

1. The presents document provides information on the various elements of the existing prior informed consent (PIC) procedure and highlights those aspects which have proven difficult to implement or that are not covered under the procedure as currently defined. The document is based on experience gained by the FAO/UNEP Joint Programme on the Operation of Prior Informed Consent in implementing the existing, voluntary PIC procedure during the last five years. A more detailed overview of the actual operation of the PIC procedure is presented in document UNEP/FAO/PIC/INC.1/4.

I. CRITERIA FOR IDENTIFYING CANDIDATE CHEMICALS

2. The PIC procedure was developed to alert countries to certain pesticides and other chemicals of particular concern moving in international trade and to provide information to facilitate informed decision-making by countries regarding the continued use of these chemicals. The focus on "banned or severely restricted chemicals" was considered to be a valid, objective means for identifying the chemicals of greatest concern, i.e. the most likely sources of health or environmental damage (see section A below). In addition, when the procedure was developed it was decided that an expert group should consider the need to supplement the banned and severely restricted chemicals with acutely hazardous pesticide formulations. These compounds may not have been banned or severely restricted in any country for health or environmental reasons, but they may be causing problems under the conditions of use in developing countries (see section B below).

A. Chemicals which have been banned or severely restricted for health or environmental reasons by final governmental regulatory action

3. The underlying principle for the identification of chemicals to be subject to the PIC procedure is that they are identified for **inclusion based on government actions**, i.e. national risk evaluations and risk reduction actions (to ban or severely restrict a chemical) as reported to the FAO/UNEP Joint Programme. Specific criteria have been developed to define the type of national control actions that should be considered as relevant to the PIC

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procedure, but **no additional assessment of the scientific basis of the national control actions** is carried out by the FAO/UNEP Secretariat.

Participating countries provide information on national control actions taken to ban or severely restrict chemicals by providing a Notification of Control Action form for each action, initially through the submission of a national inventory when joining the procedure and, subsequently, through notifications when additional control actions are passed.

4. The definitions of "banned" and "severely restricted", as given in the amended London Guidelines for the Exchange of Information on chemicals in International Trade and the International Code of Conduct on the Distribution and Use of Pesticides, are as follows:

- A **banned chemical** means a chemical which has, for health or environmental reasons, been prohibited for all uses by final government regulatory action. A **banned pesticide** means a pesticide for which all registered uses have been prohibited by final government action, or for which all requests for registration or equivalent action for all uses have, for health or environmental reasons, not been granted.

Included in this are **pesticides or chemicals which have been refused approval for first-time use or withdrawn by the industry**, either from the market or from further consideration in the approval process, where there is clear evidence that such actions have been taken for health or environmental reasons.

- A **severely restricted chemical** means a chemical for which, for health or environmental reasons, virtually all uses have been prohibited nationally by final government regulatory action, but for which certain specific uses remain authorized. A **severely restricted pesticide** (a limited ban) means a pesticide for which virtually all registered uses have been prohibited by final government regulatory action, but for which certain specific registered uses remain authorized.

5. The above definitions have caused a number of problems in the operation of the PIC procedure. The definition of "severely restricted," for example, does not provide any indication of what can be considered as "virtually all uses prohibited nationally". The FAO/UNEP Joint Group of Experts on PIC indicated that a control action can be considered as a severe restriction provided the remaining allowed uses are only **minor**. However, it is not clear whether the determination of major or minor should be judged on a quantitative basis (quantity used, number/types of uses limited), or on the importance of the use to the local economy, reduced exposure potential, obtained risk reduction, etc.

6. In the existing procedure, chemicals which are **unregistered** (and where no application for registration has been submitted or an application has been refused for health or environmental reasons) in the country of origin/export are not covered by these definitions and will therefore not qualify for inclusion in the PIC procedure. This applies especially to pesticides as these are most often subject to a registration scheme.

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7. For the purpose of the PIC procedure, the term chemical is broken down into three major use categories, namely **pesticides**¹, **industrial**² and **consumer**³ **chemicals**⁴.

8. Any control action to ban or severely restrict a pesticide, industrial or consumer chemical for health or environmental reasons should be notified to the FAO/UNEP Secretariat, so that the chemical can be considered a candidate for inclusion in PIC.

9. So far, there has been no experience with the notification and introduction into the PIC procedure of consumer chemicals. There is no precise definition of what a consumer chemical is and especially not of how it relates to products which contain chemicals: examples that could illustrate this "grey zone" are the prohibition of or setting of maximum levels of lead and mercury content in paints and the prohibition or limitation of additives in fuel, etc.

Exemptions

10. It is specified in the text of the amended London Guidelines that they do not apply to pharmaceuticals, including narcotics, drugs and psychotropic substances, radioactive materials, chemicals imported for the purposes of research or analysis in quantities not likely to affect the environment or human health, chemicals imported as personal or household effects, in quantities reasonable for these uses and food additives. It is left open to Governments to apply the guidelines to pharmaceuticals and food additives if they should wish to do so. So far, no Governments have provided information on regulatory actions on these types of chemicals.

¹ Pesticides, as defined in the International Code of Conduct on the Distribution and Use of Pesticides, are considered to be any substance or mixture of substances intended for preventing, destroying or controlling any pest, including vectors of human or animal disease, unwanted species of plants or animals causing harm during or otherwise interfering with the production, processing, storage, transport or marketing of food, agricultural commodities, wood and wood products or animal feedstuffs, or which may be administered to animals for the control of insects, arachnids or other pests in or on their bodies. The term includes substances intended for use as a plant growth regulator, defoliant, desiccant, or agent for thinning fruit or preventing the premature fall of fruit, and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage or transport. It includes any pesticide used for agricultural, household, public health or other use.

² Industrial chemicals are chemicals used in industrial activities.

³ Consumer chemicals are chemicals which are customarily produced for private, non-occupational use.

⁴ Chemicals as defined in the amended London Guidelines.

11. The following guidance on the implementation of these exemptions was developed by the FAO/UNEP Joint Expert Group of Experts:

(a) Import or export of a chemical intended for research and development, including analysis, involving quantities of less than 10 kg be considered as being outside the scope of the Code of Conduct and the amended London Guidelines; and

(b) Trade involving chemicals intended for research and development, including analysis, in quantities of more than 10 kg be considered as falling within the scope of the Code of Conduct and the amended London Guidelines unless clear evidence be provided that the chemical concerned is intended for such research and development.

12. The Group, however, recognized that the above guidance may not be adequate for the future, as industry is now developing new chemicals (especially pesticides) which are effective in very low quantities. Further guidance is needed on whether or not "new chemicals", which are subject to non-approval because of health or environmental concerns by a country that has implemented an approval scheme for new chemicals, and which thus never enter into international trade, should be exempted from the procedure.

B. Acutely hazardous pesticide formulations which have not been banned or severely restricted in any country for health or environmental reasons, but which are causing problems under conditions of use found in developing countries

13. The amended London Guidelines and the FAO guidelines for the operation of PIC make specific reference to the need for an expert group to consider the problem of acutely hazardous pesticide formulations to determine if there exists a need for a list of such products to supplement the chemicals which are already subject to the PIC procedure. Consistent with the philosophy of informed consent, participating countries would be provided with information on these pesticide formulations to enable them to make informed decisions, based on an evaluation of the potential risks, concerning whether they wish to receive shipments.

14. The FAO/UNEP Joint Group of Experts on PIC has proposed that candidates for this group of pesticides would include **pesticide formulations likely to cause problems under conditions of use in developing countries and pesticides whose active ingredients are in the World Health Organization (WHO) Class IA⁵ list of pesticides and whose typical formulations also fall into WHO Class IA.**

15. Ideally, pesticide formulations which cause problems under conditions of use in developing countries should be identified on the basis of documented reports of adverse effects. Experience has shown that this is problematic, however, since most developing countries have not established systems for documenting and reporting such incidents. On this basis, in the

⁵ WHO Recommended Classification of Pesticides by Hazards and Guidelines to Classification 1994. WHO/PCS/94.2.

absence of data from developing countries it is not reasonable to assume safe use of these formulations.

16. Further efforts to identify specific candidates have included several approaches. The reviewing of data on poisoning incidents and adverse effects documented in industrialized countries could be used to supplement any information available from developing countries. The rationale is that if, despite their relatively greater ability to impose and enforce safety precautions, industrialized countries continue to experience problems, developing countries would be likely to have even greater difficulties.

17. A second approach considered by the FAO/UNEP Joint Group of Experts as a supplement to reported incidents in developing countries was a "grading point system", which the group developed over its first eight meetings. However, this system, **which assigns points for a defined set of questions relating to potential hazards in use**, relies on much subjective information and has been very difficult to validate.

18. As a third approach, the FAO/UNEP Joint Group of Experts agreed to consider whether the existence of handling restrictions in industrialized countries could serve as an additional mechanism for "flagging" candidates for chemicals likely to cause problems under the conditions of use in developing countries. However, the pilot project initiated by the FAO/UNEP Joint Group of Experts to develop inventories of handling restrictions in selected countries has made little progress. The original idea was to compare these inventories and identify formulations subject to handling restrictions designed to minimize occupational exposure in more than one country. The principle advantage to this approach was to put greater emphasis on the regulatory actions of industrialized countries. The feasibility of this approach needs further consideration.

19. Each of these approaches will miss some pesticides that are likely to pose problems in developing countries. However, it is thought that, collectively, they could be used to supplement information available from developing countries and to "flag" pesticide formulations likely to be of concern.

20. The advantages to considering a multifaceted approach to identifying hazardous pesticide formulations include:

- the responsibility to prove that a product may be used safely devolves on the manufacturer, rather than the developing country having to prove that the product is a problem;
- a compound or formulation becomes a candidate for the PIC procedure as a result of a government action, which is also the underlying principle for including banned or severely restricted chemicals in the procedure.

21. It should be noted that the present criteria focus on the human health impacts of acutely hazardous pesticide formulations. There is no consideration of possible **environmental effects** under the conditions of use in developing countries. The scope of this discussion has also been limited

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to pesticides and does not include acutely hazardous or environmentally hazardous **industrial** or **consumer** chemicals.

II. NOTIFICATION OF CONTROL ACTION TO BAN OR SEVERELY RESTRICT THE USE OF A CHEMICAL

22. In the existing procedure, it is the participating countries that provide the basis for identifying which chemicals to include, by providing information on national control actions taken to ban or severely restrict chemicals in their respective countries. A special Notification of Control Action form should be filled out for each control action which complies with the specific criteria given in the Guidance for Governments document, either when submitting a national inventory when joining the procedure, or when submitting subsequent notifications as additional actions are approved.

23. There are certain problems in applying the existing criteria from the Guidance for Governments document concerning whether a reported ban or severe restriction is considered to be relevant to the PIC procedure. One problem concerns determining what constitutes an acceptable "health or environmental" reason. It is not clear how environmental effects are included in the criteria as given in the Guidance for Governments document. Despite the fact that the procedure covers actions taken "for health or environmental reasons", there is little reference to environmental concerns in the examples (given in the Guidance for Governments document) of control actions that **qualify**, although in present practice high toxicity to non-target species, including carrion eaters and migratory birds, **does not qualify**. It is also difficult to interpret how acute toxicity considerations are to be included. The criteria, compiled in 1990 on the basis of the discussions/meeting reports when the PIC procedure was developed, are limited to a random list of examples of acceptable control actions. There is no clear rationale why certain other aspects have been excluded from being acceptable. An attempt has been made to develop more clear guidance to DNAs, (see the annex to the present report).

24. All participating countries are requested, when joining the procedure, to provide a national inventory of all pesticides, industrial and consumer chemicals currently subject to bans or severe restrictions. So far, around 50 of the over 140 countries participating have responded to this request. When the PIC procedure was originally designed, Governments emphasized the importance of each notification containing sufficient information to judge if the control action complies with the criteria for bans and severe restrictions under the procedure. All the inventories on file have been reviewed. In all cases, it has been necessary to seek clarification from the DNAs. In reviewing the submitted notifications, the following problems were frequently encountered:

- insufficient information to judge if remaining uses constituted only a minor part of previous/possible uses (in quantity or risk reduction) and therefore constituted a severely restricted use;
- insufficient information to judge if the reasons for the control action complied with the criteria given in the Guidance for Governments document;

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- the notifications are often incomplete, lacking information on remaining uses allowed, reference to national documents, effective date or reasons for the control action, etc.

25. The criteria used by countries to notify FAO and UNEP about control actions on chemicals is not consistent. Obviously, there will be significant differences since the basis for bans or severe restrictions lies in national laws which differ greatly among countries. In this regard, some countries have extensive data requirements and undergo rigorous analysis before making such regulatory decisions; other countries have more limited review and assessment procedures. Furthermore, countries with significant export industries may have an interest in limiting their reporting on bans and severe restrictions to protect important industrial facilities.

III. SELECTION OF CHEMICALS FOR INCLUSION IN THE PIC PROCEDURE

26. As countries provide notifications of banned and severely restricted chemicals, the FAO/UNEP Secretariat verifies that the reported control actions comply with the definitions and criteria described before. After this verification process, the FAO/UNEP Secretariat should send the provided notifications for each specific chemical, together with a Decision Guidance Document (DGD) on the chemical, to all participating countries for importing country response. However, a large number of chemicals have already been banned or severely restricted prior to the adoption of the PIC procedure, so the amended London Guidelines and the Code of Conduct have made some recommendations as to how all these chemicals should be introduced into the procedure.

For control actions coming into effect after 1 January 1992 - Any notification of a ban or severe restriction of a pesticide or chemical coming into effect after this date will initiate the chemical's inclusion in the PIC procedure, provided it is not already included in the procedure.

For control actions existing before 1 January 1992 - Chemicals already banned or severely restricted prior to this date in at least five or more countries should be included in the PIC procedure. Priority is given to those pesticides/chemicals that are still in trade and, thereafter, to those being phased out. Pesticides/chemicals known to be no longer on the market will not be considered. Eventually, any chemical banned or severely restricted in one or more countries will be included.

27. Concern has been expressed about including in the PIC procedure those chemicals that have been banned or severely restricted in only one country, when the country may not have undertaken a complete scientific analysis before taking the action, or when the reasons for the control action are peculiar to the country taking the action. As indicated earlier under section I A, within the existing procedure no assessment of the scientific basis of the reported national control actions takes place.

Use of a list of candidate chemicals to be included in PIC

28. There are differences in opinion as to whether countries should be notified of the addition of chemicals to the PIC procedure prior to the preparation of DGDs. Some designated national authorities (DNAs) have said they prefer that the information not be provided, since it creates pressure from national interest groups to undertake evaluations and make decisions before the relevant information is available. Other DNAs have indicated that they believe it is useful to be aware of candidate PIC chemicals as soon as possible, in order to alert them to the fact that there might be a problem and to provide the opportunity to start gathering information concerning local uses of the chemicals. Furthermore, early notification is helpful because there is often a significant delay between the time it is decided to include a chemical in PIC and the time a DGD can be prepared and peer-reviewed. Currently, the FAO/UNEP Secretariat operates only with a list of those chemicals that are already subject to the PIC procedure and for which DGDs have been distributed.

Removing chemicals from the PIC procedure

29. Within the implementation of the existing PIC procedure, the FAO/UNEP Joint Group of Experts has advised on a general procedure to remove a chemical from the PIC procedure after new scientific evidence has been produced for a specific chemical, demonstrating that the health or environmental concerns that originally led to the ban or severe restriction prompting the chemical's inclusion in PIC can no longer be substantiated.

30. The basis for the removal of any compound from the PIC procedure is that the new scientific evidence produced must have been submitted for scientific review by those Governments whose actions caused the compound to be originally subject to the PIC procedure, and these Governments must concur that the bases for the original bans or severe restrictions are no longer valid. In this way, it is the responsibility of the registrant/industry to convince the national registration/approval authority concerned to re-register/permit the use of the compound on the basis of the new evidence. The aim is to have clear statements that the new scientific data have been evaluated by independent scientific authorities and the original decision reconsidered.

31. Once a response is received from the DNA in the affected country, a revised DGD is circulated to all participating Governments, highlighting the revised scientific conclusions and the revised regulatory status in the countries on whose decision the inclusion of the chemical in PIC was based. The new data are brought to the attention of the DNAs. Participating Governments are invited to reconsider their regulatory decision concerning the chemical, should they wish to do so. One year after the circulation of the revised DGD, import responses for the chemical would no longer be circulated and the chemical would cease to be considered subject to the PIC procedure.

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32. The decision to remove a chemical from the PIC procedure is thus based on government actions, i.e. national risk evaluations and risk reduction decisions.

IV. DECISION GUIDANCE DOCUMENTS (DGDS)

33. By the end of 1995, DGDS had been distributed for 12 pesticides and 5 industrial chemicals. The DGDS are developed to provide relevant information to DNAs, pesticide registrars and chemical regulators in order to assist them in making decisions regarding future import of each chemical. The DGDS should be short, relatively simple summary documents with references to contacts and information sources for more information. When considering future DGDS there is a need to strike a balance between the interest of DNAs to have as much information as possible to support their decision-making and the goal of having the DGD as simple and straightforward as possible. Countries with limited capability for regulatory decision-making are requesting maximum simplification of format and contents, with emphasis on reasons for the control action and information on alternatives, while countries with more sophisticated control systems are asking for more extensive scientific data, including actual evaluations.

Scope and content

34. Importing countries have provided the following considerations for expanding the DGDS to address the following subjects in greater detail:

- **availability of alternatives (chemicals or technology)** - In the present voluntary procedure, resources are unavailable to provide information and recommendations on alternatives, as reliable information is difficult to obtain and sharing information on alternatives is not straightforward, since what is acceptable in one country might not be effective elsewhere due to climatic conditions, agricultural practices, etc. So far, only information on alternatives provided by participating Governments when notifying control actions has been included in the DGDS or disseminated to DNAs separately. Experience has shown that only a limited amount of such information has been provided by DNAs;
- **exposure information;**
- **the nature of and reasons for the control action including the conditions of use in the country taking the control action** - Under the present procedure, the FAO/UNEP Secretariat has had great difficulties in ensuring that the information provided by participating Governments is complete and sufficiently comprehensive. It is important for the effectiveness of the PIC procedure that participating Governments, when notifying control actions under the procedure, put more emphasis on the quality and quantity of the national information;
- **other uses of a chemical subject to the PIC procedure** (other than the uses that have been banned or severely restricted);

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- **the application of the information to local conditions;**
- **sources of additional information** - In particular, countries have asked for an improved list of reference materials, including information on how to obtain these materials in a timely manner.

Sources of information for the DGDs

35. So far, the DGDs have been based on available internationally evaluated data for the sections relating to health and environmental effects. In this regard, since international materials are available to all countries, the DGD can focus on the conclusions.

36. The development of DGDs will likely become more difficult with the addition of chemicals for which there is limited information to the PIC procedure. Consideration should be given as to whether to seek the commitment from other international organizations, such as the International Programme on Chemical Safety (IPCS), WHO, International Agency on Research on Cancer, and the Organisation for Economic Cooperation and Development (OECD), to make PIC chemicals a priority in any work related to assessment of specific chemicals, although these chemicals may not be the most pressing for those organizations.

Responsibility for preparation of the DGDs and the need for periodic review and updating

37. So far, the FAO/UNEP Secretariat has been responsible for the drafting and finalization of DGDs, based on the "Guidance to Authors" developed by the FAO/UNEP Joint Group of Experts. The Group has recommended that, in future, the Government notifying a chemical as banned or severely restricted would be asked to provide a draft DGD, under the presumption that a national evaluation and risk assessment are already available as the basis for the national control action. If this is the case, authorities should be required to supply the secretariat(s) with a complete set of the documents used in the development of the DGD.

38. None of the DGDs so far distributed under the PIC procedure have been updated. However, DGDs may need regular updating when new information warrants it (e.g. when there is critical new information about the health or environmental risks of a chemical that may affect a country's import decision). Over time, supplementary relevant information will be available on chemicals which already have been subject to the PIC procedure. This information could come from a number of sources, including future notifications or international assessments, and may involve, for example, information on new formulations, on the nature and extent of risks, on alternatives, etc. A process for review and updating should therefore be developed.

Additional information and decision support

39. The existing procedure, through the completion of the Importing Country Response (ICR) forms, provides participating countries with the possibility of requesting additional information or expressing the need for technical assistance in order to reach a decision. So far, the FAO/UNEP Secretariat has not had the resources to follow-up these requests in a consistent manner.

V. IMPORTING COUNTRY RESPONSE

Nature of the import decisions

40. The amended London Guidelines and the Code of Conduct state that the purpose of the PIC procedure and the DGDs is to provide relevant information on chemicals and assist Governments in deciding whether to allow, restrict or stop future import of the chemical in question, thus focusing on the trade aspects of the procedure. The PIC procedure should, however, be seen as a means to support decisions about the availability and use of the chemical in a country in relation to health and environmental protection. PIC provides information about the chemical, in the form of DGDs, to assist Governments to determine whether to allow, prohibit or restrict imports and domestic sources of a chemical. Import decisions are a means of assisting countries in implementing environmental/health decision at national level.

Sufficiency of the import response options

41. Recently, the ICR form has been revised to take into account the experience and suggestions of the DNAs concerning enhancement of the ICR form. In the revised form, Governments are requested to provide consent/no consent to future import. If consent is given, it is possible to specify if general or more specific conditions apply for the import.

42. One issue raised concerns whether the options available to importing countries concerning a PIC chemical are sufficient to cover the range of possibilities in the country. For example:

- should options be available to state that either the country is unable to review the chemical or take any action due to lack of authority, or that it chooses not to review the chemical since it has not manufactured or imported the chemical in the past;
- should there also be a response alternative which indicates that no active consideration/evaluation of the chemical has taken place, and will not take place unless application for registration is received.

Meaning of consent to import under conditions

43. The intention of the import decisions taken under the PIC procedure is to ensure a shared responsibility for the implementation and control of these import decisions between the exporting and importing country. If an importing country consents to the future import of a chemical, the exporting country is expected to follow up this decision and any conditions set for the import. Experience in implementing the procedure so far, however, indicates that many of the conditions provided by importing countries in their import response apply to national conditions which may be beyond the influence or outside the responsibility of the exporter. Examples are the indication that a chemical is prohibited for certain uses by national legislation, specific labelling requirements or use/application restrictions to certified users.

Interpretation of inadequate or no response

44. As at 31 December 1995, import responses had been received from 80 countries for the first set of six pesticides; from 65 countries for the second set of six pesticides; and from 37 countries for the first set of industrial chemicals.

45. Under the current voluntary procedure, no response should be interpreted as a "**status quo**" situation, i.e. a chemical should not be exported without the explicit consent of the importing country, unless the exporter has evidence that the chemical is registered for use in the importing country or is a chemical whose use has been previously allowed by the importing country.

46. The FAO/UNEP Secretariat has no information on whether or not this status quo situation has posed problems for exporters in implementing the procedure.

Import decisions which only cover one use category

47. The breakdown in use categories reflects the fact that chemicals are most frequently regulated in use categories under separate legislation and by separate authorities. Many of the chemicals so far subject to the PIC procedure are included because they are banned or severely restricted for one use category, e.g. as a pesticide. The DGD developed for these chemicals will focus on the health and environmental effects linked to use as a pesticide, but also mentioning other use categories. The basis for control actions is given in the DGD, and Governments should consider the possibility of other uses that would be affected by a total ban on imports.

48. Experience has shown that import decisions about a specific chemical are often taken without the necessary consultation with other government authorities with separate/additional legislation governing the use and importation of the chemical. Dinoseb and Dinoseb salts are subject to PIC, as pesticidal uses have been banned or severely restricted in a number of countries. The FAO/UNEP Secretariat has received information indicating that non-pesticidal applications of Dinoseb have been affected by the fact that

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some Governments have prohibited all imports, even though import for other, industrial use had taken place earlier and is needed in the future.

Trade in products/articles or formulations containing PIC chemicals

49. Many chemicals are not only produced, imported and used in their original state, but are traded for use in industrial production of other preparations or products/articles. The FAO/UNEP Joint Group of Experts has considered possible export responsibilities under PIC for products or articles containing the chemical (e.g. lead solder in electrical appliances). The Group concluded that the amended London Guidelines specifically apply to chemicals and not to products/articles in which such chemicals may ultimately find their way.

VI. MONITORING AND COMPLIANCE WHEN EXPORTING CHEMICALS INCLUDED IN THE PIC PROCEDURE

50. A critical aspect of the PIC procedure is that the exporting country (Government and industry) should take steps, within its authority, to ensure that chemicals are not exported contrary to the decision of the importing country. As a consequence, there is a need to ensure that:

- all exporting countries participate in the PIC procedure (consistent with the decisions of the FAO Conference and the UNEP Governing Council);
- decisions of importing countries are clear;
- Governments of exporting countries establish an adequate means of informing the country's industry of the decisions of importing countries;
- Governments of exporting countries have adequate authority to take the necessary control measures.

51. Under the existing procedure, there are no provisions to monitor trade in chemicals subject to the PIC procedure and to measure compliance with the PIC provisions of the amended London Guidelines and the FAO Code of Conduct. It is important that this situation be considered in the context of a legally binding convention.

Enforcement of PIC import decisions

52. Several suggestions have also been made to improve the international customs controls procedures, in order for countries to be able to obtain better information on what is being exported from and imported to their countries. Currently, the classification system of the Harmonized Commodity Description and Coding System developed by the Customs Co-operation Council (CCC) does not, in the great majority of cases, allow an adequate differentiation of specific chemicals. Chemicals often enter a country under the trade or brand name and therefore cannot be identified by customs. In

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addition, due to a lack of sufficient import and export control legislation, customs authorities are unable to enforce national control actions. Furthermore, testing facilities and testing methods are not sufficient to monitor the amount of traded chemicals.

VII. INFORMATION REGARDING EXPORT OR EXPORT NOTIFICATION

53. The existing provision for notifications of export requires an exporting country to notify each importing country of the first time a chemical which is banned or severely restricted for use in the exporting country is shipped to the importing country. (Such notification should be repeated in the case of any significant development or new information or condition surrounding the control action taken in the exporting country.) The purpose of providing information on such exports is to remind the importing country of the original notification regarding the control action and to alert it to the fact that an export of a chemical not allowed or severely restricted for use in the country of export is expected or is about to occur. An Information Regarding Export form has been developed to facilitate this exchange of information. This exchange of information on the export of banned and severely restricted chemicals is a bilateral activity between the exporting and importing country. It does not involve the FAO/UNEP Secretariat which, therefore, does not have any information on the effectiveness of this part of the information exchange procedure.

54. This export notification is not an obligation tied to the export of any chemical subject to the PIC procedure. The obligation to provide an export notification lies only on those countries which have actually banned or severely restricted a chemical, whether it be included in the PIC procedure or not. Therefore, any chemical, whether included in PIC or not, can be exported from any country, without the need for an export notification, if the country has not taken regulatory action to ban or severely restrict that chemical.

55. International industrial associations have also expressed the view that the obligation to send an export notification for a chemical included in PIC (and which is banned or severely restricted in the exporting country) no longer applies if the importing country has already provided an import response under the PIC procedure. Consequently, importing countries cannot rely on the export notification system to fully inform them about which countries are exporting to their territory chemicals that have been banned or severely restricted in other countries or about the quantities of such chemicals entering the country.

56. What should be the aim of any obligation for export notification?
Should it be:

- to provide information to importing countries on the future import of a chemical originating only from countries which have taken action against the chemical?
- to provide importing countries with full information on the origins of a limited number of potentially hazardous chemicals which are coming into and being used within their territories?

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What information should be provided in export notifications?

57. Export notifications, to be more useful for importing countries, should include information on the exporting and importing companies and on expected quantities of the chemicals to be shipped to the importing country.

VIII. CLASSIFICATION AND LABELLING OF CHEMICALS FOR EXPORT

58. The amended London Guidelines, through additional provisions regarding classification and labelling of chemicals for export, and the Code of Conduct, through its guidelines on good labelling practices for pesticides:

- encourage exporting countries to provide importing countries with information, advice and assistance, including appropriate precautionary information, regarding the sound management of chemicals; and
- recommend that chemicals should, as a minimum, be classified, packaged and labelled according to internationally recognized procedures and practices.

59. Information on classification, packaging and labelling is an important element in the information exchange procedure. In the absence of other standards or requirements in the country of import, the exporting country should ensure that the classification, packaging and labelling of the chemical conform to recognized international standards. It is also desirable that countries exporting chemicals ensure that these chemicals are subject to no less stringent requirements for classification, packaging and labelling than comparable products intended for domestic use. The extent to which this provision is implemented by participating countries is not known to the Secretariat.

ANNEX

TYPES OF CONTROL ACTIONS TO BAN OR SEVERELY RESTRICT A CHEMICAL
WHICH QUALIFY/DO NOT QUALIFY FOR INCLUSION IN PIC
(Revision of Appendix 1 of the Guidance for Governments document)

CONTROL ACTIONS WHICH QUALIFY	CONTROL ACTIONS WHICH DO NOT QUALIFY
<p>Ban, severe restriction or refusal of first-time use:</p> <ul style="list-style-type: none"> • because scientific data indicate a health or environmental problem coupled with an exposure problem. 	<p>Ban, severe restriction or refusal of first-time use:</p> <ul style="list-style-type: none"> • because product is classified as highly toxic (e.g. according to WHO scheme); • because required data not provided; • because fees not paid; • because of the development of resistance in the target (pest(s)); • because a less toxic alternative is available; • because of setting of severe handling restrictions as a result of the need for severe occupational exposure limits e.g. maximum allowable concentrations (MAC) values, threshold limit values (TLV).
<p>Ban or severe restriction of:</p> <ul style="list-style-type: none"> • major use(s) (in terms of quantity), while minor use(s) remain acceptable for use; • minor use (in terms of quantity) if the action results in a major reduction in exposure of a product with a health or environmental problem. 	<p>Ban or severe restriction of minor use(s) while major use(s) (in term of quantity) remain acceptable.</p>
<p>Ban, severe restriction or refusal of first-time use, based on a review of health and/or environmental data and potential exposure data by the country making the notification.</p>	<p>Ban, severe restriction or refusal of first-time use, based on an action taken in another country with no review of exposure and hazards under conditions in the country in which the action is taking place.</p>
<p>The action taken is a final government regulatory action. Results in cessation in some or all uses of the chemical either immediately or at a definite time in the future.</p>	<p>The action taken is preliminary (proposed) or is being challenged by appeal or by court action.</p>
<p>The restriction of use of a pesticide to trained (licensed or certified) personnel only or to use only in special equipment e.g. closed systems, <u>together</u> with severe restrictions in quantity allowed for use.</p>	<p>The restriction of use of a pesticide to trained (licensed or certified) personnel only or to use only in special equipment e.g. closed systems.</p>
<p>The severe restriction of the use of a pesticide (in terms of amount of product) because of health or environmental reasons, e.g. limited to minor use away from sensitive ecosystems.</p>	<p>Labelling of a product with warnings and limitations, e.g. to prevent drift to sensitive ecosystems, or to minimize occupational or incidental exposure.</p>
<p>Banning or severely restricting the use of a product because of unavoidable contaminants at level of concern.</p>	<p>Allowing use of a product, without severe restrictions, as long as contaminants are maintained below certain specified standards.</p>
<p>Withdrawal of the product from commerce by a manufacturer for health or environmental reasons.</p>	<p>Withdrawal of the product from commerce by a manufacturer for commercial reasons.</p>