



United Nations
Environment Programme



UNEP



Food and Agriculture
Organization of the United
Nations

Distr.
GENERAL

UNEP/FAO/PIC/INC.1/6
19 December 1995

ORIGINAL: ENGLISH

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

First session
Brussels, 11-15 March 1996

EXPERIENCE IN THE IMPLEMENTATION OF THE PRIOR INFORMED CONSENT PROCEDURE

Note by the Secretariat

1. The present document sets out experience in the implementation of the voluntary prior informed consent (PIC) procedure contained in the amended London Guidelines for the Exchange of Information on Chemicals in International Trade and the Food and Agriculture Organization of the United Nations (FAO) International Code of Conduct on the Distribution and Use of Pesticides.

I. CONTACTS BETWEEN FAO AND UNEP AND DESIGNATED NATIONAL AUTHORITIES AND GOVERNMENTS PARTICIPATING IN THE PIC PROCEDURE

2. Both FAO and UNEP are mandated by their governing bodies, through the FAO Code of Conduct and the UNEP London Guidelines, to operate a PIC procedure for pesticides and chemicals, respectively. Through its work on the implementation of the PIC procedure, the FAO/UNEP Secretariat has had extensive contacts with participating countries. In September 1991, the PIC procedure was initiated by distributing the first six Decision Guidance Documents (DGDs) on pesticides to all participating Governments. These and other activities are described in more detail in a separate paper providing an overview of the implementation of the PIC and information exchange procedures.

/...

3. The FAO/UNEP Joint Group of Experts on PIC has held eight meetings since it was established in December 1989. In the course of these meetings, many problems have been identified and discussed as more experience with operation of the procedure has gradually been gained. Valuable feedback has also been provided by industry organizations and non-governmental organizations (NGOs), who have their own contact networks to both national industry and Governments.

4. During training workshops that have taken place with Designated National Authorities (DNAs) and other governmental officials, FAO and UNEP have received information regarding countries' experience with and recommendations for implementing the PIC procedure. Reports for several of these workshops are available.

5. The PIC procedure has been operational on a voluntary basis since 1991. So far, a single approach in the operation of the PIC procedure has been used to address a broad range of chemicals, mixtures and preparations subject to widely different degrees and types of controls at the national level. It is recognized that there is now a need for further clarification of the criteria for the inclusion of a chemical in the PIC procedure (e.g. interpretation of the terms "banned" and "severely restricted"), the definitions of the three use categories (pesticides, industrial chemicals and consumer product chemicals), what constitutes major and minor uses, etc. in order to ensure more effective implementation. These issues are discussed in a separate paper reviewing issues relevant to the implementation of the existing, voluntary PIC procedure (see UNEP/FAO/PIC/INC.1/5).

II. COUNTRIES' EXPERIENCE IN THE IMPLEMENTATION OF THE PIC PROCEDURE

6. Listed below are a number of issues that have frequently been highlighted by DNAs and other government representatives in the course of implementation of the existing PIC procedure.

Designated National Authorities (DNAs)

7. The PIC procedure was designed to assist countries with limited resources to make decisions regarding the import of certain chemicals. DNAs have difficulty in fulfilling their responsibilities as defined in the PIC procedure, as their Governments often do not have the institutional and financial capacity nor the access to the technical skills and information needed to make PIC-related decisions. The work resulting from participation in the PIC procedure is often also an unacceptable additional workload for DNAs, who are already overloaded by their regular work programme.

Support from the FAO/UNEP Secretariat

8. There have been high expectations about the FAO/UNEP Secretariat and the role it can play in an information exchange system. The Secretariat can, at best, serve as a catalyst, implementing mechanisms which facilitate information exchange among countries and between countries and relevant

/...

international organizations. Recognizing that importing countries often need additional information and assistance, and given the limited resources available to the Secretariat, systems to permit importing countries to obtain supplementary information directly from the source must be further developed. In addition, bilateral assistance to supplement the Secretariat's efforts needs to be promoted.

Decision-making at national level

9. In many countries there is a lack of essential local data necessary to make decisions which are relevant to national conditions of use. This can include information on actual health and environmental effects in the country, chemical types and quantities in use, exposure potential, etc.

10. There is a need for adequate organization and co-ordination of relevant activities of governmental and other agencies involved. Necessary inter-agency mechanisms should be established to ensure coordination and follow-up.

11. The PIC procedure was designed to assist countries with limited resources to make decisions regarding the import of certain chemicals. The PIC procedure itself was never intended to provide a legal framework for decision-making. It is the responsibility of each country to establish a legal/regulatory basis for making and enforcing the types of decisions required under the PIC procedure. The aim of the PIC procedure is to support, not substitute for, national decision-making. Under the PIC procedure, the responsibility remains with each country to make decisions on the use of specific chemicals, taking into account the potential health and environmental consequences as well as other factors relevant to conditions at the national level.

12. PIC decision-making is sometimes seen as a separate activity related to trade rather than as part of a Government's ongoing responsibility to protect health, safety and the environment. A Government's decisions should be based on whether, after a risk/benefit analysis, the chemical should be allowed to be marketed and used in the country. The trade-related aspects, such as informing potential exporters of the importing countries' decisions and seeking compliance with these decisions, are designed to give effect to the health and environmental decisions.

Documentation and communication

13. There is a need for reliable information sources in many participating countries. Although a list of references is provided in the DGDs, many developing countries have stated that they do not have the same ease of access to such published data as do developed countries. Documents from international organizations and programmes are considered very important information sources and their wide availability should be encouraged.

14. The supporting documentation for the PIC procedure is available in only three languages (English, French and Spanish), so many countries have to operate in a foreign language.

/...

15. The need for rapid communication has been emphasized on many occasions. Computers, fax machines and photocopiers assist the efficient operation of PIC, but are not always readily available in many countries.

16. DNAs should be assisted in initiating direct communication among themselves, exchanging information and, if possible, sharing expertise to the maximum extent possible. One way of doing this would be the establishment of subregional or regional networks.

Importing Country Responses

17. As at 10 December 1995, 73 countries plus all European Union countries had provided import responses for the first set of six pesticides, and 68 countries plus all European Union countries for the second set of pesticides. A total of 43 countries had provided responses for the industrial chemicals. A minority of countries provided completed Importing Country Response forms within the given time-frame of 90 days. In most cases, a lengthy process of correspondence is required to arrive finally at a properly completed, signed and dated Importing Country Response form, representing the official position of the importing country.

18. The 90-day period stipulated for providing an import response is apparently too short. Legal, administrative and technical constraints make it difficult, if not impossible, to take the necessary decisions within such a short time-frame. Although an "interim decision" is possible, if countries routinely use this option, it would defeat the purpose of the PIC procedure.

19. In the case of pesticides, many of the PIC import decisions are considered by the Pesticides Control Boards or other regulatory decision-making bodies that have been established in accordance with the recommendations of the Code of Conduct. The decision-making process for chemicals other than pesticides is frequently less well-defined at the country level and may be one reason for the low level of response. In some cases, countries have taken action to prohibit use of a chemical prior to the initiation of the PIC procedure and have not informed the Secretariat of these actions.

Import control

20. The PIC procedure is set up in such a way as to assist in the implementation of importing countries' decisions by providing a mechanism for formally obtaining and disseminating the decisions of importing countries with respect to whether or not they wish to receive future shipments of certain chemicals. It does not eliminate the need for the control of imports (e.g. customs controls, monitoring systems, education and information). Importing countries must recognize that the PIC procedure cannot be relied on to eliminate sources of prohibited chemicals, as there are exporting countries which do not participate in the procedure and the fact is that chemicals may be transhipped.

21. There is some uncertainty as to how the import responses should be interpreted. Very often the information on import conditions seems to refer to the national regulations or conditions for use that apply in the country after import has taken place. The intention of the procedure, however, should be to inform exporters whether export can take place and, if so, of any conditions with which the exporter must comply.

22. There is no mechanism for obtaining information on the importer in the importing country. Many countries have received information regarding export from other countries, but have not been in a position to followup on import and domestic use of the chemical because of lack of knowledge as to point of entry, commercialization of the chemical, etc.

23. Inadequate control or, in some cases, total absence of control on importation of toxic chemicals at the point of entry can severely limit the advantages of participating in the PIC procedure. Strengthening of such controls is therefore imperative for the success of the procedure.

Infrastructure

24. In many cases, countries have some form of regulatory framework for the control of pesticides, while there is frequently no comparable system in place for other chemicals. Where such frameworks do exist, these are often fragmented, covering only a limited type of chemical or chemical-related activity. This lack of a regulatory infrastructure is frequently compounded by insufficient inter-ministerial communication and cooperation. In view of the fact that effective chemicals management requires the involvement of a range of Ministries or agencies within a country, these problems represent a real obstacle to the effective implementation of PIC in many countries.

25. There are presently over 140 countries participating in the PIC procedure, with widely differing capabilities to make and implement PIC-related decisions. The PIC procedure was designed to take into account the fact that participating countries are at varying stages of development in terms of, *inter alia*, their economic situation, legislative/regulatory frameworks, availability of skilled decision makers, awareness of and access to information, etc. The PIC procedure, however, does not eliminate the need for systems for controlling imports (e.g. customs controls, monitoring systems, education and information).

Technical assistance for the implementation of PIC

26. The need to strengthen research into the environmental effects of use of chemicals in tropical ecosystems has been constantly discussed and underlined by DNAs in many developing countries.

27. The question of selecting cost-effective, less hazardous and easily available alternatives to banned or severely restricted chemicals is a serious concern to many countries and most DNAs have difficulties in resolving this. Therefore, whenever possible, alternatives to chemicals on

/...

the PIC list should be identified in the DGDs, together with the respective cost. Suitability of any alternative given needs to be scrutinized carefully.

28. Many countries have stressed the need for training on the PIC-procedure and on chemical management in general. They have also emphasized that not only DNAs, but also representatives of other involved sectors and policy-makers should be informed and trained.

III. RESULTS OF A SURVEY ON THE IMPLEMENTATION OF THE CODE OF CONDUCT RELEVANT TO THE PIC PROCEDURE

29. The preliminary results of a survey conducted by FAO in 1993-94 to assess the state of implementation of the Code of Conduct provide some insight into the present status of the PIC procedure at the country level, at least as it relates to the management of pesticides. The following responses emphasize the difficulties that result from inadequate infrastructure development and inter-ministerial communication:

- thirty-four percent of developing countries responding to the FAO questionnaire reported that their Governments did not notify FAO of actions to ban or severely restrict the use or handling of a pesticide for health or environmental reasons.
- twenty-seven percent (16 out of 60 responses) of participating pesticide-importing countries had not yet established internal procedures for the receipt and handling of PIC information.
- fifty-six percent (5 out of 9 responses) of developed pesticide-exporting countries responded that they had not been able to use the PIC procedure effectively, or they had been able to use it only partially effectively, for advising their pesticide exporters and industry of the decisions of importing countries participating in PIC.
- fifty percent (4 out of 8) of developed pesticide-exporting countries indicated that in 1993-94, when the questionnaire was completed, the measures they had taken to prevent exports to countries not wishing to import a certain pesticide had not been successful or had been only partially successful.

IV. OTHER GENERAL PROBLEMS RELATED TO CHEMICALS MANAGEMENT

30. Many other problems related to chemicals management have also been raised and discussed in contacts with DNAs and Governments. Implementation of the PIC procedure can only be a first valuable step towards the establishment of effective schemes for the management of pesticides and other chemicals. Some of the more general problems that have been raised are:

(a) Regional harmonization of national legislation is required to help establish similar standards and lessen trade obstacles;

/...

(b) Some Governments do not have a list of chemicals being manufactured, imported or used in the country. Those countries which already have several chemical lists should consider consolidating such lists, if possible, or clarifying their interrelationships;

(c) DNAs lack training in the PIC procedure and need further resources for the successful implementation of the PIC procedure, especially for taking timely and appropriate decisions;

(d) Regional training and assistance centres should be established to provide services on bio-efficacy, environmental effects in tropical ecosystems/high-altitude conditions, identification of alternatives, etc;

(e) Programmes are needed to identify major potentially hazardous facilities and toxic emissions to prepare for, prevent and respond to chemical accidents;

(f) Industry is not sufficiently aware of its important role in the efficient implementation of the PIC procedure and the effective management of chemicals;

(g) The connections to the customs, transport and trade aspects of the PIC procedure need more emphasis. Appropriate measures should be considered to permit adequate differentiation for easy identification of PIC chemicals for customs and trade officials in importing countries. Involved international organizations should cooperate to ensure that provisions relevant to the trade aspects of PIC (classification, packaging and labelling, shipment documents, etc.) are incorporated into the administrative procedures surrounding international customs, transport and trade;

(h) Enhanced cooperation and coordination is required among other related international organizations concerned in the areas of chemical management, including areas of hazard assessment, risk evaluation, prevention and control measures, as well as emergency response plans.

V. CONCLUSION

31. Experience with the implementation of the PIC procedure has provided valuable insights into the strengths and weaknesses of the procedure as described in the London Guidelines and the Code of Conduct. When discussing the form and content of a legally binding instrument, due consideration should be given to the points raised above. Many of the problems raised need to be addressed in order to obtain the intended effect of a future legally binding instrument.

/...