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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

Tenth session

Geneva, 17 – 21 November 2003

Item 4 (d) of the provisional agenda*

**Implementation of the interim prior informed consent procedure:
Inclusion of chemicals**

INCLUSION OF CHEMICALS AFTER THE ENTRY INTO FORCE OF THE CONVENTION

Note by the secretariat

Introduction

1. Both the Convention and the resolution on interim arrangements adopted by the Conference of Plenipotentiaries recognized that chemicals will be included during the interim period. The Convention recognizes this by providing, in article 8, a mechanism for including such chemicals in Annex III. The resolution on interim arrangements recognizes it by providing, in its paragraphs 7 and 8, details on how to include chemicals during the interim period. However, there seems to be a slight inconsistency regarding how to include chemicals in the period between the entry into force of the Convention and the first meeting of the Conference of the Parties. The Secretariat has the honour to forward to the Committee the present note which sets forth the background to the issue and suggests a possible approach.

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A. Background

The Convention

2. Article 8 of the Convention reads as follows: “For any chemical, other than a chemical listed in Annex III, that has been included in the voluntary Prior Informed Consent procedure before the date of the first meeting of the Conference of the Parties, the Conference of the Parties shall decide at that meeting to list the chemical in Annex III, provided that it is satisfied that all the requirements for listing in that Annex have been fulfilled”.

3. Article 8 establishes a unique mechanism for entering chemicals into Annex III and seems to include all chemicals included in the voluntary prior informed consent procedure right up to the date of the first meeting of the Conference of the Parties. As paragraph 2 of article 18 stipulates that that meeting must be convened no later than one year after the entry into force of the Convention, the article 8 mechanism would therefore seem to cover chemicals that are included after the entry into force of the Convention but before the first meeting of the Conference of the Parties.

The resolution on interim arrangements

4. In paragraph 2 of the resolution on interim arrangements, the Conference of Plenipotentiaries decided “that the voluntary PIC procedure contained in the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade and in the FAO International Code of Conduct on the Distribution and Use of Pesticides (hereinafter referred to as the “original PIC procedure”) is hereby changed to bring it into line with the procedure established by the Convention with effect from the date on which the Convention is opened for signature”. In paragraph 12, the Conference decided “that the interim PIC procedure shall cease to operate on a date to be specified by the Conference of the Parties at its first meeting”.

5. The resolution contains the following provisions regarding the inclusion of new chemicals in the interim PIC procedure:

(a) In paragraph 7, the Conference decided “that all chemicals that have been identified for inclusion in the PIC procedure under the original PIC procedure but for which decision guidance documents have not yet been circulated before the date on which the Convention is opened for signature will become subject to the interim PIC procedure as soon as the relevant decision guidance documents have been adopted by the Committee”. This procedure was used to include four chemicals, binapacryl, ethylene chloride, ethylene dichloride and toxaphene, under the interim PIC procedure.

(b) In paragraph 8, the Conference decided “that the Committee shall decide, between the date on which the Convention is opened for signature and the date of its entry into force, on the inclusion of any additional chemicals under the interim PIC procedure in accordance with the provisions of Articles 5, 6, 7 and 22 of the Convention”. This procedure was used to include the chemical monocrotophos under the interim PIC procedure. At the tenth session of the Committee, asbestos, DNOC and dustable powder formulations of benomyl, carbofuran and thiram are to be considered for inclusion.

6. The authority given to the Committee in paragraph 8 of the resolution of interim arrangements to include chemicals under the interim PIC procedure would seem to be limited in time to the period between the opening for signature of the Convention on 11 September 1998 and the date of its entry into force, while the Convention itself seems to foresee that chemicals may be entered into the voluntary PIC procedure right up to the date of the first meeting of the Conference of the Parties.

7. Three chemicals, tetraethyl lead, tetramethyl lead and parathion, will be under consideration in the period between the entry into force of the Convention and the first meeting of the Conference of the Parties. Those chemicals were considered by the Interim Chemical Review Committee at its fourth session, at which it decided that the notifications received for those chemicals met the criteria of Annex II of the Convention and recommended that draft decision guidance documents should be prepared for them. The draft decision guidance documents are scheduled to be discussed at the fifth session of the Interim Chemical Review Committee, in February 2004.

B. Possible action by the Committee

8. In adopting the resolution on interim arrangements, the Conference of Plenipotentiaries considered “that interim arrangements are required to continue to operate a voluntary procedure for the application of the prior informed consent (PIC) procedure in order to protect human health and the environment from certain hazardous chemicals and pesticides pending the entry into force of the Convention and to prepare for its effective operation once it enters into force” (resolution, second preambular paragraph).

9. The Conference also invited “the Executive Director of the United Nations Environment Programme and the Director-General of the Food and Agriculture Organization of the United Nations to convene such further sessions of the Intergovernmental Negotiating Committee ... during the period between the date on which the Convention is opened for signature and the date of the opening of the first meeting of the Conference of the Parties as are necessary to oversee the operation of the interim PIC procedure and to prepare for and service the Conference of the Parties until the end of the fiscal year in which the first meeting of the Conference of the Parties takes place” (ibid., para 3).

10. In the light of the above, recognizing that more chemicals are expected to be ready for inclusion under the interim PIC procedure in the period between the entry into force of the Convention and the date of the opening of the first meeting of the Conference of the Parties, and recognizing the need to protect human health and the environment from certain hazardous chemicals and pesticides, the Committee may wish to convene a short session immediately before the opening of the first meeting of the Conference of the Parties. That session would consider the inclusion under the interim PIC procedure of the chemicals for which decision guidance documents were considered at the fifth session of the Interim Chemical Review Committee so that they can be considered by the Conference of the Parties under article 8 of the Convention. It should be noted that the draft decision guidance documents will be available for consideration prior to the fifth session of the Interim Chemical Review Committee and will be posted on the Rotterdam Convention web site. The draft decisions and draft decision guidance documents as adopted by the Interim Chemical Review Committee will be circulated shortly after the Interim Chemical Review Committee has met, allowing for six months to elapse before a session of the Intergovernmental Negotiating Committee immediately prior to the opening of the first Conference of the Parties, should this occur after August 2004.
