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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

Second session

Nairobi, 16-20 September 1996

THE BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF  
HAZARDOUS WASTES AND THEIR DISPOSAL AND ITS  
RELEVANCE TO CHEMICAL WASTES

Note by the Secretariat

Background

1. During the first session of the Intergovernmental Negotiating Committee (INC), held in Brussels from 11-15 March 1996, a number of delegates sought clarification of the coverage of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal with respect to chemical waste and of the question of whether or not all chemical wastes are covered by this Convention.

Scope of Basel Convention - overview

2. The aim of the Basel Convention is the environmentally sound management of hazardous wastes. This means that Parties should minimize the generation of hazardous wastes, dispose of them (including final disposal, recovery, reuse and recycling) as close as possible to their source of generation in a manner designed to protect human health and the environment and to reduce transboundary movements to a minimum.

3. The Convention provides for a very strict control procedure, based on the prior written notification and consent for any transboundary movement of hazardous wastes and other wastes. The exporter or generator cannot initiate such movement until consent is given by all States Parties (and non-Parties if relevant), including States of transit, for the movement to take place.

4. A decision was adopted at the third Meeting of the Conference of the Parties to the Basel Convention (Geneva, September 1995) to amend the Convention with respect to a prohibition by each Party member of the Organisation for Economic Cooperation and Development (OECD), the European Community (EC), and Liechtenstein, of all transboundary movements of hazardous wastes which are destined for final disposal to other States. It also phases out by 31 December 1997 and prohibits as of that date all transboundary movements of hazardous wastes for recovery, recycling, reclamation, direct reuse or alternative uses from Party members of the OECD, EC and Liechtenstein to other States. The wastes subject to such prohibitions should be characterized as hazardous under the Convention.

5. The prime determinant for whether a waste is subject to the Basel Convention is based on the hazard characterization of the waste. Materials are subject to control under the Basel Convention:

(a) If the material in question is defined as a waste. The Basel Convention defines waste in the following terms: "Wastes are substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law "; and

(b) If the waste belongs to any category contained in Annex 1 (Categories of Wastes to be Controlled) and exhibits or possesses any of the hazardous characteristics contained in Annex III (List of Hazardous Characteristics); or

(c) If the waste belongs to either of the two categories of Annex II requiring special consideration (i.e. wastes collected from households and residues arising from the incineration of household wastes); or

(d) If the waste is not characterized as hazardous under Annexes I and III, but is defined as, or considered to be hazardous waste by the domestic legislation of the Party of export, import or transit.

6. It is important to note that the Convention provides obligations to Parties to aim at the highest possible standards in terms of the environmentally sound management and disposal of waste, whether they are moved across frontiers or generated locally.

#### Applicability to PIC chemicals

7. The term "chemical wastes," for the purpose of this paper includes "waste chemicals." Chemicals treated under the prior informed consent (PIC) procedure would not normally become subject to the Basel Convention until they have reached the end of their life-cycle, e.g. obsolete, date-expired, degraded/damaged, spilled material, and material which is considered by the appropriate national authority to be a waste. However, if they have been included in the Annex 1 waste categories of the Convention and exhibit the hazardous characteristics listed in Annex III, the chemical wastes would then be subject to control under the Basel Convention.

8. If a PIC chemical that has been declared a waste is not identified in Annex I and does not exhibit the hazardous characteristics listed in Annex III, then it could continue to be handled as a PIC substance and consequently be subject to the PIC procedure. However, it is unlikely that a chemical of sufficient hazard or concern to be classed as a PIC chemical would not equally exhibit the hazardous characteristics of Annex III of the Basel Convention.

#### Conclusions

9. Chemicals subject to the PIC procedure would be managed in accordance with the PIC procedure until such time as they are considered waste. The next step would be to assess whether the waste falls under the scope of the Basel Convention (see paragraphs 2, 3, 4, 5 and 6 above). Provided it can be demonstrated that the waste is not controlled under the Convention, then it could be subject to the PIC procedure.

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