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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

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 SECOND SESSION

I. OPENING OF THE SESSION

1. The second session of the Intergovernmental Negotiating Committee (INC) for an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was held at the United Nations Office at Nairobi from 16 to 20 September 1996.
2. The session was opened by Ms. Maria Celina de Azevedo Rodriguez (Brazil), Chairperson of the Committee, at 10 a.m. on Monday, 16 September 1996.
3. Opening statements were made by Ms. Elizabeth Dowdeswell, Executive Director of the United Nations Environment Programme (UNEP), and Ms. V. Sekitoleko, Subregional Representative of the Food and Agriculture Organization of the United Nations (FAO) for Southern and East Africa, speaking on behalf of Mr. Jacques Diouf, Director-General of FAO.
4. In her statement, Ms. Dowdeswell welcomed participants to Nairobi and commended them on the remarkable progress made at the first session of the Committee. She stressed the need for the Committee to remain focused on the

mandate agreed by Governments – that of turning a voluntary prior informed consent agreement into a legally binding instrument.

5. She pointed out with regret that UNEP was still waiting on donors to honour their promises at the Governing Council to meet the costs of the second session of the Committee. Funds had been advanced from the Environment Fund, but they must be repaid for UNEP to implement fully its broader work programme. While expressing her gratitude to the Governments of Belgium, Denmark and the Netherlands for their support for the various chemicals-related meetings, she emphasized that there were no resources available for any additional negotiating sessions.

6. Finally, she said that the prior informed consent (PIC) instrument was about sustainability and, if properly designed and implemented, it would demonstrate that high productivity, modern technology and economic development could coexist with a healthy environment.

7. Welcoming participants in the session, Ms. Sekitoleko referred to the long history of PIC and praised the exemplary cooperation between FAO and UNEP in implementing the voluntary procedure.

8. The FAO secretariat would report on progress in the negotiations to the FAO Council at its hundred-and-eleventh session, to be held in October 1996, and would receive further guidance from member Governments on PIC, future FAO involvement in the negotiations on persistent organic pollutants and on international further measures for pesticides management.

9. With regard to the work before the Committee at its current session, she said that the PIC procedure should be transparent and not require substantial resources for its implementation at the national level. It would be a major challenge to include elements that ensured that all pesticide-exporting countries participated fully in the procedure and complied with their responsibilities under the instrument. FAO considered it particularly important for PIC to cover those pesticides that could not be handled safely by small farmers in developing countries. The PIC procedure was not, however, a substitute for national regulations, on which much remained to be done. FAO strongly advocated an Integrated Pest Management approach in which farmers were provided with sufficient information to make their own informed decisions on plant protection systems and the possible applications of pesticides. FAO would continue to participate in discussions on international agreements on chemicals to draw attention to the need for creating and maintaining sustainable agricultural systems that can provide sufficient food for generations to come.

B. Attendance

10. The session was attended by representatives of the following Parties: Antigua and Barbuda, Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Benin, Bhutan, Brazil, Burundi, Cameroon, Canada, Chad, Chile, China, Colombia, Comoros, Côte d'Ivoire, Cuba, Czech Republic, Denmark, Ecuador, Egypt, Ethiopia, European Community, Finland, France, Georgia, Germany, Ghana, Guinea, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Japan, Jordan, Kazakstan, Kenya, Kyrgyzstan, Lesotho, Madagascar, Malawi, Malaysia, Mauritius, Mexico, Mongolia, Morocco, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Republic of Korea, Republic of Moldova, Russian Federation, Rwanda, Saudi Arabia, Senegal, Seychelles, South Africa,

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Spain, Sweden, Switzerland, Tajikistan, Thailand, Togo, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uzbekistan, Venezuela and Zaire.

11. The following United Nations bodies and specialized agencies were represented: Food and Agriculture Organization of the United Nations (FAO), International Labour Office (ILO), Secretariat of the Basel Convention, United Nations Environment Programme (UNEP), United Nations Institute for Training and Research (UNITAR), World Health Organization (WHO) and World Meteorological Organization (WMO).

12. The following non-governmental organizations were also represented: Arab Organization for Agricultural Development (AOAD), Chemical Manufacturers Association (CMA), Conservation and Management International (CMI), Consumers International (CI), Ecoterra International, Ecoterra - East Africa, Environmental Liaison Centre International (ELCI), European Chemical Industry Council (CEFIC), Groupement International des Associations Nationales de Fabricants de Produits Agrochimiques (GIFAP), International Centre for Environmental, Social and Policy Studies (ICESPS), International Confederation of Free Trade Unions (ICFTU), International Council of Chemical Associations (ICCA), International Council of Environmental Law (ICEL), International Council on Metals and the Environment (ICME) and International Association of Ports and Harbors (IAPH).

C. Officers

13. The following four officers, elected by the Committee at its first session, served in their respective capacities during the session:

Chairperson: Ms. Maria Celina de Azevedo Rodriguez (Brazil)

Vice-Chairpersons: Mr. Mohammed El-Zarka (Egypt)

Mr. Yuri Kundiev (Ukraine)

Rapporteur: Mr. William Murray (Canada)

14. Owing to the inability of the representative of the Asia and Pacific Group to serve on the Bureau for the second session of the Committee, the Committee elected the following representative of that group to serve on the Bureau:

Vice-Chairperson: Mr. Reza Tabatabai (Islamic Republic of Iran)

II. ORGANIZATIONAL MATTERS

A. Adoption of the agenda

15. The Committee adopted the following agenda on the basis of the provisional agenda, which had been circulated as document UNEP/FAO/PIC/INC.2/1:

1. Opening of the session.
2. Organizational matters:
 - (a) Adoption of the agenda;
 - (b) Organization of work.
3. Preparation of an international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade.
4. Other matters.
5. Adoption of the report.
6. Closure of the session.

B. Organization of work

16. At its opening meeting, the Committee decided to establish two sessional groups: a Technical Working Group, under the chairmanship of Mr. Rainer Arndt (Germany), and a Legal Drafting Group, under the chairmanship of Mr. Patrick Szell (United Kingdom). Following the plenary discussion on each group of articles, the Technical Working Group met to address the policy issues, taking into account the views expressed, and subsequently reported back to plenary. The revised text was transmitted to the Legal Drafting Group.

III. PREPARATION OF AN INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR THE APPLICATION OF THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE

17. In considering agenda item 3, the Committee had before it the following documentation: a note by the Secretariat on provisions governing a Conference of the Parties (UNEP/FAO/PIC/INC.2/2); a proposal by the Chairperson on final provisions (UNEP/FAO/PIC/INC.2/3); a note by the Secretariat on financial resources and mechanisms (UNEP/FAO/PIC/INC.2/4); a note by the Secretariat on the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and its relevance to chemical wastes (UNEP/FAO/PIC/INC.2/5); a note by the Secretariat transmitting tentative draft key articles for an international legally binding instrument for the application of the prior informed consent

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procedure for certain hazardous chemicals and pesticides in international trade (UNEP/FAO/PIC/INC.2/6 and Corr.1); a note by the Secretariat on review of capacity-building efforts on chemical management (UNEP/FAO/PIC/INC.2/INF.1 (English only)); a note by the Secretariat on a schedule of future meetings of relevance to the PIC negotiations (UNEP/FAO/PIC/INC.2/INF.2 (English only)); and a note by the Secretariat transmitting a note from the Technical Working Group of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal addressed to the Intergovernmental Negotiating Committee (UNEP/FAO/PIC/INC.2/INF.3 (English only)).

18. Following consideration of the draft articles in plenary and the revised texts prepared by the Technical Working Group and the Legal Drafting Group, the Committee decided that the draft articles and annexes, as they appear in annex I to the present report, should be retained for its consideration at its third session, on the understanding that all elements of the text would be open for discussion and amendment at that session. The main issues raised in relation to the draft articles are summarized in paragraphs 19-37 below.

Article 1 (Objectives)

19. A proposal was made containing language that would enable the Convention to accommodate further developments in other forums on the sound management of chemicals and on the adoption of control measures. The proposal for allowing such flexibility was supported by some countries but it was pointed out by many other delegations that the proposal went beyond the Committee's mandate. Some countries strongly objected to the adoption of any control measures in the Convention. An alternative proposal was put forward aimed at focusing first on the PIC procedure and secondly on information exchange. There was no support for retaining the bracketed phrase as it stood in the Chairperson's draft. It was suggested by many delegations that the principle of "common but differentiated responsibility" should be incorporated, instead of "shared responsibility".

Article 3 (Scope of the Convention)

20. There was debate whether the word "acutely" in paragraph 1 (b) should be accommodated in the definitions in Article 2. Reference to specific conventions in the text was not supported. There was a proposal to exempt chemical weapons and their precursors. A large majority wanted pharmaceuticals to be exempted, but some delegations reserved their position. Many delegations said that there was a need to clarify whether the exemptions for research or personal use would conflict with national regulatory decisions regarding these chemicals. Some delegations supported quantifying the latter exemptions.

Article 4 (General obligations)

21. The need for this article was questioned by some delegations, since Parties' obligations were already covered in a more specific manner in subsequent articles, including Articles 9 and 10, or could be incorporated in other articles, as appropriate. A number of delegations supported the need

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for such an article, not least because they felt that many international instruments routinely contained an article setting out general obligations.

Article 5 (Designated national authorities)

22. There was extensive debate on whether the Parties should be allowed to designate more than one national authority. Some delegations stated that the phrasing "shall ensure" in paragraph 2 placed too great a demand on the limited resources of certain countries and needed to be attenuated.

Article 6 (Notification of final regulatory actions)

23. There was a divergence of views on whether the notification should indicate whether it had been based on a national risk assessment or other type of documentation. There was general agreement that national inventories provided previously, under the voluntary PIC procedure, should be considered as meeting the requirement contained in paragraph 3.

Article 7 (Identification of chemicals for inclusion in the prior informed consent procedure)

24. It was understood that an expert group of the Parties should be established to ensure a process for including chemicals and hazardous pesticide formulations in the PIC procedure. There was no agreement on whether such a group should be constituted in the body of the Convention or established by the Conference of the Parties. There were different views on the number of control actions or nominations of hazardous pesticides formulations required to trigger inclusion in the PIC procedure.

Article 8 (Processing of notifications of control action)

25. It was understood that, for each chemical approved by the Parties for inclusion in the PIC procedure, the Parties would oversee and approve the preparation of a decision guidance document (DGD). There was no agreement on the time interval between approval by the Conference of Parties and circulation of DGDs.

Article 9 (Obligations of Parties that import chemicals)

26. Views differed on the time set for importing countries to respond to the DGD. It was suggested by some delegations that a definition of "status quo" should be provided in Article 2.

Article 10 (Obligations of Parties that export chemicals)

27. Views differed on whether notification should occur under this article and whether it should be on first export or each export. Views differed on whether paragraphs 1 (c) and (d) of the article could more appropriately be incorporated in Articles 11 and 16, or in Article 4.

Article 11 (Export notification)

28. The majority of countries favoured an export notification. Some believed that further consideration should be given to the purpose of export notification, including whether there were other options available to meet that purpose. Different views were expressed on which chemicals would be subject to export notification. Some countries suggested that only the chemicals in the PIC procedure needed an export notification. Some countries wished to have a shipment-by-shipment notification procedure, others favoured a once-only notification. It was noted that the issue of transit countries and of donations should be addressed in this article.

Article 12 (Classification, packaging and labelling)

29. There were different views as to what system of classification, packaging and labelling should be applied. Some delegations wished to have an internationally recognized PIC symbol or code on the label, some preferred a more complete PIC label, while others questioned the advisability of such a label. A number of delegations indicated that potential duplication of work in the same area in other forums should be avoided. It was suggested that the order of the paragraphs should be reversed.

Article 13 (Confidential data)

30. There was some debate on whether this article related to information exchange or the confidentiality of data in general. Some delegations stressed that confidentiality should not pertain to toxicity or hazard information. It was suggested that, instead, a list of data considered to be confidential should be inserted, as agreed in other international forums. Others supported the approach proposed in the Chairperson's draft text (UNEP/FAO/PIC/INC.2/6 and Corr.1). A detailed list of non-confidential data might be supplied in an annex.

Article 14 (Control of trade with non-Parties)

31. While most delegations indicated that the article should be deleted, it was suggested that the concept behind it should be retained in the interest of coherence with the WTO rules. Others suggested that the article could be retained if it was reworded so that countries would be encouraged to become Parties.

Article 15 (Implementation of the Convention)

32. It was stated that, as some aspects of the issue of obligations were touched upon elsewhere, the text in Article 15 could be incorporated under other articles. Other aspects went beyond the scope of the PIC procedure.

Article 16 (Technical assistance)

33. There were various proposals to extend the scope of this article to cover transfer of technology, training, administrative and legislative assistance, assistance in the disposal of obsolete chemicals and assistance for transit countries. Some delegations suggested that the concerns covered by the second sentence of the article should be moved to Article 4.

Article 17 (Compliance measures)

34. Many delegations supported the inclusion of the first paragraph of the article, while some proposals for rewording were made. There were suggestions that discussion of the issue would best be deferred to the Conference of the Parties.

Article 18 (Liability and compensation)

35. One side of the debate held that there was no need for a liability regime in the Convention. The contrary view was that the issue of liability and compensation should be put forward to the Conference of the Parties.

Article 19 (Financial resources and mechanisms)

36. Discussion of the article was postponed until the Committee's next session, when there would be a better understanding of the shape of the Convention and of its scope.

Articles 20-32 (Final provisions)

37. After a brief introduction, these articles were referred to the Legal Drafting Group for further consideration.

IV. OTHER MATTERS

Future sessions of the Committee

38. There was wide agreement that, while the Committee had made substantial progress at its present session, many facets of the instrument needed further detailed consideration. A need was seen for at least one further negotiating session, which some representatives felt should be two weeks in duration, and held as soon as possible, so as not to lose the momentum already gained.

39. The Secretariat said that, depending on the venue, the meeting arrangements and other factors, a one-week session could cost between US\$ 500,000 and US\$ 650,000 and a two-week session an additional US\$ 300,000. It reiterated that it was still necessary to reimburse the UNEP Environment Fund for the costs of the current session and appealed for contributions. In addition, it recalled that it was often difficult for a single Government to bear the entire costs of a meeting and encouraged interested Governments to consult with one another and the Secretariat to explore the possibilities of funding for future sessions.

40. The representative of Switzerland said that his Government stood ready to make a significant contribution towards the holding of a five-day session of the Committee in Geneva, possibly in December 1996 or in early 1997.

41. Some delegations indicated that they would prefer to have the next session of the Committee as soon as possible, in order to benefit from the progress and momentum gained at the current session. Such a timeframe would also contribute to fulfilling the mandate given to the Committee by the UNEP Governing Council. In that context, it was also pointed out that the next

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session would merely be a continuation of the current session, and should not require very extensive preparations by delegations. A regional economic integration organization clearly stated its preference against convening the next session so soon after the current one. It stated that a short interval would not allow preparation and would even be counterproductive.

42. The representative of the European Community said that his organization would consider the possibility of organizing a five-day session of the Committee possibly in March, April or May 1997, subject to confirmation.

43. The representative of the Netherlands, reiterating his Government's offer to host the five-day final session of the Committee back-to-back with a two-day diplomatic conference for the formal adoption of the instrument, said that those meetings could be convened in September or October 1997.

44. There was discussion on the different offers, the timing and the duration of future sessions and whether or not the final negotiating session and the diplomatic conference should be held back-to-back. Some delegations expressed reservations about the advisability of holding the diplomatic conference back-to-back with the final negotiating session. The meeting requested the Secretariat to hold consultations on the subsequent sessions of the Committee and to inform the participants of the outcome of those consultations in due course.

45. It was also agreed that the need for an additional session, together with the broader question of the financial difficulties of the drafting process, should be brought to the attention of the governing bodies of FAO and UNEP.

V. ADOPTION OF THE REPORT

46. The present report was adopted by the Committee at its closing session on Friday, 20 September 1996, on the basis of the draft report, which was circulated as document UNEP/FAO/PIC/INC.2/L.1 and Add.1 and Add.2.

VI. CLOSURE OF THE SESSION

47. At the closing session, the representative of the Group of 77 and China requested the Secretariat to ensure, where possible, that, at future sessions of the Committee, interpretation and translation facilities were also provided for the Group's meetings, in the interests of facilitating their discussions and advancing the conclusion of the Committee's work.

48. After the customary exchange of courtesies, at 6.30 p.m. on 20 September 1996 the Chairperson declared the meeting closed.

Annex I

STATUS OF PROPOSED DRAFT ARTICLES FOR AN INTERNATIONAL LEGALLY BINDING
INSTRUMENT FOR THE APPLICATION OF THE PRIOR INFORMED CONSENT
PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS
AND PESTICIDES IN INTERNATIONAL TRADE

1. Articles considered by the Technical Working Group, the Legal Drafting Group and noted in plenary: 3 and 5.
2. Articles considered by the Technical Working Group, the Legal Drafting Group and returned to the Technical Working Group for further consideration and submission to plenary: 5 bis, 6, 7 and 8.
3. Articles considered by the Technical Working Group and the Legal Drafting Group: 9 and 10.
4. Articles considered by the Legal Drafting Group and ready for submission to plenary: 17, Settlement of disputes, Amendments to the Convention.
5. Articles remaining with the Technical Working Group to be discussed: 1, 2 (part), 4, 12, 13, 14, 15, and 16.
6. Articles extensively discussed in the Technical Working Group and ready for discussion by the Legal Drafting Group: 2 (part) and 11.
7. Articles under consideration by the Legal Drafting Group: Final clauses, other than those mentioned in 4 above.
8. Articles still to be considered by the meeting: 19 and articles on "Secretariat" and "Relation to other conventions".
9. The Technical Working Group will continue to work on such annexes to the articles as might be required.

REVISED TEXT OF THE DRAFT ARTICLES

Article 1

Objective 1/

The objective of this Convention 2/ is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect the environment and human, animal and plant life and health from potential harm from such chemicals and to contribute to their environmentally sound use, by promoting and facilitating information exchange about the characteristics of certain potentially hazardous chemicals and pesticides in international trade and by providing for a national decision-making process on the future import of these chemicals and the dissemination of these decisions to Contracting Parties.

Article 2

Definitions 3/

For the purposes of this Convention:

(a) "Chemicals" means a substance whether by itself or in a mixture or preparation and whether manufactured or obtained from nature and include such substances in the following use-categories: pesticidal, industrial or consumer use, but does not include any living organism;

(b) "Banned chemical" means a chemical all uses of which in one or more use-category have for health or environmental reasons, been prohibited by final governmental regulatory action. [Included in this are pesticides or chemicals which have been refused approval for the 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;]

(c) "Severely restricted chemicals" means a chemical virtually all uses of which within one or more use categories for health or environmental reasons have been prohibited by final government regulatory actions, but for

1/ Alternative texts of this article were offered by the African Group, Australia and the European Community.

2/ The term "Convention" is used to denote the international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade, without prejudice to the title or form of the future instrument.

3/ Other terms such as environment, health, chemical products, designated national authority, control action, hazardous pesticide formulations, etc., may need to be added following negotiation and agreement among Governments on the substantive content of these terms.

which certain specific uses remain authorized [or for which a significant reduction of health or environmental risk has been obtained by final government regulatory action];

(c big) "Hazardous pesticide formulations" means those pesticide formulations that are likely to produce severe health [environmental] effects through [limited] 4/ exposure under conditions of use in developing countries or countries in transition;

(d) "International trade" means export or import;

(e) "Export" and "import" mean, in their respective connotations, the movement of a chemical from one Party to another Party, but exclude mere transit operations;

(f) "Party" means a State or regional economic integration organization which has consented to be bound by this Convention and for which the Convention is in force;

(g) "Exporting Party" means a Party exporting chemicals under this Convention;

(h) "Importing Party" means a Party importing chemicals under this Convention;

(i) "Prior informed consent" means the principle that international shipment of a chemical that is banned or severely restricted in order to protect human health or the environment should not proceed without the agreement, where such agreement exists, or contrary to the decision of the designated national authority in the participating importing country;

(j) "Prior informed consent procedure" means the procedure for formally obtaining and disseminating the decisions of importing countries as to whether they wish to receive future shipments of chemicals that have been banned or severely restricted;

(k) "Regional economic integration organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention [or its protocols] and [which] has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it [the instruments concerned].

4/ There was substantial discussion on the inclusion of chronic effects: inclusion of the term "limited" would exclude long-term chronic effects and several Governments wished to include this term to exclude such effects.

Article 3

Scope of the Convention

1. This Convention applies to:
 - (a) Banned or severely restricted chemicals; and
 - (b) [Acutely] hazardous pesticide formulations.
2. This Convention does not apply to:
 - (a) Narcotic drugs and psychotropic substances;
 - (b) Radioactive materials; and
 - (c) Wastes; 5/
 - [(d) Chemical weapons and their precursors;]
 - (e) Pharmaceuticals, including human and veterinary drugs; 6/
 - [(f) Chemicals used as food additives;] 7/
 - (g) Chemicals imported for the purpose of research or analysis in quantities not likely to affect the environment or human health; and 8/
 - (h) Chemicals imported by an individual for his or her own personal use in quantities reasonable for such use and in quantities not likely to affect the environment or human health. 8/

5/ In the Technical Working Group reference to specific conventions was not supported.

6/ A large majority of members of the Technical Working Group wanted this item to be exempted; however, a few members reserved their position.

7/ The Technical Working Group deleted chemical contaminants, including pesticide residues.

8/ The Technical Working Group considered that there was a need for clarification on whether these exemptions would conflict with the national regulatory decision taken regarding these chemicals. Some members proposed that there was a need to quantify the exemptions.

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Article 4

General obligations

[1. The Parties shall, in accordance with this Convention, exchange information on chemicals in international trade with the objective of protecting human health and the environment.]

[2. The Parties shall, in particular, provide information to other Parties on all control actions taken to ban or severely restrict chemicals for health and environmental reasons.]

[3. Parties that import chemicals shall provide information to other Parties on their decisions regarding future imports of chemicals subject to the prior informed consent procedure.]

4. Parties that export chemicals shall take, in accordance with this Convention, such measures, including legislative, administrative and other measures, as may be necessary to ensure that the international shipment of a chemical that is banned or severely restricted in order to protect human health or the environment does not proceed without the prior informed consent of the importing Party.

5. The Parties shall ensure that measures taken to regulate the chemicals under this Convention do not create unnecessary obstacles to, and/or constitute a means of arbitrary or unjustifiable discrimination or disguised restrictions on, international trade.

6. Nothing in this Article shall restrict the right of the Parties to take action more stringently protective of health and the environment than that called for in this Convention.

Article 5

Designated national authorities

1. Each Party shall designate one [or more] national [authority] [authorities] [as appropriate] that shall be authorized to act on its behalf and to perform the administrative functions required by this Convention.

2. Each Party shall [seek to] ensure that its designated national authority or authorities have sufficient resources to perform their tasks effectively.

3. Each Party shall, no later than the date of the entry into force of this Convention for it, notify the name and address of its designated national authority or authorities to the Secretariat. Each Party shall also immediately notify the Secretariat of any subsequent changes.

4. The Secretariat shall forthwith inform the Parties of the notifications it receives under paragraph 3.

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[Article 5 bis

Informing Parties of regulatory measures

Each Party that has adopted a regulatory measure 9/ to ban or severely restrict a chemical shall inform the Secretariat of such measure in writing through its designated national authority or authorities. The notification shall be in accordance with the provisions specified in part I of Annex X. The Secretariat shall forthwith communicate such information to the Parties.]

Article 6

Banned or severely restricted chemicals

1. Each Party which has adopted a regulatory measure to ban or severely restrict a chemical shall notify the Secretariat in writing of such measure through its relevant designated national authority. [In order to be considered for inclusion in the prior informed consent procedure] The notification shall be in accordance with the provisions set out in [parts I and II of] Annex X. 10/

2. A notification pursuant to paragraph 1 of this article shall be made as soon as possible, but not later than 90 days after the date on which the regulatory measure has taken effect.

3. Each Party shall, no later than the date of the entry into force of the Convention for it, notify the Secretariat of the regulatory measures to ban or severely restrict chemicals adopted by it and in effect at the time of the notification 11/ [according to the procedure of Article 6, paragraph 1].

4. The Secretariat shall, as soon as possible after receipt of a notification under paragraph 1, review the notification in order to identify whether the information which it contains is in accordance with [parts I and II of] Annex X.

/ The question whether this provision deals with "final regulatory measures" or "interim regulatory measures" needs to be considered by the Legal Drafting Group in conjunction with the Technical Working Group.

10/ Under this formulation, the following items would be included in part II of Annex X:

(a) Reasons for taking the regulatory measures, including their relevance to human health and the environment;

(b) [A full risk assessment that has been adopted pursuant to national regulatory measures.]

11/ The Technical Working Group's guidance is required on whether the information referred to in this paragraph is intended to trigger the listing of chemicals for inclusion in the prior informed consent procedure or is for the purpose of information exchange only.

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[5. The Secretariat shall forthwith communicate information received pursuant to paragraph 1 to the Parties.]

6. When [a Party] [...Parties] [.... Parties from more than one region] [notifies] [notify] the Secretariat in accordance with paragraph 1, the Secretariat shall forward the notification[s] to [a subsidiary body of the Conference of the Parties]. [The subsidiary body] shall consider, in accordance with the criteria set out in Annex Y, the chemical for inclusion in the prior informed consent procedure.

Article 7

[Acutely] Hazardous pesticide formulations 12/

1. Any Party 13/ experiencing problems with a hazardous pesticide formulation under conditions of use in its territory, [with assistance from] [any relevant international [United Nations] organization] 14/ [and any relevant non-governmental organization] may propose to the Secretariat, through its designated national authority or authorities, the inclusion of that hazardous pesticide formulation in the prior informed consent procedure. The proposal shall be in accordance with the provisions set out in part I of Annex ... to this Convention.

2. The Secretariat shall, as soon as possible after the receipt of a proposal under paragraph 1, review it in order to identify whether the information it contains is in accordance with the Annex referred to in paragraph 1 of this Article. It shall as necessary seek additional information from appropriate sources, including from the designated national authorities of other Parties, relevant international organizations and relevant non-governmental organizations.

3. When the Secretariat has received [...proposals] [a proposal] 15/ regarding a particular hazardous pesticide formulation, and has sufficient

12/ The term "hazardous pesticide formulations" will be defined in Article 2. The question of [acutely] must be resolved in Article 2 (Definitions).

13/ The term "any Party" has to be reconsidered after the final definition of "hazardous pesticide formulations" in Article 2 has been accepted.

/ The Technical Working Group decided to retain the references to the United Nations organizations in brackets. Another suggestions was to replace the last two square brackets concerning the United Nations with: [The United Nations or any of its specialized agencies]. The Legal Drafting Group will require further guidance from the Technical Working Group if it is decided to retain the references to international organizations and/or non-governmental organizations in this article.

/ In the Technical Working Group, opinions differed whether one or more nominations were required to start the procedure. Most participants felt that one nomination was adequate if the quality of the evidence was sufficient.

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information regarding the proposal[s], it shall forward the proposal[s] to [the subsidiary body of the Conference of the Parties]. [The subsidiary body] shall consider the hazardous pesticide formulation for inclusion in the prior informed consent procedure, in accordance with criteria set forth in the Annex referred to in paragraph 1 of this Article.

[Article 8

Decision guidance documents and approval of chemicals

1. For each chemical 16/ that [the subsidiary body of] [the Conference of the Parties] has determined [by consensus] [by rules of procedure as established by the Conference of the Parties] is appropriate for inclusion in the prior informed consent procedure, a prior informed consent decision guidance document shall be prepared in accordance with the guidelines set out in an Annex to this Convention. 17/
2. A draft decision guidance document which has been approved by [the subsidiary body] shall be forwarded to the Conference of the Parties together with any recommendation for inclusion of the chemical in the prior informed consent procedure. The Conference of the Parties shall decide [by consensus] [by rules of procedure as established by the Conference of the Parties] whether to include 18/ the chemical in the prior informed consent procedure and whether to approve the draft decision guidance document.
3. No later than __ days after its approval by the Conference of the Parties, each decision guidance document shall be circulated to all Parties through their designated national authorities.]

16/ The Legal Drafting Group should consider whether the term "each chemical" also includes hazardous pesticide formulations.

17/ When this Annex is being drafted in the Technical Working Group, consideration should be given to the view of the African Group, as contained in document UNEP/FAO/PIC/INC.1/CRP.5. The Annex should define a preparation and review process for the drafting of decision guidance documents and a deadline for party review before submission to the Conference of the Parties. Relevant intergovernmental organizations which have expertise in risk assessment, etc., such as the International Programme on Chemical Safety (IPCS), FAO, etc., should assist in the preparatory process.

18/ The Legal Drafting Group is asked to provide legal text for the following issues:

- (a) Removal of a chemical from the PIC procedure;
- (b) Inclusion of the chemicals already subject to the voluntary PIC procedure, possibly in an article on interim measures.

/...

Article 9

Obligations of importing Parties

1. Each importing Party shall seek to implement as appropriate, legislative and/or administrative measures to ensure suitable control of chemicals included in the prior informed consent procedure in its territory.
2. Each importing Party shall transmit to the Secretariat, within 120 days of receiving a decision guidance document referred to in Article 8, a response concerning its future importation of the chemical concerned.
3. A response shall consist of either:
 - (a) A final decision, pursuant to legislative and/or administrative measures, to:
 - (i) Consent to importation;
 - (ii) Not to consent to importation; or
 - (iii) Consent to importation only under specified conditions; or
 - (b) An interim response, that may contain a statement consenting to importation with or without specified conditions or prohibiting importation during the interim period, which may include:
 - (i) A statement that a final decision is under active consideration;
 - (ii) A request to the Secretariat for further information; and/or
 - (iii) A request to the Secretariat for assistance in evaluating the chemical.

[A response under (a) or (b) shall be related to the use-category.] 19/

4. A final decision shall be accompanied by information on the legislative and/or administrative measures on which the decision is based[, if available.] 20/

5. If an importing Party fails to transmit a response or transmits an interim response that does not address importation, the chemical concerned shall not be exported without the explicit consent of the importing Party, unless:

- (a) It is a pesticide which is registered in the importing Party; or

19/ In the opinion of the Technical Working Group, the inclusion of this sentence is conditional upon the text developed in Articles 6 to 8 pertaining to use-categories.

20/ In the opinion of the Legal Drafting Group, if the words "if available" remain in the paragraph, the verb "shall be accompanied" ought to be replaced by "should be accompanied".

(b) It is a chemical the use of which has been allowed by other governmental action of the importing Party.

6. Each importing Party shall make its import responses available to all natural and legal persons concerned in its territory in accordance with its legislative and/or administrative measures.

[7. A Party shall ensure that a decision to prohibit or restrict the importation of a product is not applied so as to afford protection to domestic production, does not constitute a means of arbitrary or unjustified discrimination between Parties where the same conditions apply, does not constitute an unnecessary obstacle to trade and is not a disguised barrier to international trade.] 21/

8. The Secretariat shall, at least every six months, inform each Party, through its designated national authority or authorities, of the responses received from importing [State] Party and decisions communicated therein, including information on the legislative and/or administrative measures on which the decisions are based[,if available].

Article 10

Obligations of exporting Parties

Each exporting Party shall:

(a) Implement appropriate legislative and/or administrative measures to communicate importing Party responses to natural and legal persons concerned in its territory;

(b) Abide by the terms of an importing [State] Party's response no later than ninety days after the date of dispatch 22/ by the Secretariat of the response;

(c) Take appropriate legislative and/or administrative measures to ensure compliance by exporters of prior informed consent chemicals in its territory:

(i) With importing [State] Party responses;

(ii) With paragraph 5 of Article 9; and

(d) Advise and assist, upon request and as appropriate, designated national authority or authorities in importing Parties:

21/ To be considered by the Technical Working Group in conjunction with Article 4. For this reason, the Legal Drafting Group has not yet reviewed this paragraph.

22/ In the view of the Legal Drafting Group, the reference here should be to the "date of receipt" rather than the "date of dispatch", in case the communication does not reach its intended destination.

- (i) In obtaining further information relating to decisions with respect to a prior informed consent chemical; and
- (ii) To strengthen their capacities and capabilities to control imports as well as to manage chemicals safely. 23/

Article 11

Export notification 24/

1. Each exporting [country that is a Party] [Party] shall notify, when [the first] [an] export 25/ occurs to each importing Party of a [chemical that is banned or severely restricted in its territory] [PIC chemical], this export through its designated national authority to the [relevant] designated national authority of the importing country.

2. The export notification shall contain the information set out [in an Annex to this Convention] [which shall include information on the toxicity of the product and the precautions to be taken when using this product].

3. Each Party shall, on receipt of information of exports from its territory, ensure the prompt transmittal of that information to the designated national authority in the importing country concerned.

4. [A subsequent notification shall occur after [a governmental regulatory action] [major change concerning the restriction [or labelling] of the chemical.]]

5. [For any subsequent export of the same chemical between the same Parties, the exporting country shall ensure that the export is accompanied by

23/ Some members of the Technical Working Group wanted subparagraph (d) (ii) moved to Article 16 and some wanted it moved to Article 4.

24/ Several countries indicated that the objectives and aims of notifications should be clarified. The need was expressed to quantify a minimum quantity below which no notification would be necessary. One country suggested 10 kg as the threshold.

The inclusion of transit countries was proposed: this matter must still be discussed.

The need was pointed out for adequate timing of transmission of notification documents before export shipments, to allow countries to make decisions. In addition, a number of countries expressed the need for notification documents to be in a language that is understood in the receiving country.

The concept of a detailed first notification followed by subsequent notifications with reduced information was reiterated by a number of countries.

25/ Donations are considered to be covered by the term export.

/...

the reference to the most recent notification.] [Upon request from the importing Party, provide the information set out in an Annex to this Convention.]

[Article 12

Classification, packaging and labelling]

[1. Each Party exporting any chemical subject to the prior informed consent procedure shall ensure that it is clearly labelled as such.]

[2. Parties shall ensure that chemicals exported from their territories are subject to no less stringent requirements of classification, packaging and labelling than comparable products destined for use in the Party of export.]

Article 13 26/

[Information exchange]

1. Parties receiving notifications and information regarding exports under [this Convention] shall take account of the need to protect proprietary rights and the confidentiality of data received.

2. The following data shall not be regarded as confidential:

(a) The name of the substance;

(b) The name of the preparation;

[(c) The names of the substances contained in the preparation and their percentage in the preparation;]

(d) The names of the main impurities in the substances [and their quantities];

(e) The name of the manufacturer or exporter;

(f) Information on the precautions to be taken, including the category of danger, the nature of the risk and the relevant warnings;

(g) Physico-chemical data concerning the substances;

(h) The summary results of the toxicological and ecotoxicological tests;

(i) The possible ways of rendering the substance harmless;

(j) The information contained in the safety data sheet;

/ A Canadian proposal will be considered in further discussions in the Technical Working Group.

/...

(k) The country of destination;

[(l) The name [and the address] of the importer;]

[(m) Information on precautions to be taken, including category of danger and risk and safety advice; and

[(n) Summary of regulatory restrictions and reasons for them.]

3. The Parties shall establish [through their designated national authorities] appropriate internal procedures [and designate an appropriate authority] for the receipt and handling of information received under this Convention.

Article 14

Control of trade with non-Parties

[1. Non-Parties that are in compliance with the substantive provisions of this Convention should, as far as the application of trade measures is concerned, be treated on an equal basis with Parties that are in compliance.]

Article 15

Implementation of the Convention

1. The Parties agree to take such measures as may be necessary to strengthen, as appropriate, existing national infrastructures and institutions in both importing and exporting Parties. Such measures may include:

(a) Adopting national legislation or amending existing legislation to enable the taking of the necessary measures to implement this Convention, including, in particular, the prevention of exports that contravene prior informed consent decisions taken by importing country Parties in accordance with this Convention;

[(b) Establishing national registers and databases, including safety information, for chemicals; and]

[(c) Promoting voluntary agreements and initiatives by industry.]

[2. Each Party shall ensure [take appropriate measures to ensure] to the extent practicable, that each individual has appropriate access to information [on stockpiles], [chemical handling, accident management], on environmentally safer alternatives and [on emission inventories] concerning the chemicals subject to prior informed consent procedures under this Convention.]

[3. The Parties agree to employ good-management practices in the sale and purchase of chemicals, which include: ensuring that the products meet internationally agreed specifications (such as those referred to in the

International Code of Conduct on Distribution and Use of Pesticides); purchase the correct amount of pesticide products, ensure that the pesticide product used is appropriate to the problem; consider other provisions to address problems relating to the shipment and stockpiling of obsolete pesticides, in coordination with the relevant provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.]

[4. The Parties agree to cooperate, directly or, where appropriate, through competent international organizations, for the implementation of this Convention at the subregional, regional and global levels.]

Article 16

Technical assistance

1. The Parties shall, taking into account in particular the needs of developing countries and countries with economies in transition, cooperate in promoting technical assistance for the development of the infrastructure and necessary capacity to manage chemicals for the implementation of this Convention. Parties with more advanced chemical-regulating programmes should provide technical assistance, including training to other Parties in developing infrastructure and capacity to manage chemicals within their countries.

[Article 17

Compliance

The Conference of the Parties shall, as soon as practicable, consider [and approve] [the need to develop] procedures and institutional mechanisms for determining non-compliance with the provisions of this Convention and for treatment of Parties found to be in non-compliance.]

[Article 18

Liability and compensation]

[1. The Conference of the Parties shall examine the issue of liability and compensation.]

Article 19

Financial resources and mechanisms

[to be developed] 27/

/ A discussion on financial resources and mechanisms is contained in document UNEP/FAO/PIC/INC.2/4.

Article 20

Conference of the Parties

[to be developed] 28/

Article 21

Settlement of disputes

[Alternative 1:

1. Parties shall settle any dispute between them concerning the interpretation or application of the Convention through negotiation or other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depository that, with respect to any dispute concerning the interpretation or application of the Convention, it [recognizes] [is unable to recognize] one or both of the following means of dispute settlement as compulsory [in relation to any Party accepting the same obligation]:

(a) Arbitration in accordance with procedures adopted by the Conference of the Parties in an Annex as soon as practicable 29/; and

(b) Submission of the dispute to the International Court of Justice.

3. A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedure referred to in paragraph 2 (a).

4. A declaration made pursuant to paragraph 2 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depository.

5. [The expiry of a declaration, a notice of revocation or] a new [such a] declaration shall not in any way affect proceedings pending before an arbitral tribunal or the International Court of Justice unless the parties to the dispute otherwise agree.

/ A discussion paper on the Conference of the Parties is contained in document UNEP/FAO/PIC/INC.2/2.

/ If time permits, the Legal Drafting Group would wish to develop annexes on arbitration and conciliation during the course of the third session of the Intergovernmental Negotiating Committee. The draft of such annexes will be based on the language of the Convention on Biological Diversity, as set out in the appendix to document UNEP/FAO/PIC/INC.2/3.

/...

6. If the parties to a dispute [have not accepted] [are not subject to] a common compulsory means of dispute settlement, in accordance with paragraph 2 above, and if they have not been able to settle their dispute within twelve months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted to conciliation at the request of any Party to the dispute in accordance with the procedure adopted by the Conference of the Parties in an annex as soon as practicable.]

[Alternative 2:

(Canadian proposal for settlement of disputes)

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Convention, and shall make every effort through cooperation and consultation to arrive at a mutually satisfactory resolution of any matter that may affect its operation. 30/

2. Each Party consents to submit to binding arbitration, when requested to do so by a claimant Party pursuant to Annex ..., any dispute concerning the interpretation or application of this Convention.

3. The Parties may submit to the conciliation commission, pursuant to Annex ..., any dispute concerning the interpretation or application of this Convention, provided that Parties to the conciliation proceedings agree.

4. This Article shall apply with respect to any protocol under this Convention except as otherwise provided in that protocol. 31/

Article 22

Adoption and amendment of annexes 32/

1. Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to procedural, scientific, technical or administrative matters.

2. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:

/ This provision is modeled on Article 2003 of the North American Free Trade Agreement.

/ This provision is modelled on paragraph 7 of the original draft article on dispute settlement, as contained in document UNEP/FAO/PIC/INC.2/3.

/ Reference: Convention on Biological Diversity, Article 30;
United Nations Framework Convention on Climate Change, Article 16.

/...

(a) Additional annexes shall be proposed and adopted according to the procedure laid down in Article — 33/;

(b) Any Party that is unable to approve an additional annex shall so notify the Depositary, in writing, within one year from the date of the communication of the adoption of the additional annex by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous declaration of objection in respect of any additional annex and the annexes shall thereupon enter into force for that Party subject to subparagraph (c) below; and

(c) On the expiry of one year from the date of the communication by the Depositary of the adoption of an additional annex, the annex shall enter into force for all Parties to this Convention which have not submitted a notification in accordance with the provisions of subparagraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention.

4. If an additional annex or an amendment to an annex is related to an amendment to this Convention, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention enters into force.

Article 23

Protocols 34/

1. The Conference of the Parties may at a meeting adopt protocols.

2. The text of any proposed protocol shall be communicated to the Parties by the Secretariat at least six months before such a meeting.

3. The requirements for the entry into force of any protocol shall be established by that protocol.

4. Only Parties to this Convention may be Parties to a protocol.

5. Decisions under any protocol shall be taken only by the Parties to the protocol concerned.

/ Include a cross-reference to the Article governing amendments to the Convention.

/ Reference: United Nations Framework Convention on Climate Change, Article 17; Convention on Biological Diversity, Articles 28 and 32; Vienna Convention, Articles 8 and 16.

/...

Article 24

Right to vote 35/

1. Subject to paragraph 2 below, each Party to this Convention shall have one vote.
2. A regional economic integration organization [that is a Party to this Convention together with one or more of its member States], on matters within its competence, may exercise a number of votes equal to the number of its member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

Article 25

Signature 36/

This Convention shall be open for signature at ___ by all States and any regional economic integration organization [to which its Member States have transferred competence in respect of matters governed by this Convention] 37/ from __ to __, and at the United Nations Headquarters in New York [the Headquarters of the Food and Agriculture Organization of the United Nations in Rome] from __ to __.

/ Reference: Convention on Biological Diversity, Article 31; United Nations Framework Convention on Climate Change, Article 18; Convention to Combat Desertification, Article 32; Vienna Convention, Article 15.

/ Reference: Convention on Biological Diversity, Article 33; Vienna Convention, Article 12.

/ The term "regional economic integration organization" may be defined at the beginning of the text, so that it does not have to be explained every time it is referred to in the text. A possible definition may read as follows: "Regional economic integration organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention [or its protocols] and [which] has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it [the instruments concerned]." (Reference: Article 2 of the Convention on Biological Diversity; Article 1 of the United Nations Framework Convention on Climate Change).

/...

Article 26Ratification, acceptance, approval or accession 38/

1. This Convention shall be subject to ratification, acceptance or approval by States and by any regional economic integration organizations. It shall be open for accession by States and by regional economic integration organizations [to which its member States have transferred competence in respect of matters covered by this Convention] 39/ from the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization which becomes Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.
3. In its instrument of ratification, acceptance, approval or accession, a regional economic integration organization shall declare the extent of its competence in respect of the matters governed by this Convention. Any such organization shall also inform the Depositary, who shall in turn inform the Parties, of any relevant modification in the extent of its competence.

Article 27Entry into force 40/

1. This Convention shall enter into force on the [ninetieth] 41/ day after the date of deposit of the [twentieth] 42/ [thirtieth] 43/

/ Reference: Convention on Biological Diversity, Articles 34-35; Vienna Convention, Articles 13-14; United Nations Framework Convention on Climate Change, Article 22.

/ See footnote 37 above.

/ Reference: United Nations Framework Convention on Climate Change, Article 23; Convention on Biological Diversity, Article 36.

/ Reference: Convention on Biological Diversity, Article 36, paragraph 1; United Nations Framework Convention on Climate Change, Article 23, paragraph 1; Convention to Combat Desertification, Article 36, paragraph 1; Basel Convention, Article 25, paragraph 1; Vienna Convention, Article 17, paragraph 1.

/ Reference: Vienna Convention, Article 17, paragraph 1; Basel Convention, Article 25, paragraph 1.

/...

[fiftieth] 44/ instrument of ratification, acceptance, approval or accession.

2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the [twentieth] [thirtieth] [fiftieth] instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purpose of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 28

Reservations 45/

No reservation may be made to this Convention.

/ Reference: Convention on Biological Diversity, Article 36, paragraph 1.

/ Reference: United Nations Framework Convention on Climate Change, Article 23, paragraph 1; Convention to Combat Desertification, Article 36, paragraph 1.

/ Reference: Convention on Biological Diversity, Article 37; United Nations Framework Convention on Climate Change, Article 24.

/...

Article 29

Withdrawal 46/

1. At any time after [two] 47/ [three] 48/ [four] 49/ years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it is a Party.

Article 30

Interim arrangements 50/

[to be developed]

Article 31

Depositary 51/

The Secretary-General of the United Nations [Director-General of the Food and Agriculture Organization of the United Nations] shall be the Depositary of this Convention and of any protocols adopted in accordance with Article __. 52/

/ Reference: Convention on Biological Diversity, Article 38; United Nations Framework Convention on Climate Change, Article 25.

/ Reference: Convention on Biological Diversity, Article 38, paragraph 1.

/ Reference: United Nations Framework Convention on Climate Change, Article 25, paragraph 1; Convention to Combat Desertification, Article 38, paragraph 1; Basel Convention, Article 27, paragraph 1.

/ Reference: Vienna Convention, Article 19, paragraph 1.

/ Reference: Convention on Biological Diversity, Article 40.

/ Reference: Framework Convention on Climate Change, Article 19; Convention on Biological Diversity, Article 41.

/ Include a cross-reference to the article governing protocols.

/...

Article 32Authentic texts 53/

The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at _____ on this __ day of __, one thousand nine hundred and ninety-seven.

/ Reference: United Nations Framework Convention on Climate Change, Article 26; Convention on Biological Diversity, Article 42.

/...

Annex X 54/

INFORMATION TO ACCOMPANY A NOTIFICATION OF FINAL
REGULATORY ACTION

A. The Party/Ministry taking the final regulatory action, with address or contact information (designated national authority)

B. Mandatory information related to the chemical and regulatory action, which shall include:

Chemical specific and use category information

- (a) Identity of chemical;
- (b) Common name;
- (c) Chemical name (IUPAC);
- (d) Trade name(s)/name(s) of preparation; and
- (e) Code numbers: CAS number/other numbers.

Information specific to regulatory action

Description of regulatory actions including:

- (a) Use category/categories, including major use areas within each category;
- (b) Use(s) controlled;
- (c) Summary of control action;
- (d) Specific types and approximate proportion of use controlled;
- (e) Effective date;
- (f) Reference to regulatory document;
- (g) Reasons for supporting the control action relevant to human and the environment;
- (h) Findings concerning the specific health or environmental risks;
- (i) Indication of benefits; and

/ Both Annex X and Annex Y were considered by the Technical Working Group and it was decided that the elements they contained merited further consideration.

/...

(j) Other risk reduction measures taken, if any, in addition to the final regulatory action.

C. Other information which should be provided to the extent possible. The documentation should indicate the significance of the action for the country:

- (a) Information related to alternatives, if available;
- (b) Indication whether action is based on a risk assessment consisting of a national review of scientific data, and whether supporting documentation is available for review by Parties for consideration of inclusion in the prior informed consent procedure (note: documentation should be sufficient to meet the criteria outlined in Annex Y. Parties may include such documentation at the time of the notification or at a later date);
- (c) The extent of the use prior to the control action, if available;
- (d) The extent of risk reduction expected by implementing control action, if available;
- (e) Indication of production and export amounts, if available;
- (f) Economic data as appropriate;
- (g) The number of uses subject to the action; the number of uses remaining;
- (h) The specific types and approximate proportion of uses still allowed; and
- (i) An indication of the likelihood of relevance of the action to other countries, to the extent possible.

CRITERIA FOR THE INCLUSION OF BANNED OR SEVERELY RESTRICTED
CHEMICALS IN THE PRIOR INFORMED CONSENT PROCEDURE

The criteria for consideration of chemicals in the prior informed consent procedure may include:

1. Final regulatory action(s) led to a significant decrease in the number of uses in the use category, subject to final regulatory action;
2. The final regulatory action(s) led or would be expected to lead to a significant decrease in the volume used;
3. The final regulatory action(s) led to an actual reduction of risk or would be expected to reduce the risk for human health or the environment;
4. There are indications of continuing trade in the chemical at the global level;
5. Before the final regulatory action(s) the use(s) for which the control action was initiated were significant;
6. The final regulatory action(s) were the result of use or misuse; or
7. The final regulatory action(s) were taken as a consequence of a risk assessment consisting of a national review of scientific data which concluded that a ban or severe restriction was necessary for adequate protection of human health or the environment. For this purpose documentation should be provided which shows that:
 - (a) Data should be generated according to scientifically recognized methods and test guidelines, pursuant to good laboratory practices;
 - (b) Data reviews should be performed and documented according to generally recognized scientific principles and procedures;
 - (c) Documentation should demonstrate that the regulatory action was based on an assessment and characterization, as appropriate to the circumstances, of the risks to human health and the environment, using risk assessment methodologies widely recognized; and
 - (d) Countries shall take into consideration relevant human and/or environmental exposure estimates, and have performed an exposure assessment.]

/ See footnote to Annex X above.