



**United Nations
Environment Programme**

Distr.
GENERAL



UNEP

UNEP/FAO/PIC/INC.7/6
19 June 2000



**Food and Agriculture Organization
of the United Nations**

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

Seventh session

Geneva, 30 October – 3 November 2000

Item 4 (e–i) of the provisional agenda*

IMPLEMENTATION OF THE INTERIM PRIOR INFORMED CONSENT PROCEDURE

Issues arising out of the first session of the Interim Chemical Review Committee

Note by the secretariat

1. The purpose of this note is to support the Intergovernmental Negotiating Committee's discussions of agenda item 4 (e), (f), (g), (h) and (i). These sub-items reflect the outcome of the Interim Chemical Review Committee's deliberations on some of the issues it was requested by the Intergovernmental Negotiating Committee to review at its first session, or issues that arose during its discussions. This note provides relevant background information and a summary of the Interim Chemical Review Committee's deliberations and recommendations on each issue. Also included, where appropriate, are the secretariat's suggestions for possible action by the Intergovernmental Negotiating Committee.

A. Incident report form (item 4 (e))

1. Background

2. During its discussion, at its first session, on developing operational procedures for its mandated tasks relating to article 6, on severely hazardous pesticide formulations, the Interim Chemical Review Committee agreed that, in view of the importance to developing countries and countries with economies in transition of being able effectively to meet the requirements of article 6 on severely hazardous pesticide formulations, full advantage must be taken of all opportunities to collect relevant information.

* UNEP/FAO/PIC/INC.7/1.

K0019049 130700

3. In addition, it was agreed that full advantage should be taken of the large number of training and assistance projects related to pesticides management under way in countries, by providing copies of a guidance document on reporting pesticide poisoning incidents to such projects and encouraging them to make use of that material. A cooperative approach of that kind would facilitate the identification of problematic pesticide formulations and their inclusion in the Convention.

4. Accordingly, the Interim Chemical Review Committee recommended that a one-page incident report form should be developed in conjunction with a simple guidance document on the completion of the form and the development of proposals in line with article 6 and annex IV, part 1, of the Convention. The guidance document would also provide reference to the use of the information relevant to the Convention and request that the information be forwarded to the secretariat.

5. The recommendation to the Intergovernmental Negotiating Committee on the one-page incident report form is as follows (UNEP/FAO/PIC/ICRC.1/6, annex I, sect. C):

“The Interim Chemical Review Committee recognizes the need to develop a one-page incident report form in conjunction with a simple guidance document on the completion of the form and the development of proposals in line with article 6 and annex IV, part 1, of the Convention. The Committee therefore recommends that the Intergovernmental Negotiating Committee should encourage States, bilateral and multilateral aid agencies, intergovernmental organizations and non-governmental organizations to make use of the incident report form and guidance document on reporting pesticide poisoning incidents in their projects.”

6. The Interim Chemical Review Committee also decided to establish several task groups to work inter-sessionally on the priority tasks they had identified during the session. Specifically, a task group was assigned to prepare a specific form for submission of proposals under article 6 (based on annex IV, part 1), to develop an incident report form and to develop guidance on reporting pesticide poisoning incidents and developing proposals under article 6.

7. The results are expected to be discussed at the second session of the Interim Chemical Review Committee, scheduled for early 2001.

2. Possible action by the Intergovernmental Negotiating Committee

8. The Intergovernmental Negotiating Committee may wish to encourage the Interim Chemical Review Committee to continue its development of a one-page incident report form in conjunction with a simple guidance document on the completion of the form and the development of proposals in line with article 6 and annex IV, part 1, of the Convention. It may also wish to recommend that States, bilateral and multilateral aid agencies, intergovernmental organizations and non-governmental organizations make use of the incident report form and guidance document on reporting pesticide poisoning incidents in their projects, once it is available and has been circulated via the secretariat.

B. Assistance to countries in identifying severely hazardous pesticide formulations (item 4 (f))

1. Background

9. During the discussion referred to above, the Interim Chemical Review Committee also made the following recommendation related to assistance to countries in identifying severely hazardous pesticide formulations (UNEP/FAO/PIC/ICRC.1/6, annex I, sect. D):

“The Committee recommends that the Intergovernmental Negotiating Committee encourage States, bilateral and multilateral aid agencies and non-governmental organizations to assist

developing countries and countries with economies in transition in implementing specific projects to identify severely hazardous pesticide formulations causing problems under conditions of use in those countries.”

2. Possible action by the Intergovernmental Negotiating Committee

10. The Intergovernmental Negotiating Committee may wish to consider, in order to support the effective implementation of the provisions of article 6 of the Convention, making a recommendation encouraging States, bilateral and multilateral aid agencies and non-governmental organizations to assist developing countries and countries with economies in transition in implementing specific projects to identify severely hazardous pesticide formulations causing problems under conditions of use in those countries.

C. Contaminants (item 4 (g))

1. Background

11. At its sixth session, in paragraph 3 of decision INC-6/3, the Intergovernmental Negotiating Committee requested the Interim Chemical Review Committee to review the chemical maleic hydrazide, addressing, in particular, the impurity hydrazine and the overall policy issues related to adding chemicals to the PIC procedure on the basis of control actions related to contaminants within the chemical, rather than to the chemical itself and, should it so decide, review and revise, as appropriate, the draft decision guidance document for that chemical for presentation to the Intergovernmental Negotiating Committee at its next session.

12. At its first session the Interim Chemical Review Committee discussed the issue of contaminants and the question of whether chemicals could be included in the PIC procedure on the basis of specified levels of contaminants, rather than the nature of the chemicals themselves. It identified a number of different possible scenarios involving contaminants and their possible effect on the candidature of chemicals for PIC listing of pesticides. Its discussion is reflected in paragraphs 32 to 38 of UNEP/FAO/PIC/ICRC.1/6.

13. The Interim Chemical Review Committee decided to refer the issue of chemicals whose use had been banned or severely restricted on the basis of specified levels of contaminants back to the Intergovernmental Negotiating Committee for further consideration. It also decided not to address the draft decision guidance document on maleic hydrazide until after the seventh session of the Intergovernmental Negotiating Committee.

14. The Interim Chemical Review Committee made the following recommendation related to the issue of contaminants (UNEP/FAO/PIC/ICRC.1/6, annex I, sect. E):

“The Committee recommends that the Intergovernmental Negotiating Committee adopt a policy on contaminants which would include final regulatory actions to ban a pesticide that had been taken by at least two countries in two PIC regions on the basis of a contamination contained in that substance, where the notification also met the requirements of annexes I and II of the Convention.”

2. Possible action by the Intergovernmental Negotiating Committee

15. In order to allow the Interim Chemical Review Committee to consider the draft decision guidance document for maleic hydrazide at its next session, the Intergovernmental Negotiating Committee may wish to consider at its seventh session adopting the following general policy to guide the Interim Chemical Review Committee in its consideration of whether to recommend that a pesticide containing a contaminant be made subject to the interim PIC procedure, in line with article 5, paragraph 6, of the Convention:

The Interim Chemical Review Committee may recommend a pesticide that contains a contaminant for inclusion in the interim PIC procedure, in line with article 5, paragraph 6, of the Convention, when at least one notification of final regulatory actions to ban the pesticide on the basis of a contamination contained in that substance has been reported from each of two interim PIC regions and where the notifications also meet the requirements of annexes I and II of the Convention.

D. Submission of notifications of final regulatory action for chemicals that are already subject to the interim prior informed consent procedure (item 4 (h))

1. Background

16. As reflected in paragraph 19 of the report of the first session of the Interim Chemical Review Committee, during the Committee's discussion, following a general presentation by the secretariat of the PIC procedure in the Convention, one expert from a developing country drew attention to the difficulty faced by countries such as hers in providing the information required in annex I of the Convention. In particular, she wondered whether it was really necessary for countries to submit notifications for chemicals already included in the PIC procedure, and for which they had provided an import response; or for which they had no history of use, and which they had already banned.

17. The Chair of the Interim Chemical Review Committee suggested that the Intergovernmental Negotiating Committee might be requested to consider a procedure whereby, in such cases, it would be sufficient for the country concerned merely to notify the secretariat of its action.

2. Considerations regarding submission of notifications of final regulatory action for chemicals that are already subject to the interim prior informed consent procedure

18. Some Parties ^{1/} have raised questions, including whether the requirement to provide all the information stipulated in annex I of the Convention for a chemical which is already included in the PIC procedure and for which a decision guidance document, providing extensive information on that chemical, already exists, requires too many resources, especially for developing countries and countries with economies in transition. Some Parties have suggested that consideration could be given to waiving the requirement to notify final regulatory actions on chemicals that have already been included in the procedure, as such notifications would be irrelevant to the considerations relating to identifying and deciding on which chemicals should be included in the PIC procedure. Others have expressed concern that this might be inimical to the effective implementation of other provisions of the Convention.

^{1/} During the interim period before the Convention enters into force, a "Party" is understood to mean any State or regional economic integration organization having nominated a designated national authority or authorities for the purpose of participating in the interim PIC procedure.

19. Article 5 of the Convention requires that Parties provide notification for each final regulatory action taken to ban or severely restrict a chemical. When the Convention enters into force for a Party, it must also notify the secretariat in writing of each final regulatory action in effect at that time. No exemption is made for chemicals already subject to the interim PIC procedure.

20. When the secretariat receives a notification of final regulatory action, it verifies, with the help of a checklist, whether the notification contains all the information required by annex I of the Convention. If the notification is verified to contain all the information required, a full summary of the notification is published in part A of appendix I of the next PIC Circular. If it is found not to contain all the information required by annex I, the submitting Party is informed of the result of the verification and is requested to consider whether it wishes to provide additional information, in order to ensure that it contains all the information required by annex I. If no additional information is received, the notification is listed in part B of appendix I of the next PIC Circular.

21. The submission of notifications of final regulatory action to ban or severely restrict a chemical in line with article 5, in addition to serving as a basis for identifying and deciding on which chemicals should be included in the PIC procedure, also has information exchange functions described in other articles of the Convention. Relevant Convention requirements relating to notifications of final regulatory actions, import response for a chemical subject to the interim PIC procedure and final regulatory actions to ban or severely restrict a chemical are excerpted in the annex to the present note.

22. The requirements laid down in annex I on the specific information to be contained in a notification of final regulatory action serve mainly to provide the Interim Chemical Review Committee with sufficient information to consider the criteria for listing banned or severely restricted chemicals set out in annex II of the Convention and make a recommendation on whether to include a chemical in the procedure. To apply these information requirements to notifications on a chemical already subject to the interim PIC procedure for the same category for which it was included will be resource-intensive.

23. On the other hand, notifications on regulatory actions to ban or severely restrict a chemical already subject to the PIC procedure may serve as a basis for future updating of information on regulatory action in the decision guidance documents for that chemical. These notifications would be of special relevance if the reported regulatory action was based on different health or environmental concerns, was for another category of use, or, in the case of a severe restriction, provided for a substantially different severe restriction of use from the notifications on which the decision to include the chemical in the procedure was based. Such information might lead, where relevant, to revision of the original decision guidance document by the Interim Chemical Review Committee, adoption of the revised decision guidance document by the Intergovernmental Negotiating Committee and, ultimately, changes in Parties' responses regarding future import of the chemical in question.

3. Possible action by the Intergovernmental Negotiating Committee

24. The Intergovernmental Negotiating Committee may wish to consider whether it might be appropriate to adopt a specific policy regarding submission of notifications of final regulatory action for chemicals that are already subject to the interim prior informed consent procedure and their processing in accordance with articles 5 and 7.

E. Operational procedures for the Interim Chemical Review Committee (item 4(i))

1. Background

25. At its sixth session, the Intergovernmental Negotiating Committee, in decision INC-6/2, which establishes the Interim Chemical Review Committee, decided that this Committee, consistent with the provisions of the Convention, in particular its articles 5, 6 and 7, should have the following functions and responsibilities:

(a) Making recommendations on the inclusion of banned and severely restricted chemicals: reviewing the information provided in notifications of final regulatory actions and, in accordance with the criteria set out in annex II of the Convention, recommending to the Intergovernmental Negotiating Committee whether the chemical in question should be made subject to the interim PIC procedure;

(b) Making recommendations on the inclusion of severely hazardous pesticide formulations: reviewing the information provided in proposals for the inclusion of a severely hazardous pesticide formulation in the interim PIC procedure and, in accordance with the criteria set out in part 3 of annex IV of the Convention, recommending to the Intergovernmental Negotiating Committee whether the chemical in question should be made subject to the interim PIC procedure;

(c) Preparing draft decision guidance documents: specifically, for each chemical that the Interim Chemical Review Committee has decided to recommend to be made subject to the interim PIC procedure, preparing a draft decision guidance document, which should, at a minimum, be based on the information specified in annex I of the Convention or, as the case may be, annex IV, and include information on uses of the chemical in a category other than the category for which the final regulatory action applies.

26. The Intergovernmental Negotiating Committee also decided that the Interim Chemical Review Committee should consider a mechanism for collecting and disseminating comments received on decision guidance documents as they were developed, so that countries taking a decision based on those documents were fully aware of the reasons behind the control action.

27. The Interim Chemical Review Committee, at its first session, discussed and agreed on operational procedures to guide its work, based on the functions and responsibilities mandated to it by the Intergovernmental Negotiating Committee. It approved a flow chart setting out a process for drafting decision guidance documents.

2. Possible action by the Intergovernmental Negotiating Committee

28. The Intergovernmental Negotiating Committee may wish to endorse the proposed process for drafting decision guidance documents as contained in the flow chart attached to the report of the first session of the Interim Chemical Review Committee (UNEP/FAO/PIC/INC.7/4, attachment, annex IV, part A).

AnnexA. Convention requirements relating to notifications of final regulatory action

1. Article 5, paragraphs 1 and 2, of the Convention require each Party to notify the secretariat in writing of each final regulatory action taken to ban or severely restrict a chemical. When the Convention enters into force for a Party, it must also notify the secretariat in writing of each final regulatory action in effect at that time. No exemption is made for chemicals already subject to the PIC procedure.
2. Article 5, paragraph 3, requires the secretariat to verify, as soon as possible and in any event no later than six months after receipt, whether the received notification contains the information required by annex I. If the notification contains the information required, the secretariat must forthwith forward to all Parties a summary of the information received. Such summaries, together with a synopsis of the notifications received, including information regarding those notifications which do not contain all the information required by annex I, is communicated to the Parties every six months by the secretariat. No exemption is made for chemicals already subject to the PIC procedure.
3. Article 5, paragraphs 5 and 6, require that the secretariat, when it has received at least one notification from each of two PIC regions regarding a particular chemical that it has verified meet the requirements of annex I, forwards these notifications to the Chemical Review Committee. The Committee reviews the information provided in the notifications and, in accordance with the criteria set out in annex II, recommends to the Conference of the Parties whether the chemical in question should be made subject to the PIC procedure. No exemption is made for chemicals already subject to the PIC procedure.

B. Convention requirements relating to import response for a chemical subject to the PIC procedure

4. Article 10 requires, *inter alia*, that each Party transmit to the secretariat, as soon as possible, and in any event no later than nine months after the date of dispatch of the corresponding decision guidance document, a response concerning the future import of the chemical concerned. The response shall consist of either a final decision, pursuant to legislative or administrative measures, or an interim response. A final decision should be accompanied by a description of any legislative or administrative measures upon which it is based. Every six months, the secretariat must inform all Parties of the responses it has received. Such information must include a description of the legislative or administrative measures on which the decisions have been based, where available.

C. Other Convention requirements relating to final regulatory action to ban or severely restrict a chemical

5. Article 11 requires each Party to ensure that a chemical subject to the PIC procedure is not exported from its territory to any importing Party that, in exceptional circumstances, has failed to transmit a response or has transmitted an interim response that does not contain an interim decision. Exceptions include the case of chemicals for which evidence exists that they have previously been used in, or imported into, the importing Party and in relation to which no regulatory action to prohibit their use has been taken.
6. Article 12 requires a Party, when a chemical that is banned or severely restricted by that Party is exported from its territory, to provide an export notification to the importing Party. The exporting Party must also provide an updated export notification after it has adopted a final regulatory action that results in a major change concerning the ban or severe restriction of that chemical. Further to this article,

annex V provides that export notifications must contain, among other information, the name of the banned or severely restricted chemical and a summary of the information specified in annex I that is to be provided to the secretariat in accordance with article 5.

7. Article 13 obliges each Party to require, without prejudice to any requirements of the importing Party, that both chemicals listed in annex III and chemicals banned or severely restricted in its territory are, when exported, subject to labelling requirements that ensure adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards.

8. Article 14 requires each Party, as appropriate and in accordance with the objective of the Convention, to facilitate, inter alia, the provision of publicly available information on domestic regulatory actions relevant to the objectives of this Convention and the provision of information to other Parties, directly or through the secretariat, on domestic regulatory actions that substantially restrict one or more uses of the chemical, as appropriate.
