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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

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Item 5 (e) of the provisional agenda*

PREPARATION FOR THE CONFERENCE OF THE PARTIES: ISSUES ASSOCIATED WITH THE
DISCONTINUATION OF THE INTERIM PRIOR INFORMED CONSENT PROCEDURE

Note by the secretariat

1. 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 held its eighth session in Rome from 8 to 12 October 2001. At that session, the Committee considered a note prepared by the secretariat on issues associated with the discontinuation of the prior informed consent (PIC) procedure (UNEP/FAO/PIC/INC.8/16) under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.
2. That note had been prepared at the request of the seventh session of the Negotiating Committee (decision INC-7/7). It identified options and proposes feasible solutions that could be reflected in recommendations to the Conference of the Parties or the governing bodies of the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Environment Programme (UNEP) related to the discontinuation of the interim PIC procedure.
3. In its consideration of this issue at its eighth session, the Negotiating Committee established a Working Group to sort the relevant issues into two main categories: those on which consensus could be reached on how to move forward with recommendations to the Conference of the Parties, and issues for which no consensus could be reached but which might be clarified and could be brought to the attention of the Negotiating Committee at its ninth session for further discussion. The Working Group reached consensus on ten of the issues to be examined. For the remaining issues, they succeeded in clearly delineating options for further consideration. A copy of the full report of the Working Group is attached as

* UNEP/FAO/PIC/INC.9/1.

annex I to the present document. At its eighth session, the Negotiating Committee took note of the work of the Working Group and agreed to continue its examination of the issue at its ninth session. The present note has been prepared to facilitate the follow-up to the work accomplished by the Working Group. It focuses on the five outstanding issues and reproduces the relevant text and proposed options identified in the report of the Working Group.

I. INTRODUCTION

4. At its eighth session, the Intergovernmental Negotiating Committee agreed that the following four principles were a sound basis for its work and should serve as guidance in a discussion of the issues associated with the discontinuation of the interim PIC procedure and the consideration of feasible solutions:

(a) The progress achieved under the interim PIC procedure should be maintained and the experience gained in its application retained;

(b) States and regional economic integration organizations that have not ratified or acceded to the Convention at the time of its entry into force should be given sufficient time to do so. This transition period should allow for a gradual shift from the interim PIC procedure to the Convention PIC procedure;

(c) There must be clear incentives for countries to adhere to the Convention. Parties and non-Parties to the Convention cannot continue to have the same rights and privileges for an unlimited time after entry into force of the Convention;

(d) In order to facilitate the transition from the interim PIC procedure to the Convention PIC procedure and to minimize confusion, the measures adopted for the transition period should be as simple, pragmatic and straightforward as possible.

5. The goal at the present session for the Negotiating Committee is to finalize discussion on the following issues on which consensus could not be reached at its eighth session:

(a) The composition of the PIC regions;

(b) Obligations in relation to exports of chemicals subject to the interim PIC procedure but not yet listed in annex III to the Convention;

(c) Notifications of final regulatory actions and proposals for severely hazardous pesticide formulations;

(d) Status of notifications and proposals submitted by Participating States during the transition period;

(e) Maintaining a list of import responses and national contact points for non-Parties following the discontinuation of the interim PIC procedure.

6. Where a consensus cannot be reached by the Committee, then relevant options need to be agreed upon in order that they might be reflected in recommendations to the Conference of the Parties or to the governing bodies of FAO and UNEP regarding the discontinuation of the interim PIC procedure.

7. The headings have been maintained in this note in order to retain the link with the documents considered by the Negotiating Committee at its seventh (UNEP/FAO/PIC/INC.7/12) and eighth sessions (UNEP/FAO/PIC/INC.8/16), which are posted on the Rotterdam Convention web site (www.pic.int). The present note is divided into sections: Section III – Making the transition – interim PIC to Convention PIC; Section IV – The transition period – the period of transition between the time the Convention enters into force and the termination of the interim PIC procedure; Section V – The post-transition period – discontinuation of the interim PIC procedure; and Section VI – Suggested recommendations to mitigate

possible negative effects resulting from discontinuation of the interim PIC procedure – proposes some subsequent steps.

8. The following terms have been used in the present note:

(a) The “original PIC procedure” means the voluntary PIC procedure contained in the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade and the FAO International Code of Conduct on the Distribution and Use of Pesticides, in effect until the date on which the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was opened for signature;

(b) The “interim PIC procedure” means the original PIC procedure as changed to bring it into line with the procedure established by the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, with effect from the date on which the Convention was opened for signature;

(c) The “Convention PIC procedure” means the PIC procedure as described in the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, which will become mandatory for the Parties to the Convention once the Convention enters into force;

(d) The “transition period” means the time between the entry into force of the Convention and the date on which the interim PIC procedure will be terminated, during which time the interim PIC procedure and the Convention PIC procedure will operate in parallel;

(e) “Participating States” are those States and regional economic integration organizations that are not Parties to the Convention during the transition period.

II. BACKGROUND

9. The original PIC procedure was established by the UNEP Governing Council at its fifteenth session (decision 15/30 of 25 May 1989), and the FAO Conference at its twenty-fifth session (resolution 6/89 of 29 November 1989). UNEP and FAO jointly implemented the original PIC procedure, which operated until the adoption of the Rotterdam Convention by a Conference of Plenipotentiaries on 10 September 1998. The Conference of Plenipotentiaries also considered the work to be performed during the interim period between the adoption of the Convention and the first meeting of the Conference of the Parties. It adopted a resolution on interim arrangements, which changed the original PIC procedure to a voluntary interim PIC procedure closely resembling the procedure set out in the Convention text, and requested the Executive Director of UNEP and the Director-General of FAO to provide secretariat services for the operation of the interim PIC procedure. The text of the resolution appears in annex II to the present document.

III. MAKING THE TRANSITION – INTERIM PIC TO CONVENTION PIC

10. This section reviews three issues that will need to be considered by the Negotiating Committee in moving from the interim PIC procedure to the Convention PIC procedure.

A. Composition of PIC regions

11. The Conference of Plenipotentiaries, in paragraph 5 of its resolution on interim arrangements invited the Negotiating Committee to develop a decision on PIC regions and to adopt it on an interim basis, pending its formal adoption at the first meeting of the Conference of the Parties.

12. In line with the resolution on interim arrangements, the Negotiating Committee, in decision INC-6/1, adopted on an interim basis a list of countries known as the “interim PIC regions”, for the purpose of the

implementation of the interim arrangements for the application of the PIC procedure, pending the formal adoption, by consensus, of a listing of countries by PIC regions by the Conference of the Parties at its first meeting.

13. At its seventh session, the Intergovernmental Negotiating Committee noted that the seven interim PIC regions had met the needs of the interim PIC procedure and that they should also meet the needs of the Convention PIC procedure. The maintenance of the existing PIC regions would both build on the progress achieved under the interim PIC procedure and facilitate the transition to the Convention PIC procedure. The seven regions also facilitate the identification of candidate chemicals by broadening the possibility of having at least one verified notification of final regulatory action from each of two PIC regions, in line with article 5, paragraph 5, of the Convention.

14. The first meeting of the Conference of the Parties will have a minimum of 50 Parties, but it is expected that the number of Parties will continue to increase for the foreseeable future, certainly during the course of the transition period. The importance of this decision regarding the PIC regions should serve as a further incentive for States and regional economic integration organizations to ratify or accede to the Convention, in order to continue to ensure a broad geographical basis for the PIC regions at the first meeting of the Conference of the Parties.

15. It was agreed by the Working Group that the experience gained with the interim PIC regions should be given full consideration in deciding on the PIC regions under the Convention PIC procedure. Some participants indicated concern that at the time of the first session of the Conference of the Parties the distribution of the Parties across the interim PIC regions might not satisfy article 5, in particular the requirement for at least one notification from each of two PIC regions.

16. The Working Group identified the following options:

(a) That the PIC regions to be adopted at the first Conference of the Parties should be based on the geographical distribution of the Parties at that time;

(b) That the PIC regions to be adopted at the first Conference of the Parties should be based on the regions used during the interim PIC procedure, pending consideration of the geographical distribution of Parties at that time.

B. Chemicals subject to the interim PIC procedure but not yet listed
in annex III to the Convention

17. There are no provisions in the Convention for the recognition of “cases of failure to transmit a response” that occurred under the interim PIC procedure. This may have implications for certain Parties as a result of the obligations under article 11, paragraph 2, particularly for those chemicals subject to the interim PIC procedure which are listed in annex III as a result of the first meeting of the Conference of the Parties.

18. States and regional economic integration organizations that are Parties to the Convention at the time of the first meeting of the Conference of the Parties and have failed to transmit a response under the interim PIC procedure for chemicals not yet included in annex III create a potential obstacle for exporting countries in meeting their obligations. Cases of failure to transmit a response are subject to the provisions of article 11, paragraph 2, which prevent exporting Parties from exporting to the delinquent Party, for a period of one year, unless certain conditions are fulfilled.

19. The problem is one that will be unique to those countries participating at the first Conference of the Parties which have not submitted import responses for the chemicals not yet listed in annex III. As a result of the deliberations at the first Conference of the Parties these chemicals will enter annex III and countries will then be obliged to provide import responses as per article 10, paragraph 7.

20. The simplest solution would be to avoid the problem in the first place. This could be achieved if the States and regional economic integration organizations participating in the interim PIC procedure would

provide import responses for all the chemicals subject to the interim PIC procedure. All import responses would be included in the first PIC Circular issued following the entry into force of the Convention and be recognized by the first Conference of the Parties. It was agreed by the Working Group that where import responses have not been provided, two proposals could be considered.

21. The Working Group identified the following options:

(a) Parties could be given up to nine months from the date of the first Conference of the Parties to provide a response in line with article 10, paragraph 2. After that period, exporting Party obligations under article 11 would only take effect six months after the exporting Party received information from the secretariat under article 10, paragraph 10, that the importing Party had failed to transmit a response, and would then apply for one year. "Restart the clock", option A.

(b) The date of the first Conference of the Parties could be taken as formal notice of non-response to these Parties (article 10, paragraph 3). Exporting Party obligations under article 11 would only take effect six months from this date and would then apply for one year. "Restart the clock", option B.

22. In deciding between options A and B, the Negotiating Committee may wish to consider that, under the interim PIC procedure, such Parties would have already been formally notified of their failure to provide an import response. This information has been reported in the PIC Circular and would need to be recognized under the Convention PIC procedure in order to avoid potential confusion for exporters.

C. Notifications of final regulatory action and proposals for severely hazardous pesticide formulations

23. The Convention, in article 5, paragraph 2, clearly states that at the date of entry into force of the Convention, Parties need not resubmit their notifications of final regulatory action if they have been submitted under the Amended London Guidelines or the International Code of Conduct. The Convention is silent, however, regarding proposals for severely hazardous pesticide formulations that may have been submitted in accordance with article 6 under the interim PIC procedure.

24. At present, in accordance with articles 5 and 6, the secretariat, through the PIC Circular, circulates synopses of all verified notifications and summaries of all verified proposals for severely hazardous pesticide formulations submitted during the six-month period between each circular. These notifications and proposals will have no status under the Convention PIC procedure unless the Conference of the Parties decides otherwise.

25. It was proposed by the Working Group that in order to provide a reference point for the first meeting of the Conference of the Parties, the secretariat could include in the first PIC Circular following the entry into force of the Convention a full synopsis of all the notifications submitted under the interim PIC procedure verified to contain all the information required by annex I, as at the date of entry into force of the Convention. It was also proposed that this PIC Circular could also include summaries of all the proposals for severely hazardous pesticide formulations verified to contain all the information required by part 1 of annex IV submitted to the secretariat as of the date of entry into force of the Convention.

26. This approach would parallel that taken in the transition from the original PIC procedure to the interim PIC procedure, where a comprehensive summary of all the notifications submitted under the original PIC procedure was published in appendix V of PIC Circular X (December 1999).

27. One representative participating in the Working Group indicated that, for the sake of legal clarity, there was a need for some recognition of the differing circumstances between notifications and proposals for severely hazardous pesticide formulations. In recognition of this technical difference, but in the spirit of the principles endorsed by the Intergovernmental Negotiating Committee, the member proposed that an alternative administrative arrangement could be considered whereby the relevant State(s) would reintroduce the proposal(s) into the PIC Convention procedure.

28. There was general agreement in the Working Group that, based on the “concept” of equivalent treatment of notifications and proposals made under articles 5 and 6 of the Convention, the following basis for a recommendation could be considered:

(a) That as part of the first circular issued following the entry into force of the Convention, the secretariat could publish a full compilation of summaries of all the proposals for severely hazardous pesticide formulations submitted and verified as complete, and a full synopsis of all the notifications of final regulatory action submitted and verified as complete, as of the date of entry into force of the Convention;

(b) That the information in that Circular could serve as an appropriate reference point for the Conference of the Parties at its first meeting.

29. On the matter of administrative arrangements, the Negotiating Committee may wish to consider two options regarding proposals for severely hazardous pesticide formulations made by Parties.

30. The Working Group identified the following options:

(a) That the resubmission of any proposals for severely hazardous pesticide formulations made under the interim PIC procedure should not be required;

(b) That in order for a proposal for a severely hazardous pesticide formulation to be carried forward, the proposing Party needs to inform the secretariat of its wish that the proposal should be considered as having been resubmitted. When the Convention enters into force for the Party, it should send a note to this effect, identifying the proposal and the date of submission.

IV. THE TRANSITION PERIOD

31. In paragraph 13 of its resolution on interim arrangements, the Conference of Plenipotentiaries decided that the interim PIC procedure would cease to operate on a date to be specified by the Conference of the Parties at its first meeting. The interim PIC procedure will thus operate in parallel with the Convention PIC procedure from the date of entry into force of the Convention through a date to be specified by the first meeting of the Conference of the Parties. For the purposes of discussion, this period has been named the transition period.

32. The Negotiating Committee, at its seventh session, gave wide support to a period of transition from the interim PIC procedure to the Convention PIC procedure, once the Convention comes into force. The aim of the transition period would be to retain the accomplishments and experience gained in the application of the interim PIC, while providing incentives for States and regional economic integration organizations to adhere to the Convention. The transition period would allow non-Parties that participated in the interim PIC procedure, but were not Parties at the time of the first meeting of the Conference of the Parties, to continue to participate in operational processes of the Convention procedure while preparing for ratification or accession.

33. One of the potentially problematic aspects of the transition period will be the status of notifications and proposals submitted by Participating States. No provision has been made for the further consideration of these notifications and proposals in the implementation of the Convention PIC procedure.

34. The Working Group agreed that where notifications and proposals from Participating States had contributed to the preparation of decision guidance documents and to decisions to include chemicals in the interim PIC procedure, they should be recognized as an adequate basis for including the chemicals concerned in annex III. This was consistent with the related proposal whereby all of the chemicals in the interim PIC procedure for which decision guidance documents have been approved should be included in annex III, regardless of the source of the notifications.

Status of notifications and proposals submitted by Participating States

35. The status of individual chemicals and hazardous pesticide formulations and their associated notifications and proposals at various stages of consideration by the Interim Chemical Review Committee, and of new notifications and proposals from Participating States during the transition period, is not clear.
36. The Working Group agreed that in the interest of information exchange, a synopsis of all verified notifications and summaries of all verified proposals submitted by both Parties and Participating States as at the date of entry into force of the Convention and during the transition period would be included in the appropriate issues of the PIC Circular.
37. No agreement could be reached on the compromise proposed in document UNEP/FAO/PIC/INC.8/16 (paragraph 68 (a)) such that verified notifications and/or proposals from Participating States submitted to the secretariat as at the date of entry into force of the Convention and included in the first PIC Circular distributed after the entry into force of the Convention, would remain eligible for consideration by the Chemical Review Committee during the transition period.
38. One Working Group member noted that Participating States are to be “treated equally with no distinction between those that had signed the Convention”, except in the matter of voting as per the rules of procedure. It was also suggested that consideration could be given to setting priorities among the submitted notifications and proposals.
39. Despite lengthy discussions within the Working Group, two differing views remained. The Negotiating Committee may wish to consider two options on how such notifications and proposals could be handled during the transition period.
40. The Working Group identified the following options:
- (a) Notifications and proposals by Participating States under the interim PIC procedure are not eligible for consideration by the Chemical Review Committee under articles 5 to 7 of the Convention. A notification or proposal by a State or regional economic integration organization not Party to the Convention cannot be part of the trigger for procedures under the Convention, as set forth in the Convention (for example, article 5, paragraph 2; article 6, paragraph 1; and article 8). As a practical matter, notifications and proposals submitted by a Participating State could be retained on file and be reactivated when it becomes a Party;
- (b) Alternatively, there could be no distinction made between notifications or proposals from Parties and those from Participating States under articles 5 to 7. Submitted notifications and proposals verified by the secretariat to contain all the information required could be forwarded to the Chemical Review Committee for consideration in accordance with established procedures.
41. Some Parties considered it inappropriate for notifications and proposals from Participating States to result in legally binding obligations on Parties.

V. THE POST-TRANSITION PERIOD – DISCONTINUATION OF
THE INTERIM PIC PROCEDURE

42. At the conclusion of the transition period, the interim PIC procedure will cease to exist, having been superseded by the Convention PIC procedure. Those States and regional economic integration organizations that participated during the interim PIC procedure but that have not become Parties to the Convention, shall have no special status according to the provisions of the Convention, and will become “non-Parties”.

43. As a matter of domestic law or policy, exporting States and regional economic integration organizations may continue to provide export notifications on domestic regulatory actions to ban or severely restrict a chemical or to comply with the import decisions of non-Parties.

44. The Working Group noted the potential costs, especially to the secretariat, associated with these activities or any other activities that might be proposed concerning interactions with non-Parties after the discontinuation of the interim PIC procedure.

45. The Working Group recognized that non-Parties are not mandated to submit import responses and expressed concern about the feasibility of maintaining an accurate list of import responses and/or national contact points for non-Parties, in particular any potential liability arising out of inaccuracy of these import responses. This issue therefore remains open for further consideration by the Intergovernmental Negotiating Committee at its ninth session.

46. Given the circumstances, the Working Group considered the following two options:

(a) Import responses and the list of national contact points from non-Parties would no longer be maintained or circulated by the secretariat;

(b) The import responses submitted prior to the date of discontinuation and the list of national contact points would be retained only for a defined period of time after the entry into force of the Convention. The non-Parties would opt-out, as they may wish to do so.

VI. SUGGESTED RECOMMENDATIONS TO MITIGATE POSSIBLE NEGATIVE EFFECTS RESULTING FROM TERMINATION OF THE INTERIM PIC PROCEDURE

A. Recommendations to the first meeting of the Conference of the Parties regarding discontinuation of the interim PIC procedure

47. As a result of the deliberations at its eighth and ninth sessions, the Intergovernmental Negotiating Committee will have considered all of the identified issues concerning the discontinuation of the interim PIC procedure. Based on the outcome of these deliberations, the secretariat should be requested to draft specific recommendations for each of the issues for consideration by the first meeting of the Conference of the Parties.

B. Recommendations to FAO and UNEP to mitigate the effects of discontinuation of the interim PIC procedure

48. The Negotiating Committee may wish to consider the issue of participation of non-Parties in meetings of the Conference of the Parties, the Chemical Review Committee and future workshops in connection with its discussions regarding draft financial rules and provisions under item 5 (a) of the provisional agenda for the ninth session.

Annex I

Report of the Working Group on Discontinuation of the Interim Prior Informed Consent Procedure^{1/}

1. The Working Group was co-chaired by Messrs G. Manuweera (Sri Lanka) and A. Mayne (Australia). More than 25 countries and one regional economic integration organization participated in the meetings of the Working Group, which took place during the eighth session of the Intergovernmental Negotiating Committee.
2. Mr. Mayne opened the session by reminding the Working Group of the instructions from the Chair of the Intergovernmental Negotiating Committee that they were to identify those areas where there appeared to be consensus as a basis for a recommendation to the Conference of the Parties and those where further discussion was needed. In the latter case, the outstanding issues and possible options for resolution were to be identified. He also noted the four principles identified in paragraph 4 of UNEP/FAO/PIC/INC.8/16 as guidance to the work of the Group.
3. The Working Group reviewed document UNEP/FAO/PIC/INC.8/16 and acknowledged the document as a sound analysis of the issues. Based upon this analysis, the Group considered each feasible proposal in detail. The report of the Group highlights the discussions and identifies the key issues on which agreement was reached as well as options for those issues on which the Group could not reach consensus.

III. MAKING THE TRANSITION – INTERIM PIC TO CONVENTION PIC

A. Conference of the Parties, Chemical Review Committee, Intergovernmental Negotiating Committee and Interim Chemical Review Committee

4. The resolution of the Conference of Plenipotentiaries on interim arrangements makes no provision for meetings of the Intergovernmental Negotiating Committee and the Interim Chemical Review Committee after the first session of the Conference of the Parties.
5. At its seventh session, the Intergovernmental Negotiating Committee agreed that the Negotiating Committee itself and the Interim Chemical Review Committee would no longer meet after the first session of the Conference of the Parties, to avoid any operations being carried out parallel to the Convention PIC procedure (UNEP/FAO/PIC/INC.7/15, para. 85).
6. The Working Group identified the following basis for a recommendation:
 - (a) That the Conference of the Parties, once it has established the Chemical Review Committee in pursuance of article 18, paragraph 6, of the Convention, endorse the decision of the Intergovernmental Negotiating Committee at its seventh session that the Interim Chemical Review Committee would no longer meet after the first meeting of the Conference of the Parties;
 - (b) That following the first meeting of the Conference of the Parties, the Executive Director of UNEP and the Director-General of FAO inform the UNEP Governing Council and the FAO Conference respectively, that the Intergovernmental Negotiating Committee has successfully completed its mandate, as set forth in the resolution on interim arrangements of the Conference of Plenipotentiaries and the corresponding decisions of the UNEP Governing Council and the FAO Conference, and that the first meeting of the Conference of Parties has been held.

¹ The report of the Working Group was previously submitted to the Intergovernmental Negotiating Committee as document UNEP/FAO/PIC/INC.8/CRP.11. The headings used in the report reflect those contained in document UNEP/FAO/PIC/INC.8/16.

B. The composition of PIC regions

7. In line with the resolution on interim arrangements, the Negotiating Committee, in decision INC-6/1, adopted on an interim basis a list of countries known as the “interim PIC regions”, for the purpose of the implementation of the interim arrangements for the application of the PIC procedure, pending the formal adoption, by consensus, of a listing of countries by PIC regions by the Conference of the Parties at its first meeting.

8. At the seventh session of the Intergovernmental Negotiating Committee and in subsequent written comments, it was noted that the seven interim PIC regions had met the needs of the interim PIC procedure and that they should also meet the needs of the Convention PIC procedure. The maintenance of the existing PIC regions would both build on the progress achieved under the interim PIC procedure and facilitate the transition to the Convention PIC procedure. The seven regions also facilitate the identification of candidate chemicals by broadening the possibility of having at least one verified notification of final regulatory action from each of two PIC regions, in line with article 5, paragraph 5, of the Convention.

9. The first meeting of the Conference of the Parties will have a minimum of 50 Parties, but it is expected that the number of Parties will continue to increase for the foreseeable future, certainly during the course of the transition period. The importance of this decision should serve as a further incentive for States and regional economic integration organizations to ratify or accede to the Convention, in order to continue to ensure a broad geographical basis for the PIC regions at the first meeting of the Conference of the Parties.

10. It was agreed that the experience gained with the interim PIC regions should be given full consideration in deciding on the PIC regions under the Convention PIC procedure. Some participants indicated concern that at the time of the first meeting of the Conference of the Parties the distribution of the Parties across the interim PIC regions might not satisfy article 5, in particular the requirement for at least one notification from each of two PIC regions.

11. The Working Group identified the following options:

(a) That the PIC regions to be adopted at the first meeting of the Conference of the Parties should be based on the geographical distribution of the Parties at that time;

(b) That the PIC regions to be adopted at the first meeting of the Conference of the Parties should be based on the regions used during the interim PIC procedure, pending consideration of the geographical distribution of Parties at that time.

C. Composition of the Interim Chemical Review Committee and the Chemical Review Committee

12. At its sixth session, the Intergovernmental Negotiating Committee decided, in decision INC-6/2, “to establish an interim subsidiary body, to be called the Interim Chemical Review Committee ... on the basis of the interim PIC regions” to fulfil the functions of the Chemical Review Committee to be established by the Conference of Parties (article 18, para. 6 of the Convention). The Convention makes no provision for the use of PIC regions in the determination of equitable geographical distribution in relation to membership of the Chemical Review Committee.

13. The Working Group identified the following basis for a recommendation: That the PIC regions adopted at the first meeting of the Conference of the Parties could be the basis for identifying the membership of the Chemical Review Committee.

D. Inclusion of chemicals in annex III that were included in the interim PIC procedure before the date of the first meeting of the Conference of the Parties, but are not yet listed in annex III to the Convention

14. In accordance with article 8 of the Convention, the Conference of the Parties must decide at its first meeting to list these chemicals in annex III, provided that it is satisfied that all the requirements for listing in that annex have been fulfilled.

15. Currently, there are four chemicals (binapacryl, ethylene dichloride, ethylene oxide and toxaphene) that are included in the interim PIC procedure but not listed in annex III. These chemicals were identified on the basis of notifications of control actions submitted by States and regional economic integration organizations participating in the original PIC procedure. Those notifications, which were submitted before the Convention was adopted, do not meet the information requirements of annex I of the Convention and as a result these chemicals do not fulfil all the requirements for listing in annex III.

16. Any additional chemicals that may be added to the interim PIC procedure prior to the first meeting of the Conference of the Parties will have met the requirements of the Convention PIC procedure (resolution on interim arrangements, para.8).

17. The Working Group identified the following basis for a recommendation:

(a) That all the chemicals included in the interim PIC procedure prior to the entry into force of the Convention but not yet listed in annex III, be added to annex III. This recommendation would build on the progress achieved under the interim PIC procedure, facilitate a smooth transition between the interim PIC procedure and the Convention PIC procedure and avoid any discrepancies between the two procedures during the transition period;

(b) In developing the text of any recommendation to the Conference of the Parties it is important that the following points should be made;

- (i) The solution is based on the assumption that there would be no distinction made among these chemicals in terms of whether or not the States and regional economic integration organizations providing the original notifications are Parties to the Convention at the time of the first meeting of the Conference of the Parties, and is independent of the decision that the Conference may take concerning distribution and membership of PIC regions;
- (ii) It is clear that the application of the requirements for the inclusion of binapacryl, ethylene dichloride, ethylene oxide and toxaphene, which were subject to a special procedure under the Convention, would not set a precedent for the requirements for inclusion of future chemicals;
- (iii) The decision would apply equally to any additional chemicals that are subject to the interim PIC procedure at the time of the first meeting of the Conference of the Parties and for which a decision guidance document has been approved by the Intergovernmental Negotiating Committee in accordance with article 7, paragraph 2, of the Convention.

E. Obligations in relation to imports of chemicals listed in annex III

1. Chemicals that are listed in annex III

18. The Convention is clear that each Party shall, no later than the date of entry into force of the Convention for that Party, transmit to the secretariat import responses for each chemical listed in annex III. It also provides that a Party need not resubmit import responses it has provided under the interim PIC procedure (article 10, paras. 2 and 7). However, the submitted import responses regarding future imports of chemicals subject to the interim PIC procedure, distributed by the secretariat through the semi-annual PIC Circular, will have no status under the Convention PIC procedure unless the Conference of the Parties decides otherwise.

19. Once the Convention enters into force, there will be a period of up to one year before the first meeting of the Conference of the Parties. At present, in accordance with article 10, the secretariat distributes a compilation of all import responses and cases of failure to transmit a response, through the PIC Circular, every six months (June and December).

20. The Working Group identified the following basis for a recommendation: That the first PIC Circular issued following the entry into force of the Convention provide the reference point regarding the status of import responses for chemicals listed in annex III, as at the date of entry into force of the Convention.

2. Chemicals subject to the interim PIC procedure but not yet listed in annex III

21. For this group of chemicals, the Convention is unclear regarding whether a Party would need to resubmit a response regarding future import for that chemical if it was listed in annex III at a date later than the entry into force of the Convention for that particular Party.

22. As there is agreement that there is no need to resubmit import responses for chemicals listed in annex III, the Working Group agreed that the first PIC Circular issued following the entry into force of the Convention would provide the reference point regarding the status of import responses for this limited number of chemicals for the first meeting of the Conference of the Parties.

23. The Working Group identified the following basis for a recommendation: That the first PIC Circular issued following the entry into force of the Convention provide the reference point regarding the status of import responses for chemicals included in the interim PIC procedure but not listed in annex III, as at the date of entry into force of the Convention.

F. Obligations in relation to exports of chemicals listed in annex III

24. In its deliberations, the Working Group focused on the issue of failure to transmit an import response.

25. In parallel to the situation regarding import responses, there are no provisions in the Convention for the recognition of “cases of failure to transmit a response” that occurred under the interim PIC procedure.

1. Chemicals that are listed in annex III

26. The Convention is clear that each Party shall, no later than the date of entry into force of the Convention for that Party, transmit import responses for each chemical to the secretariat. It also provides that a Party need not resubmit import responses it has provided under the original and interim PIC procedure (article 10, paras. 2 and 7).

2. Chemicals subject to the interim PIC procedure but not yet listed in annex III

27. States and regional economic integration organizations that are Parties to the Convention at the time of the first meeting of the Conference of the Parties and have failed to transmit a response under the interim PIC procedure for chemicals not yet included in annex III create a potential obstacle for exporting countries in meeting their obligations. Cases of failure to transmit a response are subject to the provisions of article 11, paragraph 2, which prevent exporting Parties from exporting to the delinquent Party, for a period of one year, unless certain conditions are fulfilled.

28. The problem is one that will be unique to those countries participating at the first meeting of the Conference of the Parties which have not submitted import responses for the chemicals not yet listed in annex III. As a result of the deliberations at the first meeting of the Conference of the Parties these chemicals will enter annex III and countries will then be obliged to provide import responses as per article 10, paragraph 7.

29. The simplest solution would be to avoid the problem in the first place. This could be achieved if the States and regional economic integration organizations participating in the interim PIC procedure would provide import responses for all the chemicals subject to the interim PIC procedure. All import responses would be included in the first PIC Circular issued following the entry into force of the Convention and be recognized by the first meeting of the Conference of the Parties.

30. Where import responses have not been provided, the Working Group identified the following options:

(a) Parties could be given up to nine months from the date of the first meeting of the Conference of the Parties to provide a response in line with article 10, paragraph 2. After that period, exporting Party obligations under article 11 would only take effect six months after the exporting Party received information from the secretariat under article 10, paragraph 10, that the importing Party had failed to transmit a response, and would then apply for one year. “Restart the clock”, option A;

(b) The date of the first meeting of the Conference of the Parties could be taken as formal notice of non-response by these Parties (article 10, paragraph 3). Exporting Party obligations under article 11 would only take effect six months from this date and would then apply for one year. “Restart the clock”, option B.

31. In deciding between options A and B, an issue to consider is the fact that under the interim PIC procedure such Parties would have already been formally notified of their failure to provide a response. This has been reported in the PIC Circular and would need to be recognized under the Convention PIC procedure in order to avoid potential confusion for exporters.

G. Notifications of final regulatory action and proposals for severely hazardous pesticide formulations

32. The Convention, in article 5, paragraph 2, clearly states that at the date of entry into force of the Convention, Parties need not resubmit their notifications of final regulatory action if they have been submitted under the Amended London Guidelines or the International Code of Conduct. The Convention is silent, however, regarding proposals for severely hazardous pesticide formulations that may have been submitted in accordance with article 6 under the interim PIC procedure.

33. At present, in accordance with articles 5 and 6, the secretariat, through the PIC Circular, circulates synopses of all verified notifications and summaries of all verified proposals for severely hazardous pesticide formulations submitted during the six-month period between each circular. These notifications and proposals will have no status under the Convention PIC procedure unless the Conference of the Parties decides otherwise. In order to provide a reference point for the first meeting of the Conference of the Parties, the secretariat could include in the first PIC Circular following the entry into force of the Convention a full synopsis of all the notifications submitted under the interim PIC procedure verified to contain all the information required by annex I, as at the date of entry into force for the Convention. Likewise, this circular could also include summaries of all the proposals for severely hazardous pesticide formulations verified to contain all the information required by part 1 of annex IV submitted to the secretariat as of the date of entry into force of the Convention.

34. This option would parallel the approach taken in the transition from the original PIC procedure to the interim PIC procedure, where a comprehensive summary of all the notifications submitted under the original PIC procedure was published in appendix V of PIC Circular X (December 1999).

35. One representative indicated that, for the sake of legal clarity, there was a need for some recognition of the differing circumstances. In recognition of this technical difference, but in the spirit of the principles endorsed by the Intergovernmental Negotiating Committee, the member proposed that an alternative administrative arrangement could be considered whereby the relevant State(s) would reintroduce the proposal(s) into the Convention PIC procedure.

36. The Working Group reached general agreement that, based on the “concept” of equivalent treatment of notifications and proposals made under articles 5 and 6 of the Convention, the following could be identified as a basis for a recommendation:

(a) That as part of the first circular issued following the entry into force of the Convention, the secretariat publish a full compilation of summaries of all the proposals for severely hazardous pesticide formulations submitted and verified as complete, and a full synopsis of all the notifications of final regulatory action submitted and verified as complete, as at the date of entry into force of the Convention;

(b) That the information in that Circular serve as an appropriate reference point for the Conference of the Parties at its first meeting.

37. On the matter of administrative arrangements, the Working Group identified two options regarding proposals for severely hazardous pesticide formulations made by Parties:

(a) That the resubmission of any proposals for severely hazardous pesticide formulations made under the interim PIC procedure should not be required;

(b) That in order for a proposal for a severely hazardous pesticide formulation to be carried forward, the proposing Party needs to inform the secretariat of its wish that the proposal be considered as having been resubmitted. When the Convention enters into force for the Party, it should send a note to this effect, identifying the proposal and the date of submission.

H. Notifications of final regulatory action and proposals for severely hazardous pesticide formulations submitted by non-Parties that participate in the interim PIC procedure

38. In recognition of the proposal that all the chemicals which are included in the interim PIC procedure should be included in annex III at the first meeting of the Conference of the Parties, it was proposed that the underlying notifications or proposals should be deemed acceptable, regardless of whether or not they came from Parties or non-Parties.

39. The Working Group identified the following basis for a recommendation: Where notifications and proposals from States and regional economic integration organizations which are not Parties to the Convention at the time of the first meeting of the Conference of the Parties have contributed to the preparation of decision guidance documents and to decisions to include chemicals in the interim PIC procedure, they would be recognized as an adequate basis for including the chemicals concerned in annex III.

I. Procedures developed by the Intergovernmental Negotiating Committee and the Interim Chemical Review Committee

40. The Intergovernmental Negotiating Committee and the Interim Chemical Review Committee have developed and approved several operational procedures for the implementation of the interim PIC procedure. The Conference of the Parties and the Chemical Review Committee will develop their own operational procedures for the implementation of the Convention PIC procedure; in doing so, they may wish to draw on the operational procedures developed during the interim PIC procedure.

41. The Interim Chemical Review Committee, in particular, has developed a number of processes aimed at facilitating the processing of notifications and the drafting of decision guidance documents for both banned and severely restricted chemicals and proposals for severely hazardous pesticide formulations. The interim period has also provided an opportunity to develop and implement processes for the submission and verification of notifications of regulatory action and import responses as well as the preparation and distribution of the PIC Circular.

42. The Working Group identified the following basis for a recommendation: That the procedures established for the operation of the interim PIC procedure be adopted for the operation of the Convention PIC procedure, with the understanding that they will continue to evolve as experience is gained in their implementation.

IV. THE TRANSITION PERIOD

43. Drawing upon UNEP/FAO/PIC/INC.8/16, the Working Group noted that the length of the transition period will have a direct impact on the nature of the transitional measures and that a longer transition period could be a disincentive for ratification.

44. While there is a desire to encourage States and regional economic integration organizations to ratify or accede to the Convention, it was recognized that Parties and non-Parties to the Convention cannot continue to have the same rights and privileges for an unlimited time period after entry into force of the Convention.

45. It was recognized further that there will be costs during the transition period associated with the maintenance of the interim PIC procedure, primarily related to the participation of developing countries and countries with economies in transition that are not Parties to the Convention. Other costs would relate to the maintenance and operation of parallel systems for handling information from Parties and non-Parties.

46. Some representatives also drew the attention of the Working Group to their particular capacity-building needs relating to ratification, implementation and compliance. They further indicated that the transition period will introduce additional pressures upon them. They reiterated their call for appropriate capacity-building arrangements to assist them to participate in the Convention PIC procedure in a timely manner.

A. Length of the transition period

47. In considering the issue of the length of transition, the Working Group identified the following basis for a recommendation: That the transition period be limited to two years from the date of entry into force of the Convention.

B. Nature of the transitional measures

48. The Working Group agreed that the transitional measures would define the role and position of non-Parties during the transition period, with the understanding that Parties would enjoy the full benefits associated with the Convention. The Group identified the following basis for a recommendation:

(a) The secretariat would maintain two lists that clearly distinguish between Parties to the Convention and those States or regional economic integration organizations which have not yet ratified or acceded to the Convention, but which are participating under the interim PIC procedure. The latter would, for the transition period, be identified as Participating States.^{2/} All Participating States would be treated equally with no distinction between those that had signed the Convention and those that had not;

(b) Participating States would attend meetings of the Conference of the Parties and the Chemical Review Committee as observers, in line with the rules of procedure adopted at the first meeting of the Conference of the Parties;

(c) The list of Designated National Authorities would include Participating States. Participating States would benefit from information exchange activities under article 14 of the Convention, as well as receive the PIC Circular and decision guidance documents;

² Participating States are those States and regional economic integration organizations that are not Parties to the Convention during the transition period.

(d) Participating States would receive copies of decision guidance documents for any new chemicals added to annex III during the transition period and would be requested to provide an import response. Import responses from Participating States and cases of failure on their part to provide a response would be included in the PIC Circular;

(e) Both exporting Parties and exporting Participating States would be requested to observe the import decisions of Participating States and Parties and continue to provide them with export notifications in line with article 12 of the Convention;

(f) Participating States should be encouraged to provide voluntary contributions to the operation of the Convention;

(g) Participating States would be eligible for technical assistance for capacity-building in accordance with article 16 of the Convention directed towards enabling them to ratify and implement the Convention.

C. Status of notifications and proposals submitted by Participating States

49. The status of individual chemicals and hazardous pesticide formulations and their associated notifications and proposals at various stages of consideration by the Interim Chemical Review Committee, and of new notifications and proposals from Participating States during the transition period, is not clear.

50. The Working Group agreed that in the interest of information exchange, a synopsis of all verified notifications and summaries of all verified proposals submitted by both Parties and Participating States as of the date of entry into force of the Convention and during the transition period would be included in the appropriate issues of the PIC Circular.

51. No agreement could be reached on the compromise proposed in document UNEP/FAO/PIC/INC.8/16 (paragraph 68 (a)) such that verified notifications and/or proposals from Participating States submitted to the secretariat as at the date of entry into force of the Convention and included in the first PIC Circular distributed after the entry into force of the Convention, would remain eligible for consideration by the Chemical Review Committee during the transition period.

52. One Working Group member noted that Participating States are to be “treated equally with no distinction between those that had signed the Convention”, except in the matter of voting as per the rules of procedure. It was also suggested that consideration could be given to setting priorities among the submitted notifications and proposals.

53. Despite lengthy discussions within the Working Group, two differing views remained on how such notifications and proposals could be handled during the transition period. The Group identified the following options:

(a) Notifications and proposals by Participating States under the interim PIC procedure are not eligible for consideration by the Chemical Review Committee under articles 5 to 7 of the Convention. A notification or proposal by a State or regional economic integration organization not Party to the Convention cannot be part of the trigger for procedures under the Convention, as set forth in the Convention (for example article 5, paragraph 2; article 6, paragraph 1; and article 8). As a practical matter, notifications and proposals submitted by a Participating State could be retained on file and be reactivated when it becomes a Party;

(b) Alternatively, there should be no distinction between notifications or proposals from Parties and those from Participating States under articles 5 to 7. Submitted notifications and proposals verified by the secretariat to contain all the information required should be forwarded to the Chemical Review Committee for consideration in accordance with established procedures.

54. Some Parties considered it inappropriate for notifications and proposals from Participating States to result in legally binding obligations on Parties.

V. THE POST-TRANSITION PERIOD – DISCONTINUATION OF THE INTERIM PIC PROCEDURE

55. At the conclusion of the transition period, the interim PIC procedure will cease to exist, having been superseded by the Convention PIC procedure. Those States and regional economic integration organizations that participated during the interim PIC procedure but that have not become Parties to the Convention, shall have no special status according to the provisions of the Convention and will become “non-Parties”.

56. As a matter of domestic law or policy, exporting States and regional economic integration organizations may continue to provide export notifications on domestic regulatory actions to ban or severely restrict a chemical or to comply with the import decisions of non-Parties.

57. The Working Group noted the potential costs, especially to the secretariat, associated with these activities or any other activities that might be proposed concerning interactions with non-Parties after the discontinuation of the interim PIC procedure.

58. The Working Group recognized that non-Parties are not mandated to submit import responses and expressed concern about the feasibility of maintaining an accurate list of import responses and/or national contact points for non-Parties, and any potential liability arising out of inaccuracy of these import responses.

59. Given the circumstances, the Working Group considered the following two options:

(a) Import responses and a list of national contact points from non-Parties would no longer be maintained or circulated by the secretariat;

(b) The import responses submitted prior to the date of discontinuation and a list of national contact points would be retained only for a defined period of time after the entry into force of the Convention. The non-Parties would opt-out, as they may wish to do so.

Annex II

Resolution on interim arrangements adopted by the Conference of Plenipotentiaries on the Convention on the Prior informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

The Conference,

Having adopted the text of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (hereinafter referred to as the “Convention”),

Considering that interim arrangements are required to continue to operate a voluntary procedure for the application of the prior informed consent (PIC) procedure in order to protect human health and the environment from certain hazardous chemicals and pesticides pending the entry into force of the Convention and to prepare for its effective operation once it enters into force,

Taking note of the existing voluntary PIC procedure established by resolution 6/89 of 29 November 1989 of the twenty-fifth session of the Conference of the Food and Agriculture Organization of the United Nations and decision 15/30 of 25 May 1989 of the fifteenth session of the Governing Council of the United Nations Environment Programme,

Recalling the decisions of the twenty-ninth session of the Conference of the Food and Agriculture Organization of the United Nations and the fifth special session of the Governing Council of the United Nations Environment Programme, agreeing to accept changes in the voluntary PIC procedure if so decided by the Conference of Plenipotentiaries on the Convention, provided that costs additional to the implementation of the present voluntary procedure be met through extrabudgetary resources,

I

1. Calls upon States and regional economic integration organizations entitled to do so to consider signing, ratifying, accepting, approving or acceding to the Convention with a view to bringing it into force as soon as possible;

II

2. Decides that the voluntary PIC procedure contained in the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade and in the FAO International Code of Conduct on the Distribution and Use of Pesticides (hereinafter referred to as the “original PIC procedure”) is hereby changed to bring it into line with the procedure established by the Convention with effect from the date on which the Convention is opened for signature. The original PIC procedure with these changes is hereinafter referred to as the “interim PIC procedure”;

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

4. Invites the Committee to establish an interim subsidiary body to discharge the functions entrusted to the subsidiary body to be established under article 18, paragraph 6, of the Convention;

5. Invites the Intergovernmental Negotiating Committee to develop, based on the FAO regions, the decision referred to in paragraph 5 of article 5, and to adopt this decision on an interim basis, pending its formal adoption at the first meeting of the Conference of the Parties;
6. Decides that all chemicals in respect of which decision guidance documents have been circulated under the original PIC procedure before the date on which the Convention is opened for signature will be subject to the interim PIC procedure;
7. Decides that all chemicals that have been identified for inclusion in the PIC procedure under the original PIC procedure but for which decision guidance documents have not yet been circulated before the date on which the Convention is opened for signature will become subject to the interim PIC procedure as soon as the relevant decision guidance documents have been adopted by the Committee;
8. Decides that the Committee shall decide, between the date on which the Convention is opened for signature and the date of its entry into force, on the inclusion of any additional chemicals under the interim PIC procedure in accordance with the provisions of articles 5, 6, 7 and 22 of the Convention;
9. Decides that nominations of designated national authorities, notifications of control actions and import responses made under the original PIC procedure shall remain in effect under the interim PIC procedure unless and until the State or regional economic integration organization concerned notifies the interim secretariat in writing that it has decided otherwise;
10. Appeals to States and regional economic integration organizations to participate in and apply in full the interim PIC procedure;
11. Calls on States and regional economic integration organizations to submit notifications of final regulatory action in accordance with the provisions of article 5 of the Convention, and calls on developing countries and countries with economies in transition that are in a position to do so to submit proposals concerning severely hazardous pesticide formulations in accordance with the provisions of article 6 of the Convention;
12. Requests the Executive Director of the United Nations Environment Programme and the Director-General of the Food and Agriculture Organization of the United Nations to provide secretariat services for the operation of the interim PIC procedure;
13. Decides that the interim PIC procedure shall cease to operate on a date to be specified by the Conference of the Parties at its first meeting;

III

14. Appeals to States and regional economic integration organizations to make voluntary contributions to the trust fund established by the United Nations Environment Programme in order to support the interim arrangements and the operation of the Conference of the Parties until the end of the fiscal year in which the first meeting of the Conference of the Parties takes place, and to ensure the full and effective participation of developing countries and countries with economies in transition in the further work of the Committee;
15. Calls on States and regional economic integration organizations with more advanced programmes for regulating chemicals to provide technical assistance, including training, to other States and regional economic integration organizations in developing their infrastructure and capacity to manage chemicals throughout their life cycle, particularly in view of the urgent need of their participation in the effective operation of the Convention once it enters into force.
