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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

Ninth session

Bonn, 30 September - 4 October 2002

Item 4 (c) and (f) of the provisional agenda\*

IMPLEMENTATION OF THE PRIOR INFORMED CONSENT PROCEDURE

Status of implementation of decisions INC-8/1 and INC-8/3 taken at the eighth session of the  
Intergovernmental Negotiating Committee

Note by the secretariat

1. The purpose of the present note is to provide the Intergovernmental Negotiating Committee with information on the status of the implementation of decisions INC-8/1 and INC-8/3 taken at its eighth session, on rules and procedures for preventing and dealing with conflicts of interest relating to the activities of the Interim Chemical Review Committee, and maleic hydrazide, respectively (see UNEP/FAO/PIC/INC.8/19, annex I). The two decisions are reproduced in annexes to the present document for ease of reference.

Introduction

2. Information on the status of implementation of decision INC-8/1 on conflicts of interest is relevant to the discussion under agenda item 4 (f) on the Interim Chemical Review Committee – extension of mandate or nomination of new members.

3. Decision INC-8/3 on maleic hydrazide included a request for a progress report to be submitted to the ninth session of the Intergovernmental Negotiating Committee concerning the preparation of specifications of the Food and Agriculture Organization of the United Nations (FAO) for the potassium salt of maleic hydrazide. The progress report will be considered under item 4 (c) on the report of the Interim Chemical Review Committee on the work of its third session.

4. The present note is divided into two parts. Each sets out a brief background to the decision, actions taken since the eighth session of the Intergovernmental Negotiating Committee and the current status of implementation for consideration by the Negotiating Committee at its present session.

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

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## I. DECISION INC-8/1, RULES AND PROCEDURES FOR PREVENTING AND DEALING WITH CONFLICTS OF INTEREST RELATING TO THE ACTIVITIES OF THE INTERIM CHEMICAL REVIEW COMMITTEE

5. At its seventh session, held at Geneva from 30 October to 3 November 2000, the Intergovernmental Negotiating Committee noted the possible need for the Interim Chemical Review Committee to be protected through the use of conflict-of-interest procedures. The Negotiating Committee asked the secretariat to develop a draft disclosure and/or recusal form and procedure for consideration by the Negotiating Committee at its eighth session along with a summary of the information collected (UNEP/FAO/PIC/INC.7/15, para. 110).

6. In considering this topic at its eighth session, the Intergovernmental Negotiating Committee had before it a note by the secretariat containing a proposed draft disclosure form and procedure, together with a summary of the information on which the proposal was based (UNEP/FAO/PIC/INC.8/10), on the basis of which the Committee adopted decision INC-8/1.

7. In accordance with paragraph 8 of decision INC-8/1, all members of the Interim Chemical Review Committee were informed of the decision in a letter dated 9 November 2001. The letter included a copy of the decision and a declaration of interests form. Review Committee members were requested to complete the form and return it to the secretariat by 15 January 2002.

8. At its third session, held at Geneva in February 2002, the Interim Chemical Review Committee was informed of the status of implementation of decision INC.8/1 (see UNEP/FAO/PIC/ICRC.3/INF/1). For those members of the Review Committee that had not submitted completed declaration of interests forms, a follow-up letter was sent dated 15 February 2002. That letter also included a copy of decision INC-8/1 and a declaration of interests form, along with a request that members submit the completed forms as soon as possible.

9. As at 30 May 2002, completed declaration of interests forms had been received from 26 of the 29 members of the Committee. Those members for which forms had not been received were from Cameroon, India and Mauritius.

## II. DECISION INC-8/3, MALEIC HYDRAZIDE

10. The Intergovernmental Negotiating Committee, in decision INC-7/5, requested the Interim Chemical Review Committee, on a pilot basis and without prejudice to any future policy on contaminants, to apply two approaches to its consideration of maleic hydrazide and its impurity hydrazine and report on the outcome to the eighth session of the Intergovernmental Negotiating Committee.

11. At its second session, the Interim Chemical Review Committee considered the issue of maleic hydrazide and recommended to the Intergovernmental Negotiating Committee that it not be included in the interim prior informed consent (PIC) procedure provided certain conditions were fulfilled by the four identified manufacturers (Otsuka Chemicals, Japan; and Drexel Chemical, Fair Products and Uniroyal Chemical, United States of America). The recommendation of the Review Committee to the Intergovernmental Negotiating Committee and the reasoning behind it may be found in annex IV of the report of the Review Committee (UNEP/FAO/PIC/ICRC.2/11).

12. At the eighth session of the Intergovernmental Negotiating Committee, the Chair presented the recommendation on maleic hydrazide. She drew the attention of the meeting to the proviso that if the manufacturers of maleic hydrazide failed to provide confirmation that the level of free hydrazine was not more than one part per million, the matter should be referred back to the Interim Chemical Review Committee, which would then consider what action should be taken. She also reported that there were manufacturers of maleic hydrazide in one more country (China) than had been originally thought and that

therefore any consideration by the Review Committee should be applicable not only to the four already identified manufacturers but also to the three manufacturers in that country.

13. It was noted that the Convention did not cover products that did not enter international trade and that the maleic hydrazide produced in China was for domestic use only. As such products are not exported then there was no obligation on that country's manufacturers to provide the confirmation as to the level of free hydrazine.

14. On 11 June 2001, a letter was sent to the Designated National Authorities in those countries where the four identified manufacturers of maleic hydrazide were located (Japan and United States of America) drawing their attention to the recommendation of the Interim Chemical Review Committee. This letter was accompanied by a copy of the recommendation from the Committee, the name and address of the relevant manufacturers, as well as brief guidance on the procedures that the manufacturers should follow regarding FAO specifications.

15. The report of the second session of the Interim Chemical Review Committee was circulated to all Designated National Authorities on 12 June 2001, along with a request that they identify additional manufacturers of maleic hydrazide.

16. A reminder was sent to the Designated National Authorities in Japan and the United States on 6 December 2001. Responses were received from the manufacturers in the United States (Drexel Chemical, Fair Products and Uniroyal Chemical) through the Designated National Authority, in which they indicated that their products do not contain hydrazine in concentrations above one part per million and their intention to pursue FAO specifications.

17. The response from the Designated National Authority in Japan noted that in addition to Otsuka Chemicals, the Japan Hydrazine Company was also making maleic hydrazide. In the case of Otsuka Chemicals it was stated that the product contained less than one part per million free hydrazine and was produced solely for domestic use. The Japan Hydrazine Company produces the choline salt of maleic hydrazide and it was noted that the free hydrazine content of their products would increase considerably during storage with the result that the level would exceed one part per million. It was stated that the Ministry of Agriculture, Forestry and Fisheries of Japan was working with the manufacturer on possible options, including voluntary cancellation and improved product quality and that they would keep the Interim Chemical Review Committee and the Intergovernmental Negotiating Committee informed.

18. At its second session, the Interim Chemical Review Committee was informed of the status of the implementation of decision INC-8/3 and provided with the responses from the five manufacturers: Drexel Chemical, Fair Products and Uniroyal Chemical (United States); and Otsuka Chemical and Japan Hydrazine Company (Japan) (UNEP/FAO/PIC/ICRC.3/INF.2). The Interim Chemical Review Committee took note of the report and the intention of the secretariat to report further to the Intergovernmental Negotiating Committee (UNEP/FAO/PIC/INC.9/6, annex, para. 86).

19. On 7 March 2002, a further reminder regarding decision INC-8/3 was sent to the Designated National Authorities in Japan and the United States with a copy to the five identified manufacturers. It was noted that this decision called for manufacturers to seek and comply with the FAO specifications by January 2004 and that in order to meet this time line they would need to have had their specifications approved by the FAO Panel of Experts on Pesticide Specifications, Registration Requirements, Application Standards and Prior Informed Consent at its meeting in June 2003. In order to be scheduled for consideration at that meeting, manufacturers needed to inform the FAO secretariat of their intent to submit the relevant information by 30 May 2002, at the latest. The letter was accompanied by brief guidance on the procedures that manufacturers should follow in seeking FAO specifications as well as a contact person in a national industry association familiar with the process of developing FAO pesticide specifications.

20. As at 11 June 2002, only one company (Uniroyal Chemical) had sought FAO specifications for maleic hydrazide. The two other manufacturers in the United States (Drexel Chemical and Fair Products) had confirmed with the FAO secretariat their commitment to provide the relevant data, according to the established time lines, in support of a review of their products by the June 2003 meeting of the FAO Panel of Experts on Pesticide Specifications. No response had been received from the Japanese manufacturers of maleic hydrazide.

Annex IDecision INC-8/1, Rules and procedures for preventing and dealing with conflicts of interest relating to the activities of the Interim Chemical Review Committee<sup>a/</sup>The Intergovernmental Negotiating Committee

1. Decides that it is essential to safeguard confidence in the integrity of the process of work of the Interim Chemical Review Committee while encouraging experienced and competent persons to accept membership in the Committee by:
  - (a) Establishing an appropriate code of conduct;
  - (b) Establishing clear rules with respect to conflict of interest while and after serving as a member;
  - (c) Minimizing the possibility of conflicts arising between the private interests and public duties of members; and
  - (d) Establishing appropriate procedures for preventing and dealing with conflicts of interest relating to the activities of the Interim Chemical Review Committee.
  
2. Decides, without prejudice to the obligations incumbent upon the individual members of the Interim Chemical Review Committee as set out in Paragraphs 3 and 4 below, that the Governments have primary responsibility in ensuring compliance with this decision. To this effect, when considering designating experts in chemicals management for appointment by the Intergovernmental Negotiating Committee, the Governments shall exercise due diligence in order to prevent potential or actual situations of conflict of interest.
  
3. Decides that in carrying out their duties the members of the Interim Chemical Review Committee shall:
  - (a) Perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of the Interim Chemical Review Committee are preserved and enhanced;
  - (b) Act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law of any country;
  - (c) Act in good faith for the best interest of the process;
  - (d) Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
  - (e) Not give any preferential treatment to anyone or any interest in any official manner related to the Interim Chemical Review Committee;
  - (f) Not solicit or accept gifts, hospitality, or other benefits from persons, groups or organizations having or likely to have dealings with the Interim Chemical Review Committee;
  - (g) Not accept transfers of economic benefit, other than customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the member;

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<sup>a/</sup> UNEP/FAO/PIC/INC.8/19, annex I.

(h) Not step out of their role as a member to assist other entities or persons in their dealings with the Interim Chemical Review Committee where this act would result in preferential treatment to any person or group;

(i) Not knowingly take advantage of, or benefit from, information that is obtained in the course of their duties and responsibilities as a member of the Interim Chemical Review Committee, and that is not generally available to the public; and

(j) Not act, after their term of office as a member of the Interim Chemical Review Committee in such a manner as to take improper advantage of their previous office.

4. Decides that to avoid the possibility or appearance that members of the Interim Chemical Review Committee might receive preferential treatment, members shall not seek preferential treatment for themselves or third parties or act as paid intermediaries for third parties in dealings with the Interim Chemical Review Committee.

5. Decides that the members of the Interim Chemical Review Committee shall disclose activities, including business or financial interest, which might call into question their ability to discharge their duties and responsibilities objectively. The members of the Interim Chemical Review Committee must annually disclose their activities. In addition, they must disclose any financing from a company engaged in commercial or industrial activities for their participation in the Interim Chemical Review Committee. To this effect, the Intergovernmental Negotiating Committee adopts the declaration of interests form as set out in the Appendix to this decision for consideration in connection with the designation, appointment and review of the status of experts to the Interim Chemical Review Committee.

6. Decides that in assessing potential or actual situations of conflict of interest the criteria set out in Paragraph 1 of the declaration of interest form should be applied by all concerned in a consistent manner, on a case by case basis, with regard to all relevant circumstances involved in each particular case.

7. Decides to adopt the following procedure for the implementation of the declaration of interests form:

Review process prior to appointment

(a) When considering designating an expert to the Interim Chemical Review Committee, the Government concerned shall inform the expert that he or she shall be requested by the interim secretariat to fill in a declaration of interests form;

(b) Prior to the designation of an expert by a Government, or concurrently with the process for that designation, the interim secretariat shall request the expert, through the Government, to fill in a declaration of interests form. The form shall be submitted by the designating Government to the interim secretariat;

(c) Should the interim secretariat require further clarification as to the suitability of an expert, the interim secretariat shall discuss the matter with the designating Government and the prospective expert, through the Government, as appropriate. Depending on the outcome of these discussions, the interim secretariat may refer the matter to the Bureau of the Intergovernmental Negotiating Committee. The Bureau of the Intergovernmental Negotiating Committee shall review the matter and make a recommendation to the concerned Government;

(d) Should a Government be in disagreement with a recommendation by the Bureau of the Intergovernmental Negotiating Committee, that Government may request that the matter be considered by the Intergovernmental Negotiating Committee.

### Review process after appointment

(e) All appointed experts shall be required to inform the interim secretariat, through the Government that designated them, of any change in the information provided in a declaration of interests form previously submitted;

(f) In the course of the mandate of an expert, should the interim secretariat be of the opinion that a situation of conflict of interest could arise or has arisen, the interim secretariat shall discuss the matter with that expert and, where deemed appropriate, with the designating Government. The Bureau of the Intergovernmental Negotiating Committee may recommend to the Intergovernmental Negotiating Committee the temporary suspension of the participation of the expert in some or in all the activities of the Interim Chemical Review Committee. A decision on the matter shall be taken by the Intergovernmental Negotiating Committee at its next session.

### General provisions

(g) Subject to the provisions of this decision, the interim secretariat shall take all necessary measures to safeguard the restricted character of the information provided in the declaration of interests form. To the extent necessary for the implementation of this decision, this information may be provided to the Intergovernmental Negotiating Committee and its Bureau and subsidiary bodies, as deemed appropriate.

(h) Where the objectivity of a particular meeting has been called into question, the Intergovernmental Negotiating Committee shall define the conditions for the disclosure of all relevant information in addition to that which is provided for in paragraph 7 (g) above;

(i) The Intergovernmental Negotiating Committee shall consider any issue that is not covered by the present decision;

(j) The Intergovernmental Negotiating Committee shall keep under review the implementation of the present decision and, not later than five years after its adoption, it will carry out a comprehensive assessment of its implementation with a view to making such amendments thereto as may be required. Should the Conference of Parties meet before this term, it is recommended that this comprehensive assessment be made at its first session.

8. Decides that a declaration of interests form shall be completed by current members of the Interim Chemical Review Committee and submitted by the designating Government to the interim secretariat before the third session of this Committee, due to be held in February 2002. This declaration shall be considered under the provisions of Paragraph 7 (f). Further decides that any designation of new experts to serve in the Interim Chemical Review Committee shall be subject to the relevant provisions of Paragraph 7 of this decision.

Annex II

Decision INC-8/3, maleic hydrazide<sup>a/</sup>

The Intergovernmental Negotiating Committee

1. Approves the recommendation of the Interim Chemical Review Committee that maleic hydrazide not become subject to the interim PIC procedure and that a decision guidance document not be developed;
2. Makes subject paragraph 1 to written confirmation to the secretariat from the four identified manufacturers engaged in international trade (Uniroyal Chemical, Drexel Chemical, Fair Products and Otsuka Chemicals) by 1 January 2002 that the level of free hydrazine is not more than 1 part per million and to their commitment to seek and comply with the specifications of the Food and Agriculture Organization of the United Nations for the potassium salt of maleic hydrazide by 1 January 2004;
3. Decides that the present resolution shall not cause prejudice to or set precedent for any future policy on contaminants;
4. Requests relevant designated national authorities to encourage each identified manufacturer to provide written confirmation to the secretariat by 1 January 2002 that the level of free hydrazine is not more than 1 part per million and that it is committed to seek and comply with the specifications of the Food and Agriculture Organization of the United Nations for the potassium salt of maleic hydrazide by 1 January 2004;
5. Requests that confirmations by manufacturers of maleic hydrazide that the level of free hydrazine is not more than 1 part per million be submitted through the relevant designated authority to the secretariat;
6. Requests the Interim Chemical Review Committee to review whether confirmations by the four identified manufacturers of maleic hydrazide that the level of hydrazine is not more than 1 part per million are provided to the secretariat by 1 January 2002, to review the statements and to report to the Intergovernmental Negotiating Committee at its ninth session;
7. Requests designated national authorities to identify additional manufacturers of maleic hydrazide engaged in international trade and submit this information to the secretariat for consideration by the Interim Chemical Review Committee;
8. Encourages the Food and Agriculture Organization of the United Nations to give priority to the preparation of specifications for the potassium salt of maleic hydrazide;
9. Requests designated national authorities in future to provide greater specificity about the chemicals subject to their reported regulatory actions, in order to avoid the necessity of the Interim Chemical Review Committee having to interpret the notifications to determine which chemicals are to be considered;
10. Requests the Interim Chemical Review Committee to follow progress made with regard to the preparation of specifications of the Food and Agriculture Organization of the United Nations for the potassium salt of maleic hydrazide and report to the Intergovernmental Negotiating Committee at its ninth session.

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UNEP/FAO/PIC/INC.8/19, annex I.