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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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OVERVIEW OF THE PRIOR INFORMED CONSENT AND INFORMATION EXCHANGE PROCEDURES

Note by the Secretariat

1. The present note provides information concerning the overview of the prior informed consent and information exchange procedures set out in the International Code of Conduct on the Distribution and Use of Pesticides and the amended London Guidelines for the Exchange of Information on Chemicals in International Trade.

BACKGROUND

2. The growth in world trade in chemicals during the 1960s and 1970s led to increasing concerns about the risks associated with their use, particularly in developing countries which frequently do not have the necessary expertise or infrastructures to ensure their safe use. These concerns led to the development of **the International Code of Conduct on the Distribution and Use of Pesticides** by the Food and Agriculture Organization of the United Nations (FAO) and the **London Guidelines for the Exchange of Information on Chemicals in International Trade** by the United Nations Environment Programme (UNEP). The FAO Code of Conduct was adopted by the FAO Conference in 1985 and the London Guidelines were adopted by the UNEP Governing Council in 1987.

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3. Both the Code of Conduct and the London Guidelines include provisions aimed at making existing information about hazardous chemicals more freely available, thus permitting competent authorities in countries to assess the risks associated with use of chemicals under their own conditions of use. The first of these provisions concerns **information exchange on chemicals** in international trade (see section B of the present document). The second provision, known as **prior informed consent (PIC)**, was added in 1989 to help control imports of unwanted chemicals that have been banned or severely restricted in order to protect human health or the environment (see section A below). This PIC procedure is implemented jointly by FAO and UNEP through the FAO/UNEP Joint Programme on Operation of Prior Informed Consent.

A. THE PRIOR INFORMED CONSENT (PIC) PROCEDURE

4. The PIC procedure is voluntary. It has been unanimously accepted by the governing bodies of FAO and UNEP and is supported by Governments, leading chemical industry associations and a variety of non-governmental organizations (NGOs). It helps participating countries learn more about the characteristics of potentially hazardous chemicals that may be shipped to them, initiates a decision-making process on the future import of these chemicals and disseminates these decisions to participating countries.

5. The aim of the PIC procedure is to promote a shared responsibility between exporting and importing countries in protecting human health and the environment from the harmful effects of certain hazardous chemicals being traded internationally. PIC is not a recommendation to ban or severely restrict the use of chemicals.

National Authorities

6. In order to participate in the PIC and information exchange procedures, Governments must nominate a Designated National Authority (DNA) to act as a national focal point. The DNA is responsible for the operation of the PIC and information exchange procedures at the national level, i.e. collecting and providing national information to FAO, UNEP and other countries and ensuring that the information received is transmitted to all relevant authorities and organizations within the country.

7. Some countries have nominated one authority for all chemicals, while others have designated more DNAs, e.g. one with responsibility for pesticides and a second for industrial and consumer chemicals. The DNA is generally a government department or office responsible for broad policy decisions with

the authority to decide which chemicals may be used in the country. In the case of pesticides, the registration authority or equivalent is generally nominated to serve as the DNA. The need to designate one or more authorities depends on the administrative and legislative organization in each country.

8. As at December 1995, 144 countries were participating in the PIC and information exchange procedures through the nomination of DNAs.

FAO/UNEP Secretariat on Implementation of PIC

9. The FAO/UNEP Secretariat is responsible for the operation of the Joint Programme. The Plant Production and Protection Division of FAO is the lead agency for pesticides. In UNEP, it is the International Register of Potentially Toxic Chemicals (IRPTC) which is the lead office for industrial and consumer chemicals. An estimate of the cost to FAO and UNEP of implementing the existing voluntary PIC procedure is given in the annex to the present note.

10. The FAO/UNEP Joint Group of Experts on PIC was established to provide guidance and advice to the FAO/UNEP Secretariat on the development and operation of the PIC procedure. The Joint Group has had eight meetings since its establishment in December 1989, and reports of all meetings are available. Members of the Joint Group are selected on the basis of their experience and with a view to geographic distribution. Participants in recent meetings have come from Canada, Colombia, Ecuador, Ireland, Malaysia, Netherlands, Philippines, Sri Lanka, Turkey, United Kingdom, United Republic of Tanzania and the United States. The participants are invited in their individual capacities, not as representatives of national Governments.

Type of chemicals included in the PIC procedure

11. Pesticides, industrial and consumer chemicals that have been banned or severely restricted for health or environmental reasons by Governments can be included in the procedure. In addition, acutely toxic pesticide formulations which present a hazard under conditions of use in developing countries may also be included. The procedure specifically applies to chemicals as such and not to products/articles in to which such chemicals may ultimately find their way.

12. Certain specific groups of chemicals such as pharmaceuticals, radioactive materials and food additives are excluded from the PIC procedure. There is also an exclusion for small quantities of chemicals used for research purposes and some other small-volume uses.

Selection of chemicals to be included in PIC

13. Any chemical banned or severely restricted in at least one country after 1 January 1992 is eligible for inclusion in the PIC procedure. In the case of chemicals banned or severely restricted prior to that date, those for which

control actions have been taken in five or more countries are also eligible. As part of the information exchange procedure, participating countries provide information to the FAO/UNEP Secretariat on regulatory control actions taken to ban or severely restrict chemicals at the national level (see section B below). This information is used as a basis to identify the banned or severely restricted chemicals which are eligible for inclusion in the PIC procedure.

14. However, it was recognized by Governments when developing the PIC procedure that the above criteria would not necessarily identify pesticides which present a hazard under conditions of use in developing countries, e.g. acutely toxic pesticides in the World Health Organization (WHO) Recommended Classification of Pesticides by Hazard, Class 1a (extremely hazardous), with typical formulations also falling under WHO Class 1a. Therefore, it was also agreed that, where there is evidence of risk to human health, such pesticide formulations should be included in the PIC procedure.

15. For each chemical subject to the PIC procedure a **Decision Guidance Document (DGD)** is developed. The DGD contains information on the main uses of the chemical, its chemical and physical properties, toxicological and environmental characteristics, including effects on fish and wildlife, exposure potential from use, control actions taken in various countries, protective measures to reduce exposure, packaging and labelling requirements, storage recommendations and references to relevant scientific literature. The information contained in a DGD is not exhaustive, but the DGD is intended as a basis from which Governments may assess the risks connected with the handling and use of the chemical under conditions at the national level, seeking further advice if necessary and considering national needs, in order to make informed decisions about the future import and use of the chemical.

16. As at December 1995, DGDs for a number of chemicals, as indicated in Table 1 below, had been distributed to DNAs.

Table 1 - Distribution of Decision Guidance Documents (DGDs)by type of chemical	**Date of original distribution**
FIRST SET OF PESTICIDES: Aldrin, DDT, Dieldrin, Dinoseb, Fluoroacetamide, HCH (mixed isomers)	English (E): September 1991 French (F): November 1991 Spanish (S): November 1991
SECOND SET OF PESTICIDES: Chlordane, Cyhexatin, EDB, Heptachlor, Chlordimeform and mercury compounds, (as mercuric oxide, mercurous chloride, Calomel, other inorganic mercury compounds, alkyl mercury compounds and alkoxyalkyl and aryl mercury compounds)	E: November 1992 F: January 1993 S: January 1993

FIRST SET OF INDUSTRIAL CHEMICALS Crocidolite, Polybrominated Biphenyls (PBB), Polychlorinated Biphenyls (PCB), except mono- & dichlorinated, Polychlorinated Terphenyls (PCT), and Tris (2,3 dibromopropyl) phosphate	E, F and S: March 1993
Revised DGD for Cyhexatin	E, F,and S: September 1995

17. At the most recent meeting of the FAO/UNEP Joint Group of Experts on PIC (eighth meeting, March 1995), the Group recommended the preparation of DGDs for a further 17 chemicals. Twelve were selected on the basis of control actions in countries: binapacryl, bromacil, captafol, chlorobenzilate, EDC, ethylene oxide, hexachlorobenzene, lindane, maleic hydrazide, pentachlorophenol, toxaphene and 2,4,5-T. Certain formulations of five pesticides were selected on the basis of potential problems under conditions of use in developing countries: monocrotophos, methamidophos, phosphamidon, methyl-parathion and parathion.

18. The FAO/UNEP Joint Group of Experts had concluded at its seventh meeting (March 1994) that limiting a DGD to a specific pesticide formulation would be of little practical use to developing countries. It was agreed that in such cases a DGD would be developed for the active ingredient, but would clearly indicate those formulations causing concern and identify any other available formulations which were not of concern.

19. The DGDs for the next set of six chemicals to be subject to the PIC procedure (captafol, chlorobenzilate, hexachlorobenzene, lindane, pentachlorophenol and 2,4,5-T) will be circulated to DNAs in early 1996. DGDs for the other chemicals will be circulated later in 1996.

Implementation of the PIC procedure

20. Once a DGD has been distributed, DNAs are requested to review the information, prepare an **Importing Country Response (ICR)** form and forward it to the FAO/UNEP Secretariat. In completing the ICR form, countries report their decision on whether to accept future import, refuse import or allow import under certain conditions. It is also possible to make an interim decision regarding import combined with a request for additional time, technical assistance or further information.

21. These import decisions are compiled by the FAO/UNEP Secretariat and distributed to all DNAs in participating countries every six months, in conjunction with a PIC Circular which provides an overview of recent activities at international level, of the deliberations of the FAO/UNEP Joint Group of Experts, of regional workshops and information on possible alternatives to chemicals which are subject to the PIC procedure as reported by participating countries. The compilation and distribution of importing country responses are intended to ensure that exporting countries are aware of decisions regarding the import of chemicals subject to the PIC procedure.

22. Compilations of import responses have been distributed to DNAs as listed in Table 2. The next complete compilation of import responses (as at 30 June 1996) for chemicals included in the PIC procedure will be distributed to all DNAs in July 1996.

Table 2 - Distribution of compilations of import responses received from participating countries	**Date of original distribution**
First compilation of import responses for the first set of pesticides, as at 31 July 1992	August 1992
PIC CIRCULAR I - import responses for the first and second sets of pesticides, as at 1 June 1993	July 1993
PIC CIRCULAR II - import responses for the first and second sets of pesticides and the first set of industrial chemicals, as at 31 December 1993; complete list of DNAs	February 1994
PIC CIRCULAR III - import responses for the first and second sets of pesticides and the first set of industrial chemicals, as at 30 June 1994	July 1994
PIC CIRCULAR IV - import responses for the first and second sets of pesticides and the first set of industrial chemicals, as at 31 December 1994; complete list of DNAs	March 1995
PIC CIRCULAR V - import responses for the first and second sets of pesticides and the first set of industrial chemicals, as at 30 June 1995	July 1995
PIC CIRCULAR V- UPDATE - update of import responses for the first and second sets of pesticides and the first set of industrial chemicals, as at 31 December 1995; complete list of DNAs	January 1996

Countries' responsibilities

23. In short, countries' responsibilities for follow-up action in the PIC procedure are as follows:

Importing countries

- After receiving a DGD on a chemical, importing countries are expected to make a response (either final or interim) as to whether or not future import of the chemical in question will be permitted. Such a response should be made within 90 days of receiving the DGD.

- Importing countries are requested to ensure that national import control authorities (customs departments), importers and, as far as possible, users are informed on a regular basis of all notifications and responses received under the PIC procedure.

- Import decisions must apply uniformly to imports from all exporting countries and to any domestic manufacture of the chemicals.

Exporting countries

- Exporting countries should ensure that PIC decisions made by participating importing countries are communicated to their exporters, industry and any other relevant authorities, such as the customs.

- Exporting countries are also obliged to take appropriate measures, within their authority and legislative competence, to ensure that exports do not occur contrary to the decision of participating importing countries. If no decision has been reported under the PIC procedure the **status quo** applies, i.e. export should not proceed without the consent of the importing country unless the chemical has been shipped to the country in the past, is currently registered for use in the country or has been officially requested by the country.

B. THE INFORMATION EXCHANGE PROCEDURE FOR CHEMICALS IN INTERNATIONAL TRADE

24. The London Guidelines, in paragraph 13, and the Code of Conduct, in article 9, describe the actions that Governments should take to facilitate the exchange of information on chemicals between countries. The information exchange procedure is a mechanism to facilitate the exchange of information between countries on chemicals moving in international trade, especially those which have been banned or severely restricted to protect human health or the environment. The procedure also provides a means to inform authorities in importing countries that a chemical which is banned or severely restricted in the country of export is being, or will be, sent to their country. Exporting countries are encouraged to provide importing countries with information, advice and assistance, including appropriate precautionary information, regarding the chemicals they are exporting. Exporters are also requested to ensure that chemicals, when exported, are, as a minimum, classified, packaged and labelled according to internationally recognized procedures and practices.

25. The information exchange procedure is based on the philosophy that countries with advanced systems for the safe management of chemicals have a responsibility to share their experience with those countries with less developed systems. The recommendations do not preclude Governments from instituting broader or more frequent information exchange or other systems involving consultation with importing countries on banned or severely restricted chemicals.

Relationship to the PIC procedure

26. One of the functions of the information exchange procedure is to facilitate the flow of information among participating countries on regulatory actions to ban or severely restrict chemicals for health or environmental reasons. Each country can make use of the information, as appropriate. The PIC procedure builds on this activity, but also provides DGDs containing information on specific chemicals, activates a decision-making process regarding future import of the chemical, and ensures the dissemination of this decision to potential exporting countries.

Information exchange on control actions to ban or severely restrict chemicals

27. The Government of any country that takes action to ban or severely restrict a chemical in order to protect health or the environment should notify UNEP and FAO as soon as possible of the action it has taken by providing a **Notification of Control Action form.** This information is to be sent to and compiled by the FAO/UNEP Secretariat and circulated to DNAs in participating countries. The purpose of circulating a compilation of notified control actions is to make competent authorities aware of the regulatory actions in other participating countries and to provide information on the reasoning behind the actions taken.

28. The notification of control actions provided by participating countries under the information exchange procedure also represent the primary means for identifying banned and severely restricted chemicals to be included in the PIC procedure.

Information exchange on the export of domestically banned or severely restricted chemicals

29. When a country exports a chemical which is banned or severely restricted for domestic use, the DNA of that exporting country should ensure that the DNA in the importing country is aware that the export of such a chemical is to be expected or is about to occur. The exporting country should also ensure that the DNA in the importing country is provided with relevant information on the chemical. This information should be provided prior to the first export following the control action. The DNA in the importing country should also be informed by the DNA of the exporting country of the development of any significant new information relevant to the initial control action in the exporting country.

30. An **Information Regarding Export form** has been developed to facilitate this exchange of information. Several countries have regulatory schemes where export notification is required by law and they have therefore developed their own forms to supply this information. These forms may be different from that prepared by the FAO/UNEP Secretariat, however, they should be consistent with the FAO/UNEP scheme.

31. The exchange of information on the export of chemicals that have been banned or severely restricted nationally is a bilateral activity between the exporting and importing countries; it does not involve the FAO/UNEP Secretariat.

Classification and labelling of chemicals for export

32. Information on classification, packaging and labelling is an important element of the information exchange procedure. In the absence of other standards or requirements in the country of import, the exporting country should ensure that the classification, packaging and labelling of the chemical exported conform to recognized international standards. Examples may be found in the Code of Conduct and its relevant Guidelines and in the International Labour Organization Convention on Safety in the Use of Chemicals at Work (1990), the United Nations Recommendations on the Transport of Dangerous Goods (8th revised edition, 1993) and the International Maritime Organization (IMO) International Maritime Dangerous Goods Code.

33. It is also desirable that countries exporting chemicals ensure that these chemicals are subject to the same stringent requirements for classification, packaging and labelling as comparable products intended for domestic use.

Implementation of the information exchange Procedure

34. When countries join the information exchange and PIC procedures, the DNA is requested to provide a national inventory of all control actions taken to ban or severely restrict chemicals (pesticides, industrial and consumer chemicals) in the country and to notify the FAO/UNEP Secretariat of all subsequent actions taken. Complete inventories of current control actions are now available for a number of countries. The FAO/UNEP Joint Expert Group at its eighth meeting in March 1995 agreed that these inventories contain a large amount of useful information on chemicals which is of potential interest to all DNAs, and recommended that this material be circulated to all participating countries. The Group also recommended that the possibility of

making the information available in several formats (including on-line through the Internet, on diskette and hard copy) be investigated for the future.

35. National inventories for a total of 28 countries were circulated to DNAs in January 1996. The accompanying letter clearly identified the purpose of the information and how it relates to the PIC procedure, in order to avoid it being mistaken for a further list of chemicals subject to the PIC procedure.

C. TRAINING ACTIVITIES TO ASSIST COUNTRIES IN IMPLEMENTING THE PIC PROCEDURE

36. In 1989, UNEP, in association with the United Nations Institute for Training and Research (UNITAR), established a training programme, with funding from the Government of Switzerland, to provide training for decision makers and experts from developing countries on the implementation of the London Guidelines and the PIC procedure. Originally, the programme covered Asia and the Pacific as well as Latin America and the Caribbean, but has now been expanded to cover countries with economies in transition. The training activities were undertaken gradually, through UNEP's involvement in the FAO/UNEP Joint Programme on PIC, in full cooperation with FAO. The European Commission in 1995 provided funding to UNITAR, in cooperation with the FAO/UNEP Joint Programme on PIC, for a two-year period to support training on the implementation of the PIC procedure in the African region.

37. The initiation of the Joint Programme with UNEP in 1991 has resulted in cooperative training activities (in collaboration with UNITAR), which are primarily focused on raising countries' awareness of the importance of the PIC procedure and issues associated with chemicals management, particularly the importance of inter-ministerial cooperation and communication.

38. FAO has for many years maintained an extensive programme of field work aimed at assisting member countries develop their capacity for the management of pesticides. This programme of technical assistance is conducted within the framework of the Code of Conduct, which undertakes the individual activities in an appropriate context. These include assessing countries' needs, providing consultants to work with nationals within a country to develop appropriate legislation and regulations, followed up by support over a period of one or more years to implement the changes. Increasing emphasis is placed on regional or subregional activities where countries are brought together to learn from each other (for example, projects in Central America, Andean countries and previous work in Asia and the Pacific). The amendment of the Code in 1989 resulted in the expansion of this programme to include the PIC procedure. The presentation of the PIC procedure in the context of an overall regulatory framework for pesticides as represented by the Code of Conduct has helped to make it more readily understood and accepted by countries.

39. Capacity-building is considered an essential factor in UNEP's activities relating to toxic chemicals. UNEP, in collaboration with the International Programme on Chemical Safety (IPCS), also provides training in developing countries on preventive toxicology of industrial and household chemicals and control of chemical hazards. In addition, UNEP initiated the establishment of pilot National Registers of Potentially Toxic Chemicals (NRPTCs) to assist countries in identifying international, regional and national information sources and organizing effective access to them, as part of a national chemicals management process.

ANNEX

AN ESTIMATION OF THE COST PER BIENNIUM FOR FAO AND UNEP TO IMPLEMENT THE EXISTING, VOLUNTARY PIC PROCEDURE
(in United States Dollars)

Project Personnel Component	
Programme personnel [1]	474,000
General staff support [2]	277,000
Consultants	50,000
Administrative Core Costs	
Overheads, rent of premises, communications	77,000
Meetings/Conferences	
• FAO/UNEP Joint Group of Experts, one meeting/year Participants travel & daily subsistence allowances,	125,000
• Staff travel	55,000
Publication/Distribution of Information	
• 6-monthly Circular with import decisions, translation printing and mailing costs	40,000
• Printing costs information materials, Guidance for Governments, etc.	35,000
• Decision Guidance Documents, drafting, translation, printing and distribution costs	40,000
PIC Database	
• Database administration	10,000
• Development and maintenance costs	10,000
Total	**1,193,000**

This estimation does not include costing for any of UNEP's or FAO's capacity-building activities linked to chemicals management or implementation of the Code of Conduct, respectively.

[1] This includes programme staff (2), senior advisors and supervisory staff cost in both FAO and UNEP.

[2] This includes secretarial staff, temporary assistance and data entry staff.
