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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

Eighth session

Rome, 8-12 October 2001

Item 5 (d) of the provisional agenda\*

PREPARATION FOR THE CONFERENCE OF THE PARTIES

NON-COMPLIANCE

Note by the secretariat

Introduction

1. In its consideration of this subitem at its seventh session, the Intergovernmental Negotiating Committee had before it a note by the secretariat (UNEP/FAO/PIC/INC.7/10) on procedures and institutional mechanisms for determining non-compliance prepared by the secretariat in response to a request made by the Committee at its sixth session.
2. The Committee requested the secretariat to develop a model for a procedure to handle cases of non-compliance based on work that had been or was being undertaken in other forums, taking into account comments received from the floor, and in particular the need for an efficient mechanism in the Convention. It also invited all members to provide their inputs on the issue to the secretariat by 1 February 2001, and requested the secretariat to submit the model to the Committee at its eighth session.
3. Several representatives felt that meeting the obligations of and compliance with the Convention would be better served if a procedure for reporting were in place. The Committee considered that the issue of reporting needed to be further examined, and invited all members to provide proposals, information and views on the matter of reporting to the secretariat by 1 February 2001. The Committee also requested the secretariat to draft for submission to it at its eighth session an outline of a possible reporting procedure.

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\* UNEP/FAO/PIC/INC.8/1.

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The outline should be based on comments received from members of the Committee and should encompass, inter alia, the frequency and the composition of the reporting system.

4. In response to this invitation by the Committee to its members to provide proposals, information and views on the matter of reporting to the secretariat by 1 February 2001, the secretariat has received views and comments regarding the need to create a reporting mechanism, as well as suggestions as to the elements this mechanism should comprise, from Canada. The Canadian submission is to be found in document UNEP/FAO/PIC/INC.8/INF/2.

#### Background

5. The Rotterdam Convention contains a number of provisions that require Parties to report directly on actions taken, but there is no general provision on reporting. Article 5 provides, in paragraph 1, that each Party that has adopted a final regulatory action shall notify the secretariat of such action, and specifies a time limit and format for such notification. In addition, paragraph 2 provides that each new Party shall notify the secretariat of its final regulatory actions in effect at the time of entry into force of the Convention for that Party. Furthermore, article 10 provides that each Party must transmit to the secretariat its response concerning its future imports of chemicals added to the Convention, and also sets a time limit and format for this response. In addition it provides that new Parties shall provide such responses for all chemicals listed in annex III of the Convention. The secretariat circulates to all Parties information on notifications received in pursuance of article 5 and responses received in pursuance of article 10.

6. Regarding the overall implementation of the Convention, article 15 provides a general obligation for each Party to take the measures necessary to ensure the effective implementation of the Convention. No reporting requirement is linked to this article.

7. Article 18 establishes a Conference of the Parties. It provides, in paragraph 5, that the Conference of the Parties shall continuously review and evaluate the implementation of the Convention, and shall establish such subsidiary bodies as it considers necessary for the implementation of the Convention. It may be noted that an Implementation Committee has been established under the Montreal Protocol on Substances that Deplete the Ozone Layer – a multilateral environmental agreement of a similar character – to assist the Meetings of the Parties in overseeing the implementation of the Convention.

8. The Stockholm Convention on Persistent Organic Pollutants contains general provisions on reporting. Article 15 of the Stockholm Convention is reproduced in annex I of the present note to illustrate how the issue of reporting has been addressed in that Convention.

9. In requesting the secretariat to prepare an outline of a possible reporting procedure, the Committee noted that this outline should be based on comments received from members of the Committee. A draft outline is to be found in annex II to the present note.

#### Possible action by the Committee

10. The Committee may wish to use the information provided as a basis for further consideration of this issue.

Annex I

Stockholm Convention on Persistent Organic Pollutants

Article 15: Reporting

1. Each Party shall report to the Conference of the Parties on the measures it has taken to implement the provisions of this Convention and on the effectiveness of such measures in meeting the objectives of the Convention.
2. Each Party shall provide to the Secretariat:
  - (a) Statistical data on its total quantities of production, import and export of each of the chemicals listed in Annex A and Annex B or a reasonable estimate of such data; and
  - (b) To the extent practicable, a list of the States from which it has imported each such substance and the States to which it has exported each such substance.
3. Such reporting shall be at periodic intervals and in a format to be decided by the Conference of the Parties at its first meeting.

Annex II

Draft outline of a possible reporting procedure

1. Periodicity

Each Party to submit reports every two years, and at least six months prior to each meeting of the Conference of the Parties, or as otherwise directed by the Conference of the Parties.

2. Reporting procedures

The report to be submitted, through the secretariat, to the Implementation Committee and the Conference of the Parties.

3. Contents of the report

(a) List of annex III chemicals imported during the period of the report and countries of origin (article 10);

(b) Legislative or administrative measures taken to communicate to those concerned within the Party's jurisdiction the responses forwarded to the secretariat in accordance with paragraph 10 of article 10 (article 11);

(c) List of annex III chemicals exported during the period of the report, including countries of destination. Indication of exports to Parties that have failed to transmit a response or have transmitted an interim response that does not contain an interim decision, and which of the subparagraphs of paragraph 2 of article 11 applied to such export (article 11);

(d) List of all export notifications provided during the period of the report for banned or severely restricted chemicals not listed in annex III, and list of countries to which they have been exported (article 12);

(e) Indication of measures taken to establish and strengthen national infrastructures and institutions for the effective implementation of the Convention (e.g. the establishment of national registers and databases to provide public access to information relating to chemical safety) (article 15);

(f) Details of the measures taken to cooperate in promoting technical assistance, and, if provided, the nature and amount of technical assistance (article 16).

4. Format of the report

The decision of the Conference of the Parties should include guidelines as to the structure of the report. The reporting format should be clear and as simple as possible while still being informative, and not overly burdensome to complete.

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