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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 of the provisional agenda\*

IMPLEMENTATION OF THE INTERIM PRIOR INFORMED CONSENT PROCEDURE

Note by the secretariat

1. The purpose of the present note is to facilitate the Intergovernmental Negotiating Committee's discussions of agenda item 4. The sub-items highlighted herein cover the discussion on the outcome of the Interim Chemical Review Committee's deliberations on some of the issues it had been requested by the Intergovernmental Negotiating Committee to review at its third session, or issues that arose during its discussions. The present note provides relevant background information and a summary of the Review Committee's deliberations and conclusions on each issue. Also included, where appropriate, are the secretariat's suggestions for possible action by the Intergovernmental Negotiating Committee.

I. ISSUES CONSIDERED AT THE THIRD SESSION OF THE INTERIM CHEMICAL REVIEW  
COMMITTEE PURSUANT TO THE EIGHTH SESSION OF THE INTERGOVERNMENTAL  
NEGOTIATING COMMITTEE

A. Conflict of interest

2. At its seventh session, 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. At its eighth session, the Intergovernmental Negotiating Committee reviewed the draft disclosure form and procedure prepared by the secretariat (UNEP/FAO/PIC/INC.8/10). The Negotiating Committee adopted rules and procedures for preventing and dealing with conflicts of interest relating to the activities of the Interim Chemical Review Committee, and decided that a declaration of interests form should be completed

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

by current members of the Review Committee and submitted by the designating Government to the interim secretariat before the third session of the Review Committee (decision INC-8/1).

3. In a letter dated 9 November 2001 the secretariat informed the members of the Interim Chemical Review Committee of decision INC-8/1 and requested that they submit the completed declaration of interests form to the secretariat by 15 January 2002. A reminder to do so dated 15 February was sent to those members who had not submitted the requested forms.

4. A status report on the implementation of decision INC-8/1 on the conflict of interest procedure by the Interim Chemical Review Committee is available to the Intergovernmental Negotiating Committee in document UNEP/FAO/PIC/INC.9/INF/3. The Committee may wish to note that some members of the Review Committee failed to submit completed declaration of interests forms. This is relevant to the discussion of the Review Committee under agenda item 4 (f).

#### B. Maleic hydrazide

5. The Intergovernmental Negotiating Committee, in its 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 Negotiating Committee at its eighth session (see UNEP/FAO/PIC/INC.7/15, annex I). At its eighth session, the Intergovernmental Negotiating Committee reviewed the recommendation of the Interim Chemical Review Committee and, in decision INC-8/3 on maleic hydrazide, requested a progress report to be submitted to the ninth session of the Intergovernmental Negotiating Committee with regard to the preparation of specifications of the Food and Agriculture Organization of the United Nations for the potassium salt of maleic hydrazide.

6. A status report on the implementation of decision INC-8/3 on maleic hydrazide is available to the Intergovernmental Negotiating Committee in document UNEP/FAO/PIC/INC.9/INF/3.

#### C. Compatibility of current regulatory practices with the notification requirements of the interim prior informed consent procedure

7. The issue of the compatibility of regulatory practices with the notification requirements of the interim prior informed consent (PIC) procedure was first discussed by the Interim Chemical Review Committee at its second session (see UNEP/FAO/PIC/ICRC.2/9). It was further considered by the Intergovernmental Negotiating Committee at its eighth session (see UNEP/FAO/PIC/INC.8/8), which endorsed the preparation of an issue paper by the Review Committee and requested a report on progress to be submitted to the ninth session of the Negotiating Committee.

8. At its third session, the Interim Chemical Review Committee had before it document UNEP/FAO/PIC/ICRC.3/9 containing an issue paper prepared by an intersessional task group. The issues identified in that paper can be broadly characterized into two main areas: differences between national regulatory systems and the language of the Convention, and inadequate regulatory infrastructure in many developing countries and countries with economies in transition. The Committee, during its deliberations, identified a further range of issues largely related to the lack of infrastructure in countries, particularly in respect of industrial chemicals, and the difficulty of enforcing those regulations that were in place. Countries were advised that they should raise any such concerns at the level of the Intergovernmental Negotiating Committee.

9. In response to the issues raised, the Chair with the assistance of the secretariat, has prepared a series of three papers. Two technical issue papers (UNEP/FAO/PIC/INC.9/8 and UNEP/FAO/PIC/INC.9/9) and a more general information paper on how chemicals are regulated in countries (FAO/UNEP/PIC/INC.9/INF/4), are before the Intergovernmental Negotiating Committee.

#### D. Severely hazardous pesticide formulations

10. At its seventh session, the Intergovernmental Negotiating Committee considered the work of the Interim Chemical Review Committee on the development of an incident report form for severely hazardous pesticide formulations (see UNEP/FAO/PIC/INC.7/6). In decision INC-7/3 the Negotiating Committee encouraged the Review Committee to continue its development of the incident report form in conjunction with a simple guidance document on the completion of the form and the development of proposals in line with article 6 and annex IV, part 1, of the Convention. It also recommended that States, regional economic integration organizations, bilateral and multilateral aid agencies, intergovernmental organizations and non-governmental organizations make use of the incident report form and guidance document on reporting pesticide poisoning incidents in their projects, once it is available and has been circulated by the secretariat.

11. At its third session, the Interim Chemical Review Committee reviewed the report of an intersessional working group (UNEP/FAO/PIC/ICRC.3/5) charged with pilot testing and finalizing the draft severely hazardous pesticide formulation report form and guidance document. With minor amendments, the Committee adopted the revised form and guidance material. The incident form would not necessarily replace any incident forms already in place at national and regional levels. Countries could submit national forms so long as the requirements of annex IV are met.

12. The Review Committee noted that the incident report form had already been used to submit a first proposal on severely hazardous pesticide formulations. It was further suggested that training in the use of the incident form should be included in the agenda of future workshops to be held on the implementation of the interim PIC procedure. The incident report form and guidance was sent to all Designated National Authorities and a wide range of bilateral and multilateral aid agencies, and was posted on the Rotterdam Convention web site in July 2002.

13. In the light of decision INC-7/3, the Intergovernmental Negotiating Committee is invited to note the adoption of the revised incident report form and guidance by the third session of the Interim Chemical Review Committee.

#### E. Prioritization of work on old notifications of final regulatory actions to ban or severely restrict a chemical

14. At its second session, the Interim Chemical Review Committee discussed the issue of how the Committee should deal with "old" notifications of final regulatory actions, i.e., those submitted prior to implementation of the interim PIC procedure that did not satisfy the criteria set out in annex I of the Convention. The Committee established an intersessional task group to develop a process for prioritizing the work on old notifications.

15. At its third session, the Interim Chemical Review Committee, in reviewing the report of the work of the intersessional task group (UNEP/FAO/PIC/ICRC.3/8, annex), agreed that countries should be encouraged to prioritize their work to bring forward notifications where the chemicals were in ongoing international trade; where there was at least one valid notification; and where notifications of control actions had been received from two or more PIC regions. It was also agreed that if a substance was covered by another international instrument such as the Montreal Protocol or was already subject to the interim PIC procedure, its priority in terms of the Convention was reduced.

16. The Review Committee recalled that the Intergovernmental Negotiating Committee encouraged the submission of second, new notifications where one old but valid notification already existed. It also recalled that under paragraph 2 of article 5 of the Convention, old notifications need not be resubmitted; however, updating of notifications which did not meet the new criteria, and updating of the legislation they reflected, might nevertheless be desirable. The Committee requested that the tabular information in the appendix to document UNEP/FAO/PIC/ICRC.3/8 should be checked for accuracy, its clarity and ease of use improved and that it should then be published in the PIC Circular and posted on the Rotterdam Convention web site. In response, the secretariat prepared two tabular summaries, one on notifications of final regulatory actions

for banned or severely restricted chemicals submitted prior to the adoption of the Convention in September 1998, and a second on notifications of final regulatory actions for banned or severely restricted chemicals verified to meet the information requirements of annex I. The second table will be updated every six months, circulated to Designated National Authorities with the PIC Circular and posted on the Rotterdam Convention web site.

17. The Intergovernmental Negotiating Committee is invited to note that the tabular summaries of information on notifications were included with PIC Circular XV in June 2002, and posted on the Rotterdam Convention web site.

## II. ISSUES THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE SHOULD CONSIDER TO BRING TO THE ATTENTION OF STATES

### A. Determination of ongoing trade in chemicals

18. At its second session, the Interim Chemical Review Committee had agreed that after two notifications for a chemical had been received, the secretariat should collect information on the international trade in that chemical, the existence of such trade having been established in annex II to the Convention as a criterion for listing.

19. At its third session, the Review Committee considered an issue paper (UNEP/FAO/PIC/ICRC.3/12) on this topic; the ensuing discussion illustrated the difficulties, practical and logical, of proving a negative. On the positive side, it was agreed that while considerations of commercial confidentiality might put legal impediments in the way of quantitative statements of imports, exports, production and consumption of a chemical, they did not impede simple, qualitative statements of “yes” or “no” as requested by annex I of the Convention.

20. The Review Committee noted that under paragraph (c) of annex III to the Convention, the Review Committee was required to “consider” whether there was evidence of ongoing international trade, not to “confirm” or “establish”, as was required for the criteria under paragraphs (a) and (b) of the annex. That wording was interpreted by the Review Committee to mean that it had a greater degree of flexibility in respect of the paragraph (c) criteria. However, it also noted that there was no point in writing draft guidance documents for chemicals in which there was no ongoing international trade.

21. The Review Committee also recalled that production of chemicals might be restarted after an interruption and manufacturers on record as former producers of chemicals of interest should be contacted when trying to verify non-production of PIC-listed substances.

22. The Review Committee agreed to use the process as described in document UNEP/FAO/PIC/ICRC.3/12 to collect trade information.

23. The Intergovernmental Negotiating Committee is invited to note the process adopted by the Interim Chemical Review Committee as described in document UNEP/FAO/PIC/ICRC.3/12. The Negotiating Committee may wish to invite countries participating in the interim PIC procedure to provide to the secretariat such information, if requested.

### B. Common and recognized patterns of use of severely hazardous pesticide formulations

24. At its third session, the Interim Chemical Review Committee considered the first proposal for inclusion of a severely hazardous pesticide formulation. Annex IV, part 1, paragraph (f), of the Convention establishes that a proposing party has to provide information on common and recognized patterns of use relevant to proposals for inclusion of severely hazardous pesticide formulations. The Review Committee adopted the outline proposed in document UNEP/FAO/PIC/ICRC.3/13 as a basis on which to characterize common and recognized patterns of use, and to collect the information identified on a case-by-case basis.

25. The Intergovernmental Negotiating Committee is invited to note the process adopted by the Interim Chemical Review Committee as described in UNEP/FAO/PIC/ICRC.3/13. The Negotiating Committee may wish to invite countries participating in the interim PIC procedure to provide to the secretariat relevant information, as may be requested, to facilitate an understanding of the common and recognized patterns of use.

### C. Chemical Abstract Service numbers

26. At its third session, the Interim Chemical Review Committee took note of an information note on Chemical Abstract Service (CAS) numbers (UNEP/FAO/PIC/ICRC.3/INF/4). The Chair stressed that in its recommendations for PIC listings, the Review Committee was obliged to specify the CAS numbers of all chemicals involved: the CAS numbers, except in rare cases, had the virtue of unambiguity. However, the possible conflict between unambiguous CAS numbers and the phrasing of bans or severe restrictions by legislators, as a possible issue of compatibility between the Convention and national legislation, remained an issue for the Review Committee in its handling of notifications because not only was it required to pass on specific CAS numbers in its recommendations for listing, it must first be sure that notifications from a minimum of two regions did in fact cover the same substances. He stressed that notifying authorities must be encouraged to be comprehensive and specific by stating all the CAS numbers of the chemicals which their notifications were intended to cover.

27. This issue and others related to the importance of precise descriptions of chemicals proposed for inclusion in the interim PIC procedure are considered in document UNEP/FAO/PIC/INC.9/9.

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