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INTERIM CHEMICAL REVIEW COMMITTEE

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Item 5 of the provisional agenda*

CONSIDERATION OF THE DRAFT DECISION GUIDANCE DOCUMENT ON
MALEIC HYDRAZIDE REFERRED TO THE INTERIM CHEMICAL REVIEW COMMITTEE
BY THE SIXTH SESSION OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE,
IN THE LIGHT OF GUIDANCE PROVIDED BY THE SEVENTH SESSION OF THAT COMMITTEE

Note by the secretariat

1. The purpose of this note is to inform the Interim Chemical Review Committee of the decision taken by the Intergovernmental Negotiating Committee, at its seventh session in Geneva, 30 October - 3 November 2000, concerning the issue of chemicals whose use had been banned or severely restricted on the basis of specified levels of contaminants, in order for the Committee to continue its consideration of the decision guidance document on maleic hydrazide, referred to it by the Intergovernmental Negotiating Committee at its sixth session.
2. The Interim Chemical Review Committee, at its first session, decided not to address the draft decision guidance document on maleic hydrazide until after the seventh session of the Intergovernmental Negotiating Committee, and referred the issue of chemicals whose use had been banned or severely restricted on the basis of specified levels of contaminants back to the Intergovernmental Negotiating Committee for its further consideration. The Committee also agreed that there might be a need for it to resume its consideration of the issue of contaminants, in the light, of discussion of the issue by the Intergovernmental Negotiating Committee and of the outcome of further consideration of other issues relating to maleic hydrazide.
3. Section I of this note contains the decision (decision INC-7/5) of the seventh session of the Intergovernmental Negotiating Committee resulting from its consideration of the issue of chemicals whose use has been banned or severely restricted on the basis of specified levels of contaminants. The related decision of the seventh session of the Intergovernmental Negotiating Committee, adopting a general policy on contaminants related to final regulatory actions to ban a pesticide (decision INC-7/4), may be found in document UNEP/FAO/PIC/ICRC.2/2. Section II of this note provides a summary of the outcome of discussions on the draft decision guidance document on maleic hydrazide and the issue of contaminants that took place at the Conference of Plenipotentiaries (Rotterdam, September 1998), the sixth session of the Intergovernmental Negotiating Committee (Rome, July 1999) and the first session of the Interim Chemical Review Committee (Geneva, February 2000).

* UNEP/FAO/PIC/ICRC.2/1.

4. The draft decision guidance document on maleic hydrazide, referred to the Interim Chemical Review Committee by the Intergovernmental Negotiating Committee at its sixth session, was circulated in advance of the first session of the Committee as document UNEP/FAO/PIC/ICRC.1/4/Add.3 in English only, the working language of the Committee. It was also made available informally to the Interim Chemical Review Committee in French, Spanish, Arabic, Chinese and Russian. The draft decision guidance document on maleic hydrazide is also contained in document UNEP/FAO/PIC/INC.6/6/Add.5. This document is available in English, French and Spanish on the Rotterdam Convention Website and in Arabic, Chinese and Russian upon request from the secretariat.

I. DECISION INC-7/5 OF THE SEVENTH SESSION OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE REGARDING CONTAMINANTS

5. The Intergovernmental Negotiating Committee, at its seventh session, when considering the issue of contaminants in general and maleic hydrazide specifically, had before it a note from the Secretariat (UNEP/FAO/PIC/INC.7/6, sect. C). The discussion of the matter at the first session of the Interim Chemical Review Committee had been inconclusive. The issue of pesticides which had been notified as banned or severely restricted on the basis of specified levels of contaminants was therefore referred back to the Intergovernmental Negotiating Committee for further guidance. In order to address this unresolved issue, the Intergovernmental Negotiating Committee established an open-ended technical contact group to consider the policy issues involved.

6. Based on the results of the work of the technical contact group, the Intergovernmental Negotiating Committee decided that:

“the Interim Chemical Review Committee should, on a pilot basis and without prejudice to any future policy on contaminants, apply the following two approaches in its consideration of maleic hydrazide and report on the outcome to the next session of the Intergovernmental Negotiating Committee:

1. Consider pesticide A with contaminant Y less than the specified upper limit of X as a different entity from pesticide A containing contaminant Y at more than X.

In such cases, the pesticide containing more than the specified upper limit of contaminant is banned and this is the basis for the control action reported to the Secretariat.

- a) It would need to be established that the pesticide subject to the control action, that containing more than the maximum level of the contaminant, was moving in international trade (as per Annex II C (iv) of the Convention);
- b) At the same time, industry could be encouraged to support the development of FAO specifications to characterize “acceptable” products. The Contact Group recommended that the FAO give priority to the development of such specifications;
- c) Once an international specification for the pesticide is in place there would be no need to list it in Annex III of the Convention, as the specification would provide importing countries and manufacturers with an internationally recognized quality standard against which to judge the acceptability of the pesticide moving in trade. The end result would be to effectively reduce the market for pesticides not meeting this acceptable standard.

2. Consider the pesticide as a single entity.

In this case, pesticide A containing contaminant Y at less than the specified maximum level of X would still be moving in trade and acceptable for a range of uses.

Such cases would not likely be considered to have met the criteria in annex II, C (i) of the Convention e.g. resulted in a decrease in the quantity of the chemical used or to a decrease in the number of uses.

- a) In such cases a country may decide not to notify the chemical, since it would not be considered for entry in the PIC procedure;
- b) If a notification of the regulatory action was made which complied with the requirements of annex I, the secretariat should prepare a synopsis of the information received and circulate it to all parties;
- c) Countries may decide to send Export Notifications in line with article 12 and should provide information on this control action to other parties as an information exchange activity in line with article 14. As a consequence of this, industry could be encouraged to support the development of FAO specifications to characterize "acceptable" products. The Contact Group recommended that the FAO give priority to the development of such specifications;
- d) Once an international specification for the pesticide is in place, it would provide importing countries and manufacturers with an internationally recognized quality standard against which to judge the acceptability of the pesticide moving in trade. The end result would be to effectively reduce the market for pesticides not meeting this acceptable standard."

II. SUMMARY OF PREVIOUS DISCUSSIONS ON THE DRAFT DECISION GUIDANCE DOCUMENT ON MALEIC HYDRAZIDE AND THE ISSUE OF CONTAMINANTS

7. The Conference of Plenipotentiaries on the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam, September 1998) decided that all chemicals identified for inclusion in the prior informed consent (PIC) procedure under the voluntary PIC procedure, but for which decision guidance documents had not yet been circulated before the date on which the Convention was opened for signature, would become subject to the interim PIC procedure as soon as the relevant decision guidance documents had been adopted by the Intergovernmental Negotiating Committee.

8. The Intergovernmental Negotiating Committee, at its sixth session, considered the draft decision guidance documents for the following six chemicals: binapacryl, bromacil, ethylene dichloride, ethylene oxide, maleic hydrazide and toxaphene. It adopted the draft decision guidance documents for binapacryl and toxaphene and referred the remaining four decision guidance documents to the Interim Chemical Review Committee. In the case of maleic hydrazide, the Committee took the following action (decision INC-6/3 paragraphs 3 and 5):

"3. Decides that the Interim Chemical Review Committee shall review the chemical maleic hydrazide (CAS number 123-33-1; category: pesticide), addressing, in particular, the impurity hydrazine and the overall policy issues related to adding chemicals to the PIC procedure on the basis of control actions related to contaminants within the substance, rather than to the substance itself, and, should it so decide, review and revise, as appropriate, the draft decision guidance document for that chemical for presentation to the Intergovernmental Negotiating Committee at its next session;"

"5. Decides that, following its review and revision, as appropriate, of relevant draft decision guidance documents, the Interim Chemical Review Committee shall forward such draft decision guidance documents to the Intergovernmental Negotiating Committee for its consideration."

9. When adopting decision INC-6/3, the Intergovernmental Negotiating Committee considered whether, when the Interim Chemical Review Committee reviewed and updated the decision guidance documents for the substances under discussion, it should proceed on the basis of the criteria previously set out in the voluntary PIC procedure and not the new criteria as defined in article 5 of the Rotterdam Convention, or whether it should consider also the Convention's criteria, to ensure that the interim decisions were an adequate reflection of the Convention, in the light of the provisions of article 8.^{1/}

10. In order to facilitate the work of the Interim Chemical Review Committee, the Intergovernmental Negotiating Committee also requested that all notifications of control actions, background documents and comments on the decision guidance documents on bromacil, ethylene dichloride, ethylene oxide and *maleic hydrazide* should be provided to the secretariat by 31 October 1999 and made available to the Interim Chemical Review Committee.^{2/}

11. On 16 August 1999, the secretariat sent a letter to all designated national authorities and to the official contact point in States that had not yet nominated a designated national authority, informing them of the decisions taken by the Intergovernmental Negotiating Committee at its sixth session. At the same time, they were requested to provide the secretariat with any relevant information regarding the four chemicals in question by 31 October 1999.

12. The secretariat compiled the information received and made it available to the Interim Chemical Review Committee before its first session (UNEP/FAO/PIC/ICRC.1/INF/2 and Add.1).

13. The Interim Chemical Review Committee, at its first session, considered the draft decision guidance document for maleic hydrazide^{3/} in accordance with the mandate provided in paragraph 3 of decision INC-6/3 of the Intergovernmental Negotiating Committee.

14. The Interim Chemical Review Committee recommended^{4/}:

“that the Intergovernmental Negotiating Committee adopt a policy on contaminants which would include final regulatory actions to ban a pesticide that had been taken by at least two countries in two PIC regions on the basis of a contamination contained in that substance, where the notification also met the requirements of annexes I and II of the Convention.”

15. The Committee decided to refer the issue of chemicals whose use had been banned or severely restricted on the basis of specified levels of contaminants back to the Intergovernmental Negotiating Committee for its further consideration. The Committee also agreed that there might be a need for it to resume its consideration of the issue of contaminants, in the light, of discussion of the issue by the Intergovernmental Negotiating Committee and of the outcome of further consideration of other issues relating to maleic hydrazide.

16. The Committee decided not to address the draft decision guidance document on maleic hydrazide until after the seventh session of the Intergovernmental Negotiating Committee.

^{1/} Report of the Intergovernmental Negotiating Committee on the work of its sixth session (UNEP/FAO/PIC/INC.6/7), para. 44.

^{2/} UNEP/FAO/PIC/INC.6/7, para 43.

^{3/} Report of the Interim Chemical Review Committee on the Work of its first session UNEP/FAO/PIC/ICRC.1/6 paragraphs 32-38.

^{4/} UNEP/FAO/PIC/ICRC.1/6 Annex I paragraph E.