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Interim Chemical Review Committee

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Item 3 of the provisional agenda*

**Review of the outcome of the ninth session of the
Intergovernmental Negotiating Committee**

**ISSUES ARISING OUT OF THE NINTH SESSION OF INTERGOVERNMENTAL
NEGOTIATING COMMITTEE**

Note by the secretariat

Introduction

1. The purpose of the present note is to provide the Interim Chemical Review Committee with an overview of the guidance, action items and decisions relevant to its work that resulted from the deliberations of the Intergovernmental Negotiating Committee at its ninth session, in Bonn, 30 September to 4 October 2002. The report of the ninth session of the Intergovernmental Negotiating Committee (UNEP/FAO/PIC/ICRC.9/21) was circulated in November 2002 and posted on the Rotterdam Convention web site www.pic.int.
2. Chapter I describes issues for which the Intergovernmental Negotiating Committee has provided guidance to or requested follow-up by the Interim Chemical Review Committee, while chapter II reports on other decisions taken by the Intergovernmental Negotiating Committee of relevance to the work of the Interim Chemical Review Committee. Chapter III reports on the decisions taken by the Intergovernmental Negotiating Committee based on the recommendations of the Interim Chemical Review Committee at its third session.

* UNEP/FAO/PIC/ICRC.4/1.

I. ISSUES ON WHICH FOLLOW-UP BY THE INTERIM CHEMICAL REVIEW COMMITTEE
WAS REQUESTED

A. Maleic hydrazide

3. The Intergovernmental Negotiating Committee reviewed the report of the third session of the Interim Chemical Review Committee (UNEP/FAO/PIC/ICRC.3/19) and the status report on the implementation of the maleic hydrazide decision as modified by the Intergovernmental Negotiating Committee in its decision INC-8/3 (UNEP/FAO/PIC/INC.9/INF/3).
4. The representative of a regional economic integration organization was deeply disturbed about the apparent failure of some manufacturers to comply with the condition of paragraph 2 of decision INC-8/3 whereby they should confirm their commitment to seek to comply with FAO specifications by 1 January 2004. He was particularly concerned to learn that one Japanese manufacturer had been identified as producing the choline salt of maleic hydrazide with a free hydrazine content of more than 1 ppm. That raised serious doubts about the continued validity of decision INC-8/3 not to include maleic hydrazide in the interim PIC procedure. He proposed that the Interim Chemical Review Committee should be requested to review the situation again at its next meeting, and make appropriate recommendations if the situation had not been adequately resolved.
5. The representative of Japan said that the competent authority in his country had reported that it had measured the hydrazine content of the maleic hydrazide produced by the Japan Hydrazine Company and had found it to be below 1 ppm. The authority was currently preparing a report on that survey and the Government of Japan would submit the results in writing to the secretariat by the end of November 2002.
6. The Intergovernmental Negotiating Committee requested the Interim Chemical Review Committee to report to it at its tenth session on the status of implementation of decision INC-8/3 concerning maleic hydrazide.
7. A status report on the implementation of decision INC-8/3 and the text of the decision are given in document UNEP/FAO/ICRC.4/14.

B. Issues for which the Interim Chemical Review Committee requested guidance at its third session from the Intergovernmental Negotiating Committee

8. At its third session, the Interim Chemical Review Committee identified a series of issues related to the application of the provisions of the Convention for which it requested guidance from the Intergovernmental Negotiating Committee. The issues were separated into two papers for consideration by the Intergovernmental Negotiating Committee at its ninth session (UNEP/FAO/PIC/ICRC.4/8 and UNEP/FAO/PIC/ICRC.4/9). As a result of its consideration of those issues, the Intergovernmental Negotiating Committee provided the guidance requested and in addition sought specific follow-up by the Interim Chemical Review Committee.
 1. Issues to consider in establishing whether a final regulatory action has been taken as a consequence of a risk evaluation relevant to the conditions within the reporting Party in line with the criteria of Annex II of the Convention
9. When the document on this matter (UNEP/FAO/PIC/INC.9/8) was introduced at the ninth session of the Intergovernmental Negotiating Committee, it was noted that there were two distinct issues to be considered: whether preventive regulatory actions on pesticides met the definition of a ban under article 2 of the Convention and the relationship of such regulatory actions to the criteria of Annex II, and concerns that each country should provide a supporting risk evaluation based on conditions prevailing in that country.

10. The Intergovernmental Negotiating Committee noted that article 2 did not exclude preventive action, even if a chemical was not proposed for use in the notifying country, and agreed that the definition of a banned chemical in paragraph (b) of the article included preventive regulatory actions taken to protect human health or the environment from chemicals that might not have been proposed for use in the notifying country.

11. The Intergovernmental Negotiating Committee agreed that when a country gave notification of a final regulatory action to ban a chemical that had been refused approval for first-time use or had been withdrawn from further consideration in the domestic approval process in order to protect human health or the environment, the extent to which the notification and supporting documentation were found to meet the criteria of Annex II of the Convention should be considered by the Interim Chemical Review Committee on a case-by-case basis. In the event that a country gave notification of a final regulatory action to ban a chemical that had not been proposed for use in that country, submission of chemical-specific supporting documentation would assist the Interim Chemical Review Committee in establishing whether the final regulatory action had been taken as a consequence of a risk evaluation of the anticipated or likely uses of the chemical in the notifying country.

12. With reference to countries' capacity to provide risk evaluations in support of final regulatory actions, the Intergovernmental Negotiating Committee stressed that, when hazard or risk evaluation information for a notification of final regulatory action was taken from another country, supporting documentation must be provided to show that conditions in the two countries were similar and comparable. Such supporting documentation might include information such as a comparison of uses; conditions of use; physical and climatic conditions; and risk reduction measures. Also, the level of detail of such information should be sufficient to enable the Interim Chemical Review Committee to judge whether conditions were comparable. The sufficiency and acceptability of the information must be determined by the Interim Chemical Review Committee on a case-by-case basis.

13. The Committee noted that, in the absence of documentation detailing how a risk evaluation from another country related to conditions obtaining in the notifying country, the final regulatory action would not be considered as meeting the criteria of Annex II of the Convention.

14. The Intergovernmental Negotiating Committee requested the Interim Chemical Review Committee to develop guidelines, for review by the Intergovernmental Negotiating Committee at its tenth session, on the scope of information to be contained in the supporting documentation provided by the notifying country.

15. An initial draft of possible guidance on the scope of such information is contained in document UNEP/FAO/ICRC.4/9 and will be considered under agenda item 4 (b) (iii).

2. Issues to consider in ensuring consistency between the scope of reported national regulatory actions and the inclusion of the chemical in the interim prior informed consent procedure

16. When the document on this issue (UNEP/FAO/PIC/INC.9/9) was introduced at the ninth session of the Intergovernmental Negotiating Committee, the attention of the Committee was drawn to the request by the Interim Chemical Review Committee for guidance on ensuring consistency between the scope of reported national regulatory actions and the listing of chemicals in the interim prior informed consent procedure.

17. The Committee considered specific issues related to the listing of chemicals using asbestos, DNOC and Granox TBC/Spinox T as examples. The requested guidance is available to the Committee as issues to consider in finalizing the draft decision guidance documents on asbestos, DNOC, and

Granox TBC/Spinox T (documents UNEP/FAO/PIC/ICRC.4/11, UNEP/FAO/PIC/ICRC.4/12, UNEP/FAO/PIC/ICRC.4/13 respectively) and will be considered under agenda item 5 (b).

18. In the light of the discussion on the various chemicals, the secretariat was requested to prepare a "housekeeping" paper (UNEP/FAO/PIC/ICRC.4/9) identifying inconsistencies within Annex III of the Convention and inconsistencies between Annex III and decision guidance documents for consideration and review by the Interim Chemical Review Committee under agenda item 4 (b) (iv).

19. The report of the fourth session of the Interim Chemical Review Committee will be submitted to the Intergovernmental Negotiating Committee at its tenth session, inter alia as a basis on which the Intergovernmental Negotiating Committee can prepare a recommendation to the first Conference of the Parties and further guidance for the operation of the Interim Chemical Review Committee.

II. OTHER DECISIONS OF RELEVANCE TO THE WORK OF THE INTERIM CHEMICAL REVIEW COMMITTEE

A. Confirmation of experts designated for the Interim Chemical Review Committee

20. At its ninth session, the Intergovernmental Negotiating Committee considered a note by the secretariat (UNEP/FAO/PIC/INC.9/11) recording the resignation of an expert from the North American region (Canada) and the subsequent process leading to the designation of a new expert from that region, and indicating also that consultations had been conducted with the other member of the region.

21. In its decision INC-9/2, the Intergovernmental Negotiating Committee confirmed the appointment of Mr. Rob Ward (Canada) and reaffirmed the provisions of decisions INC-6/2 with regard to the duration of service of the experts.

B. The Interim Chemical Review Committee: extension of mandate or nomination of new members

22. At its ninth session, the Intergovernmental Negotiating Committee considered a note by the secretariat (UNEP/FAO/PIC/INC.9/12) on the extension of the mandate or appointment of new members for the Interim Chemical Review Committee.

23. The regional groups for Europe, Latin America and the Caribbean, the Near East and North America decided to recommend extending the mandates of the experts from their regions until the first meeting of the Conference of the Parties.

24. The Southwest Pacific regional group also recommended extending the mandate of the experts from that region, but noted that Mr. William J. Cable (Samoa) would no longer be in a position to continue his mandate. In his place, the regional group nominated a further representative from Samoa.

25. The regional group for Africa recommended extending the mandates of the experts from Gambia, Ethiopia, Mauritius, Morocco and South Africa. The expert from Cameroon was replaced by one from the Republic of Congo, for the sixth position for the region.

26. The regional group for Asia nominated five new experts from that region from Bangladesh, Malaysia, Philippines, Republic of Korea and Thailand.

27. The Chair reminded the Intergovernmental Negotiating Committee that complete documentation, including nominations from Governments and completed conflict-of-interest forms, had not yet been received for all the experts. On an exceptional basis, the Committee agreed to confirm all the experts on the condition that the outstanding documents were received by the secretariat by 15 November 2002. Experts who did not meet that condition would not be allowed to participate in the intersessional work or the meetings of the Interim Chemical Review Committee.

28. In its decision INC.9/3, the Committee approved the nominations submitted by the regions for the composition of the Interim Chemical Review Committee. That decision, together with complete list of the members of the Interim Chemical Review Committee, is reproduced in document UNEP/FAO/PIC/ICRC.4/INF/1.

III. DECISIONS TAKEN ON THE BASIS OF RECOMMENDATIONS BY THE INTERIM CHEMICAL REVIEW COMMITTEE AT ITS THIRD SESSION

A. Monocrotophos

29. At its ninth session, the Intergovernmental Negotiating Committee considered the note by the secretariat (UNEP/FAO/PIC/INC.9/10) containing the recommendation of the Interim Chemical Review Committee on the inclusion of the chemical monocrotophos and on the adoption of the associated draft decision guidance document.

30. In its decision INC-9/1, the Intergovernmental Negotiating Committee made the chemical monocrotophos subject to the interim prior informed consent procedure and approved the draft decision guidance document.

31. The Intergovernmental Negotiating Committee recognized that as a result of the decision to include the chemical monocrotophos per se in the interim prior informed consent procedure, under article 10 of the Convention countries would be required to submit separate import decisions not only for the severely hazardous formulations (soluble liquid formulations exceeding 600 grams active ingredient per litre) currently listed in Annex III of the Convention but also for all other forms of the chemical, and that such a requirement could lead to confusion. It decided therefore that with the circulation of the newly approved decision guidance document on monocrotophos, countries would be invited to submit a single decision regarding future imports that would apply to all forms of monocrotophos, including the severely hazardous formulations listed in Annex III of the Convention.
