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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

First session

Brussels, 11-15 March 1996

REPORT OF THE 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 ON THE WORK OF ITS FIRST SESSION

Introduction

1. The Governing Council of the United Nations Environment Programme (UNEP), in its decision 18/12 of 26 May 1995, authorized UNEP, *inter alia*, to prepare for and convene, together with the Food and Agriculture Organization of the United Nations (FAO) and in consultation with Governments and relevant international organizations, an intergovernmental negotiating committee, with a mandate to prepare an international legally binding instrument for the application of the prior informed consent (PIC) procedure for certain hazardous chemicals in international trade. In addition, the FAO Council at its one hundred and seventh session, held in Rome from 15 to 24 November 1994, had agreed that the FAO Secretariat should proceed with the preparation of a draft PIC convention as part of the current FAO/UNEP Joint Programme on PIC, and in cooperation with other international and non-governmental organizations concerned.

2. In accordance with the above mandate, the first session of the Intergovernmental Negotiating Committee (INC) for an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was convened in Brussels from 11 to 15 March 1996, hosted by the Government of Belgium.

I. ORGANIZATION OF THE SESSION

A. Opening of the session

3. The session was opened by the Executive Director of UNEP, Ms. Elizabeth Dowdeswell, at 10.45 a.m. on Monday 11 March 1996. At the outset, she thanked the Government of Belgium for hosting the important PIC negotiations.

4. Mr. Jan Peeters, Secretary of State for Security, Social Integration and Environment of Belgium, welcomed participants and said that it was most appropriate that the first negotiating session should be held in the premises of the European Parliament, the first political institution to call for PIC to be applied to exports from the European Community. He hoped that the negotiating process would result in a truly universal multilateral environmental agreement, improving on the solid foundation provided by existing non-binding instruments, as part of the global legal framework to guide international cooperation in the pursuit of sustainable development. The PIC procedure should be strengthened in regard to compliance measures, indicating clearly the obligations of exporting countries. Another area in which additional efforts were required was that of technical assistance and capacity-building for developing countries and countries in transition.

5. He further indicated that the outcome of the INC must provide a dynamic legal framework, capable of responding to new needs and challenges as they arose by accommodating further measures, such as, for example, production phase-out provisions for certain particularly hazardous chemicals, as and when an international consensus on such measures emerged. He expressed the view that it was necessary for the Committee to take a broad perspective and consider the relationship between PIC and possible additional measures. He expressed his confidence that the INC would take these issues into account in its deliberations.

6. Ms. Dowdeswell, pointing to the exemplary partnership between UNEP and FAO over the past seven years in implementing the PIC procedure, then gave the floor to Mr. Abdoulaye Sawadogo, Assistant Director-General of the Agriculture Department of FAO.

7. Speaking on behalf of Dr. Jacques Diouf, Director-General of the Food and Agriculture Organization of the United Nations, Mr. Abdoulaye Sawadogo, outlined the task of the INC as being to review the voluntary PIC procedure and to determine elements to be retained in a legally binding procedure.

8. He stated that the procedure should be a transparent one and not require substantial infrastructure for its implementation at the national level. Experience with the voluntary procedure had shown that national decision-making took time due to lack of resources. He praised the continuing excellent cooperation between UNEP and FAO in all the work and discussions that had led to the present INC meeting. In closing, he recalled that the UNEP Governing Council had called for discussions of further measures beyond the PIC procedure to reduce the risks from a limited number of hazardous chemicals and said that FAO would continue to participate in those discussions. He also expressed his thanks to the Government of Belgium for hosting the meeting.

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9. In her opening address to the INC, Ms. Dowdeswell said that the PIC procedure had served its purpose: promoting shared responsibilities between exporting and importing countries, thereby protecting human health from the harmful effects of certain hazardous chemicals and pesticides being traded internationally. It had also given developing countries, in particular, a tool to enable them to make decisions on acceptable levels of risks from hazardous substances. There was now a need to develop an international legal framework, as mandated in UNEP Governing Council decision 18/12.

10. She further indicated that a legally binding instrument on PIC should be compatible with the 1994 General Agreement on Tariffs and Trade (GATT) and related World Trade Organization (WTO) agreements, such as the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures. A number of developing countries were not only importing, but also producing chemicals for domestic use and export. It was necessary to take into account changes in patterns of trade and address both North-North and South-South trade in such chemicals. A legally binding procedure was needed because, as long as compliance was not mandatory, it was susceptible to producing uneven results. Pointing to the fact that it was agreed that additional actions at the international level in addition to PIC were required to ensure the continued safe and sustainable use of chemicals, she wished to assure the meeting that UNEP's actions on persistent organic pollutants (POPs) taken during the Intergovernmental Conference to adopt a Global Programme of Action for the Protection of the Marine Environment from Land-based Activities, held in Washington, D.C., from 23 October to 3 November 1995, and those of IRPTC would continue to complement the decisions taken during the present meeting. Thus, it was very important that the present meeting focus on achieving unanimity on the PIC convention itself.

B. Attendance

11. The session was attended by representatives of the following countries: Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bahamas, Bangladesh, Belarus, Belgium, Benin, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, China, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Czech Republic, Denmark, Egypt, Eritrea, Finland, France, Gambia, Georgia, Germany, Ghana, Guinea, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Kazakstan, Kenya, Latvia, Lithuania, Malaysia, Mexico, Moldova, Mongolia, Morocco, Namibia, Netherlands, New Zealand, Niger, Norway, Pakistan, Panama, Peru, Philippines, Poland, Republic of Korea, Russian Federation, Rwanda, Senegal, South Africa, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Uzbekistan, Venezuela, Zambia. The European Community was also represented.

12. The following United Nations bodies and specialized agencies were represented: International Labour Organization (ILO), Universal Postal Union (UPU), United Nations High Commission for Refugees (UNHCR), United Nations Institute for Training and Research (UNITAR), Preparatory Commission for the Organization for the Prohibition of Chemical Weapons.

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13. The following non-governmental organizations were represented: European Chemical Industry Council (CEFIC), Groupement International des Associations Nationales de Fabricants de Produits Agrochimiques (GIFAP), International Council of Chemical Associations (ICCA), International Confederation of Free Trade Unions (ICFTU), International Council of Metals and the Environment (ICME), Netherlands Society for Nature and Environment (SNM), the Pesticides Trust (PT).

C. Election of the Bureau

14. The INC elected the following Bureau:

Chairperson: Ms. Maria Celina de Azevedo Rodriguez (Brazil)

Vice-Chairperson: Mr. Mohammed El-Zarka (Egypt)
Mr. Wang Zhijia (China)
Mr. Yuri Kundiev (Ukraine)

Rapporteur: Mr. William Murray (Canada)

15. The INC also decided unanimously that Mr. Marc Pallemmaerts, as representative of the host Government, should be an ex officio member of the Bureau for the current session.

D. Adoption of the rules of procedure

16. An open-ended contact group, chaired by Mr. Patrick Szell (United Kingdom), was established to resolve issues raised by representatives on the provisional rules of procedure (document UNEP/FAO/PIC/INC.1/2). The rules of procedure as amended in plenary were adopted at the closing meeting of the session, on 15 March 1996, and are attached to the present report as annex I.

E. Adoption of the agenda

17. The INC adopted the following agenda for the session, as contained in document UNEP/FAO/PIC/INC.1/1:

1. Opening of the meeting.
2. Election of the Bureau.
3. Organizational matters:
 - (a) Adoption of the rules of procedure;
 - (b) Adoption of the agenda;
 - (c) Organization of work.
4. Preparation of an international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade.

5. Other matters.
6. Adoption of the report.
7. Closure of the session.

F. Organization of work

18. In the deliberations on the organization of the work of the session, it was decided that discussion of agenda item 4 would commence with general presentations by UNEP and the representatives of countries, followed by more detailed examination of the substantive elements of a PIC instrument.

II. PREPARATION OF AN INTERNATIONAL LEGALLY BINDING INSTRUMENT
FOR THE APPLICATION OF THE PRIOR INFORMED CONSENT
PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND
PESTICIDES IN INTERNATIONAL TRADE

19. In its deliberations on the item, the INC had before it the following documents: UNEP/FAO/PIC/INC.1/3, "Comments on the possible elements for an international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade identified by the ad hoc working group"; UNEP/FAO/PIC/INC.1/4, "Overview of the prior informed consent and information exchange procedures"; UNEP/FAO/PIC/INC.1/5, "Review of issues relevant to the implementation of the existing, voluntary PIC procedure"; UNEP/FAO/PIC/INC.1/6, "Experience in the implementation of the prior informed consent procedure"; UNEP/FAO/PIC/INC.1/7 and Corr.1 (English and Russian only), "Relationship between the existing international legally binding instruments and an international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade"; UNEP/FAO/PIC/INC.1/8 and Corr.1 (English only), "Trade-related issues"; UNEP/FAO/PIC/INC.1/9 and UNEP/FAO/PIC/INC.1/Inf.1 (English only), "Study on international trade in widely prohibited chemicals".

20. In preparation for the discussion under this item, UNEP provided a comprehensive overview of the present operation of the voluntary PIC procedure.

21. In the general debate on the item, all representatives who took the floor expressed their gratitude to the Government of Belgium for hosting the meeting and for the excellent facilities provided. Many representatives thanked the joint FAO/UNEP Secretariat for the work carried out to prepare for the current INC session.

22. All representatives gave their support to the establishment of a legally binding instrument for the application of the PIC procedure for certain hazardous chemicals and pesticides in international trade, many of them referring to the principle of common responsibility between exporting and importing countries.

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23. Reference was made to the clear mandate given to the meeting by UNEP Governing Council decision 18/12 regarding the development of a legally binding instrument for the application of the PIC procedure. Several representatives cautioned against extending the mandate given to the INC at this time. Others stressed the necessity of including provisions in the legally binding instrument that would allow some flexibility for the inclusion of additional elements. It was stated that the meeting should take the current PIC procedure, as described in the London Guidelines and the FAO International Code of Conduct on the Distribution and Use of Pesticides, as the basis for its discussions on a legally binding instrument, with full recognition of the ongoing work in other forums, such as the meeting of Government-designated experts scheduled to be held in Copenhagen in April 1996, and the experience in the development and application of other international legal instruments.

24. Presentations were made on the ILO Convention concerning Safety in the Use of Chemicals at Work (Convention No. 170), as well as the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. There was also a brief overview of the work of UNITAR, in cooperation with FAO and UNEP, in training in the implementation of the voluntary PIC procedure.

25. It was pointed out that it was important to ensure that the criteria for and process for selecting chemicals for inclusion in the PIC procedure were clearly defined in order to avoid overloading the process.

26. The interrelationship between economic development and environmental protection was considered to be critical. It was important for countries to retain the right to make appropriate decisions based on their individual needs and the concept of cost/benefit analysis. Several representatives drew attention to the need for close coordination with other organizations active in related spheres, especially WTO and other United Nations bodies. The trade implications of any provisions proposed for inclusion in the legally binding instrument had to be considered in light of existing trade agreements, such as GATT 1994 and the WTO Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures, in order to avoid duplication and overlap.

27. The negotiations had to keep in mind the ability of countries to implement the legally binding convention, including consideration of financial and technical assistance to countries in order to ensure that they had the capacity/capability to do so.

28. During the general debate, reference was made to a range of other issues which needed to be revisited later in more detail, including the interests of transit countries and a clearer definition of the roles of exporting countries and importing countries in the implementation of the PIC procedure.

29. The principal references considered in the discussion were the voluntary PIC procedure as defined in the amended London Guidelines and the annex to the report of the Ad Hoc Working Group of Experts on the Implementation of the Amended London Guidelines on the work of its fourth session, held in Geneva from 11 to 15 April 1994 (UNEP/PIC/WG.1/4/5). The annex to the report of the Ad Hoc Working Group contains elements for a structure of a

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legal instrument and, as such, was used as a means of focusing further discussion. The initial aim was to review the section headings with a view to identifying those that might be included in a legally binding instrument. Several representatives expressed reservations with respect to those sections which were not included in the voluntary PIC procedure and they therefore considered the following sections not appropriate for discussion in this forum: Export notification; Classification, packaging and labelling; Liability and compensation; and provisions concerning prohibitions of use or phase-out. The following sections were bracketed as a means of highlighting the need for further discussion: Appeal; Status quo; Confidential data; Technical assistance; Clearing-house; Trade provisions; Control of trade with non-Parties; Financial provisions; Financial mechanisms; Settlement of disputes.

30. Each section was then discussed in more detail.

Objectives

31. Several representatives raised objection to paragraph 4 of the elements paper, which UNEP/PIC/WG.1/4/5, referred to provisions governing prohibition of use or phase-outs of hazardous chemicals, as this was beyond the mandate of the Committee. Others were of the opinion that the objective should be formulated to make it possible to consider measures beyond PIC.

Scope

32. In reviewing a paper containing elements on scope and exemptions prepared by the Secretariat at the request of the Committee (UNEP/FAO/PIC/INC.1/CRP.2), there was extensive debate of the provisions as drafted. A number of representatives expressed support for those provisions, while others suggested additional elements or modifications.

33. The proposal to include a reference to the environment as a further issue related to pesticide formulations of concern under conditions of use in developing countries was extensively discussed. Some representatives expressed reservations that the addition was outside the scope of the current PIC procedure. It was also noted that further work would be needed to consider how such formulations might be identified.

34. There was general agreement that full consideration should be given to other relevant international instruments in developing those provisions in order to avoid unnecessary duplication or overlap.

Exemptions

35. Several representatives raised a concern that not all chemical wastes were covered by the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. It was stressed, nonetheless, that wastes covered by the Basel Convention should be exempted. A brief overview was given by the Secretariat of the work being carried out under the Basel Convention. There was general agreement on the need to specify quantities of chemicals imported for research or analysis or as personal household effects.

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36. There was also discussion on a wide range of additional items that might be included in the PIC procedure or excluded therefrom: cosmetics, chemicals imported to manufacture pharmaceuticals, veterinary products, non-chemical pesticides and plant growth regulators, pesticides imported for trials leading to registration in the importing country, genetically engineered substances, obsolete/out-of-date pesticides, and pesticide or chemical contaminant residues in food products. Some representatives suggested that certain terms, such as "personal or household effects" and "research and analysis", needed to be defined. It was also proposed that further consideration be given to including products of biotechnology which express pesticidal genes, as they might be classified as pesticides in other forums.

Definitions

37. It was recommended that the existing definitions of control actions and the categories of chemicals subject to the PIC procedure be refined. There were several proposals for new definitions. It was suggested that definitions be limited to terms used in the text. It was agreed that a decision on additional terms that needed definition could wait until the text of the instrument had been further developed.

General obligations

38. Some representatives felt that the text should be limited to the application of the PIC procedure and that several points in paragraph 25 (UNEP/PIC/WG.1/4/5) went beyond the scope of the instrument. Other representatives expressed a reservation about including this element in a legally binding instrument. Reservations were also expressed concerning the difficulty in identifying internationally acceptable alternatives to chemicals subject to the PIC procedure, due to the wide range of conditions between countries. There was a need to clarify the type of information that could be exchanged and to highlight the differentiated obligations of importers and exporters.

Designated National Authority

39. The importance of having a Designated National Authority to serve as a central focal point to receive and forward information to the relevant authorities was stressed. Mention was made of the importance of ensuring the autonomy of Governments in deciding on their Designated National Authorities. It was noted that the Designated Authority need not necessarily be a governmental body.

Notification of control action

40. There was general agreement that there was a need for improved guidance to countries on the preparation and submission of notifications in order to have a clearer understanding of the basis for their control actions. It was recognized that further guidance was needed for the revision of the text of this provision.

Identification of chemicals for inclusion in the PIC procedure

41. It was strongly emphasized that the procedure for the inclusion of chemicals in the PIC list should be transparent, workable and rational. Above all, there had to be well-defined criteria and an agreed process in determining which chemicals to include. Some representatives considered that the procedure should allow for amendments or additions to the list without a formal ratification. Some representatives pointed to the need for political oversight of the process.

42. Following the initial discussion on this and the preceding element, the INC agreed to set up a small informal, open-ended working group, chaired by Mr. Rawal (India), to report to plenary. The report to the plenary was circulated as document UNEP/FAO/PIC/INC.1/L.2. The INC took note of the report, which is attached to the present report as annex II, as one of the documents that would be used as a basis for further discussions on the identification of chemical products for inclusion.

Appeal

43. There was general agreement that discussion on the appeal provisions should be deferred until a decision had been taken on the procedure for identification of chemicals for inclusion in the PIC procedure.

Import decisions

44. There was general agreement that better information on conditions for import in countries importing PIC chemicals was needed by exporting countries. One representative noted the interrelationship with proposed trade provisions and said that any import decision should be compatible with international trade rules.

Status quo

45. There was general support for the concept contained in this provision. It was noted that issues such as possible trade implications needed further consideration.

Dissemination of import decisions

46. There was general agreement that the draft provisions concerning dissemination of import decisions were acceptable. However, clarification was needed regarding the legal basis for import decisions and the potential compliance issues in a legally binding instrument, as a result of the time lag between a decision being made and its dissemination.

National measures in exporting countries

47. Several representatives expressed the need to retain flexibility in the system and allow countries to determine the appropriate domestic measures, including voluntary measures, to implement the PIC procedure. It was pointed out that the distinction between importing and exporting countries may be inappropriate, as some countries were both, and that consideration be given to combining the elements for exporting and importing countries.

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National measures in importing countries

48. Reference was made to the need for capacity-building and financial assistance, in order that countries could effectively implement PIC. Mention was made of the difficulty in obtaining the information necessary for decision-making from exporting countries. It was considered important that import decisions also apply to domestic production of chemicals for domestic use.

Export notification

49. There was broad support for this activity which is part of section 8 of part II of the London Guidelines. Some representatives thought that the current process of notification of the first export was adequate, while others recommended that it be broadened to include all shipments of chemicals banned or severely restricted domestically. Some representatives expressed concern that export notification was beyond the scope of the current PIC procedure, but they emphasized that it could continue as part of the information exchange on chemicals. It was suggested that it might be better considered by the Government-designated experts on further measures at their meeting in Copenhagen the following month. The question of whether there were other mechanisms through which to make such information available was also raised.

Confidential data

50. There was general agreement that a confidential data provision was important for the proper functioning of a PIC instrument. Several representatives thought that the concept of confidentiality should be clarified and specific criteria formulated; others stressed that a balance must be struck between the need for protection of confidential data and the public interest to disclose such information for the protection of health and the environment. Information must be two-way and industry should be obliged to disclose data to regulators. Several representatives said that hazard information on toxic substances and the methods of their assessment and evaluation should not be confidential. OECD and ILO instruments preclude confidentiality on products in the area of health and safety. There was no need to protect non-confidential data, and EC Council Regulation 2455/92 (article 4, paragraph 5) as well as the work of other bodies, could serve as the basis for text on that subject.

Classification, labelling and packaging

51. There was general agreement on the importance of classification, labelling and packaging to the sound management of chemicals. Concerns were expressed, however, that the issue related to information-exchange rather than the PIC procedure and should not be part of the negotiation. It was also noted by many representatives that there was extensive work ongoing on the harmonization of classification and labelling and that the matter should not be addressed in the INC process but should be left to those forums already discussing the issue. Several representatives stated that there should be a system of labelling established specifically for PIC chemicals. It was further stated that existing international systems and norms, including customs codes, should be used. Labelling and packaging norms for

chemicals being exported should be no less strict than those applied in the country of export. It was agreed that further discussion on this topic was needed as the work in other forums developed further.

Compliance measures

52. Several representatives noted that two types of compliance were addressed in the elements paper (UNEP/PIC/WG.1/4/5). Options 1 and 2 concerned specific international mechanisms to be included in the legally binding instrument, while option 3 related to national measures to be taken under domestic law. A number of representatives expressed support for provisions according to either option 1 or 2 to be included in the instrument, while there were some reservations with regard to the inclusion of option 3. A further view advocated the adoption, in addition, of consultative, non-confrontational methods of dealing with non-compliance referred to in other legally binding instruments.

Liability and compensation

53. Many representatives considered this provision important in order to ensure that liability for any adverse consequences of PIC chemicals was shared by the exporting and importing countries and were of the view that this should be discussed by the Conference of the Parties at its first meeting. There were other views against inclusion of this provision, as it was not considered necessary for the proper operation of the PIC procedure.

Technical assistance

54. The importance of technical and financial assistance to developing countries and countries with economies in transition was highlighted, particularly in the development of infrastructure and training. Such assistance was closely linked with the issue of financial provisions and, for that reason, one regional grouping believed that provisions on financial mechanisms (paragraphs 87 and 88) should also be discussed in this context. It was proposed that reference also be made to countries with economies in transition. Specific regional groupings had prepared position papers on assistance, which were made available to the meeting as conference room papers (African Group Regional Position on the Establishment of an International Legally Binding PIC Instrument - UNEP/FAO/PIC/INC.1/CRP.5; Eastern and Central European Group Position on PIC - UNEP/FAO/PIC/INC.1/CRP.6; and Position of the Latin American and Caribbean group (GRULAC) Regarding the Chapter on Technical Assistance - UNEP/FAO/PIC/INC.1/CRP.7). Some representatives believed that assistance should be provided through existing frameworks. It was proposed that the Secretariat prepare a paper for the next INC session, describing existing capacity-building efforts. It was considered important initially to identify where assistance was needed, for example through the development of national profiles, assessing the existing infrastructure and country needs and priorities in chemical management. It was observed that the IFCS and IOMC had initiated activities to improve the coordination of capacity-building and that these efforts might provide an appropriate forum for further consideration of country needs. The ongoing work of international organizations in training and capacity-building was noted.

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Clearing-house mechanism

55. As presented, options 1 and 2 were not extensively debated. A third option was proposed which would call for other types of mechanisms for managing technical assistance needs.

Trade provisions

56. Several representatives referred to the issues identified by the Expert Group on International Environmental Agreements and Trade, listed in the annex to the note by the Secretariat on trade-related provisions (UNEP/FAO/PIC/INC.1/8). Particular emphasis was placed on environment and trade policies being mutually supportive and complementary and it was noted that that should be considered in any trade provisions. Several representatives expressed the view that the principles in GATT/WTO rules and agreements such as those on Technical Barriers to Trade and on the application of Sanitary and Phytosanitary Measures should be taken into account. The view was expressed that there should be a thorough evaluation of the trade implications of a legally binding instrument on PIC. It was also stated that any measures taken pursuant to the legally binding instrument should be least trade-restrictive and non-discriminatory. In that connection, it was suggested that WTO should be invited to the next session of the INC.

Control of trade with non-Parties

57. Several representatives stated that the complex issues of trade provisions and control of trade with non-Parties should be further discussed. Several representatives expressed the view that non-Parties in compliance with the substantive provisions of the instrument should be treated without discrimination and on an equal basis with Parties in compliance. The view was expressed that trade with non-Parties should be the sovereign decision of importing countries. It was noted that the time taken for the process of ratification should be taken into consideration and that during this period trade between Parties and non-Parties preparing to sign should not be hampered.

Relationship with other international conventions

58. Several representatives recalled the need for consistency with other agreements and instruments and the avoidance of duplication and overlap. A view was expressed that all options should be retained until further development of a legally binding instrument on PIC. The joint UNEP/FAO Secretariat was requested to consult with the secretariats of existing chemicals-related conventions and agreements in the development of this instrument. Furthermore a representative suggested that a general provision be included to enable the negotiation and the adoption of protocols at a later stage.

Conference of the Parties

59. The difficulty of discussing the Conference of the Parties without knowing the scope or objectives of the instrument was noted. Details of the provisions for the Conference of the Parties should be drafted by the

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Secretariat for discussion at the next session. The Secretariat was requested to draft text on the basis of existing environmental conventions for consideration at the second session of the INC.

Secretariat and interim arrangements

60. The meeting noted that the nature of the Secretariat was dependent on several aspects of the legally binding instrument to be developed. The discussion of interim arrangements might also await these developments. The meeting agreed that these two issues as well as those of financial provisions and financial mechanisms could be dealt with by a working group at the next session of the INC.

Financial provisions and financial mechanisms

61. The Secretariat was requested to prepare a draft document describing existing financial mechanisms in other environmental conventions. The document should provide several options for financial mechanisms, including bilateral and multilateral donor institutions, and present costs for operating the PIC procedure. The Secretariat was further requested, when preparing the document, to include the financial implications of the different options presented. Several representatives expressed support for new and additional financial resources to ensure the success of the PIC procedure as a legally binding instrument.

Final clauses (paragraphs 89-100 of the annex to document UNEP/FAO/PIC/WG.1/4/5)

62. There was general agreement that the final clauses were appropriate, based as they were on the corresponding provisions in other environmental conventions. Some views, however, were expressed about the settlement of disputes of procedure and, in particular, the possibility of binding dispute settlement was raised. It was suggested that the Chairperson could, where possible, proceed with the drafting of the provisions in legal language modelled on existing environmental conventions; the text should be submitted to the INC for discussion.

III. OTHER MATTERS

Date and place of next session

63. In accordance with UNEP Governing Council decision 18/12, the current negotiations should be concluded by early 1997. Two further negotiating sessions were envisaged, the final one in conjunction with a diplomatic conference for the purpose of adopting and signing an international legally binding instrument for the application of the PIC procedure. At the eighteenth session of the Governing Council of UNEP, in May 1995, the Government of the Netherlands offered to host the final negotiating session and the diplomatic conference. This offer was welcomed by the Governing Council. The Government of the Netherlands has made financial arrangements concerning these meetings.

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64. The Secretariat reported that several Governments had expressed their interest in hosting the second negotiating session. Several representatives expressed the wish that at least one negotiating session should be held in a developing country. In this connection, the representative of Egypt made an offer on behalf of his Government to host a negotiating session. The Secretariat was requested to examine with the Governments the financial and practical implications of holding these sessions. In any event, financing of meetings, including the present one, depended on contributions from Governments. A second negotiating session could be held in about six months' time, provided that the requisite contributions were forthcoming. The view was expressed that the Secretariat make every effort to meet the time-frame set forth in the INC mandate.

Other meetings of relevance to the PIC negotiations

65. The Secretariat was requested to circulate the report(s) of the meetings on further measures needed to reduce the risk from a limited number of hazardous chemicals.

66. The Secretariat was also requested to make available a schedule of future meetings of relevance to the PIC negotiations.

IV. ADOPTION OF THE REPORT

67. At the 10th meeting of the session, on 15 March 1996, the INC adopted its report on the basis of the draft report contained in documents UNEP/FAO/INC.1/L.1 and Add.1, as amended by the Rapporteur and by the representatives.

68. Some representatives stressed the importance of retaining throughout the report the references to the amended London Guidelines as a fundamental document in negotiating an international legally binding instrument for the application of the PIC procedure.

V. CLOSURE OF THE SESSION

69. At the closing session, several representatives stressed the importance of concluding the negotiations on an international legally binding instrument for application of the PIC procedure within the time-frame set out in UNEP Governing Council decision 18/12. Although the work on further measures was important, the PIC instrument needed to be finalized first and the second session of the INC should be held before any second meeting on further measures.

70. It was agreed that late August or early September 1996 would be a good date for the next INC session.

71. After the customary exchange of courtesies, at 8.45 p.m. on 15 March 1996 the Chairperson declared the meeting closed.

Annex I

RULES OF PROCEDURE FOR MEETINGS OF THE INTERGOVERNMENTAL NEGOTIATING
COMMITTEE FOR AN INTERNATIONALLY LEGALLY BINDING INSTRUMENT FOR
THE APPLICATION OF THE PRIOR INFORMED CONSENT PROCEDURE FOR
CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN
INTERNATIONAL TRADE

I. PURPOSES

These rules of procedure shall govern the negotiation of an international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade.

II. DEFINITIONS

Rule 1

1. "Parties" means the States and regional economic integration organizations which are members of the Food and Agriculture Organization of the United Nations (FAO) participating in the negotiation of the international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade. Regional economic integration organizations which are members of FAO shall participate in the negotiation in matters within their competence. Such participation shall in no case entail an increase in the representation to which the member States of those organizations would otherwise be entitled. Such organizations shall provide a statement on the extent of their competence with respect to matters within the negotiation. Notification shall be made by such organizations of any relevant modification in the extent of their competence.
2. "Chairperson" means the Chairperson elected in accordance with rule 8, paragraph 1, of the present rules of procedure.
3. "Secretariat" means the Secretariat provided by the Executive Director and the Director-General required to service the negotiations.
4. "Executive Director" means the Executive Director of the United Nations Environment Programme.
5. "Director-General" means the Director-General of the Food and Agriculture Organization of the United Nations.
6. "Meeting" means any session convened in accordance with these rules of procedure.
7. "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties who abstain from voting are considered as not voting.

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III. PLACE AND DATES OF MEETINGS

Rule 2

The venue and dates of the meetings shall be decided by the Parties in consultation with the Secretariat.

IV. AGENDA

Drawing up of the provisional agenda for a meeting

Rule 3

The Executive Director and the Director-General, after approval by the Bureau referred to in paragraph 1 of rule 8 below, shall submit to each meeting the provisional agenda for the following meeting. The provisional agenda shall include all items recommended by the Parties.

Adoption of the agenda

Rule 4

At the beginning of each meeting, the Parties shall adopt the agenda for the meeting on the basis of the provisional agenda.

Revision of the agenda

Rule 5

During a meeting, the Parties may revise the agenda for the meeting by adding, deleting or amending items. Only items which the Parties consider to be urgent and important may be added to its agenda during the meeting.

V. REPRESENTATION

Composition of delegations

Rule 6

The delegation of each Party shall consist of a head of delegation and such alternate representatives and advisers as may be required.

Alternates and advisers

Rule 7

The head of delegation may designate an alternate representative or an adviser to act as a representative.

VI. OFFICERS

Elections

Rule 8

1. The Parties shall elect from among the representatives of the State Parties a Bureau composed of one Chairperson, three Vice-Chairpersons and a Rapporteur.

2. In electing the officers, the Parties shall have due regard to the principle of equitable geographical representation. Each of the five regional groups shall be represented by one member.

Acting Chairperson

Rule 9

If the Chairperson finds it necessary to be absent from a meeting or any part thereof, he/she shall call on a Vice-Chairperson to take his/her place.

Replacement of the Chairperson

Rule 10

If the Chairperson is unable to continue to perform his/her functions, a new Chairperson shall be elected with due regard to rule 8, paragraph 2.

VII. SECRETARIAT

Rule 11

The Executive Director and the Director-General may designate their representatives during the meetings.

Rule 12

The Executive Director and the Director-General shall provide and direct the staff of the Secretariat required to service the negotiations, including any subsidiary organs which may be established by the Parties.

Rule 13

The Executive Director and/or the Director-General, or their designated representatives may, subject to rule 17, make oral as well as written statements at the meetings concerning any matter under consideration.

Rule 14

The Executive Director and the Director-General shall be responsible for convening meetings in accordance with rules 2 and 3 and for making all the necessary arrangements for meetings, including the preparation and distribution of documents at least six weeks in advance of the meetings.

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Rule 15

The Secretariat shall, in accordance with these rules: interpret speeches made at meetings; receive, translate and circulate the documents of the meetings; publish and circulate reports and relevant documentation to the Parties; have the custody of the documents in the archives; and generally perform all other work that the Parties may require.

VIII. CONDUCT OF BUSINESS

Quorum

Rule 16

1. The Chairperson may declare a meeting open and permit the debate to proceed when at least one third of the State Parties participating in the meeting are present. The presence of a majority of State Parties so participating shall be required for any decision to be taken.

2. For the purpose of determining a quorum, as specified in paragraph 1 above, a regional economic integration organization which is a member of FAO shall be counted to the extent that it is entitled to vote in the meeting in respect of which the quorum is sought.

Powers of the Chairperson

Rule 17

In addition to exercising the powers conferred upon him elsewhere by these rules, the Chairperson shall declare the opening and closing of each meeting, shall direct the discussion, ensure observance of these rules, accord the right to speak, put questions to the vote and announce decisions. The Chairperson shall rule on points of order and, subject to these rules, shall have control over the proceedings of the meetings and over the maintenance of order at meetings. The Chairperson may propose to the meeting the limitation of the time to be allowed to speakers, the limitation of the number of times each Party may speak on any subject, the closure of the list of speakers or the closure of the debate. The Chairperson may also propose the suspension or the adjournment of the meeting or of the debate on the question under discussion.

Rule 18

The Chairperson, in the exercise of his/her functions, remains under the authority of the Parties.

Powers of the Acting Chairperson

Rule 19

A Vice-Chairperson acting as Chairperson shall have the same powers and duties as the Chairperson.

The Chairperson shall not vote

Rule 20

The Chairperson shall not vote, but may designate another member of his/her delegation to vote in his/her place.

Speeches

Rule 21

No one may address the meeting without having previously obtained the permission of the Chairperson. Subject to the rules, the Chairperson shall call upon speakers in the order in which they signify their desire to speak. The Chairperson shall call a speaker to order if his/her remarks are not relevant to the subject under discussion.

Precedence

Rule 22

The Chairperson, Vice-Chairperson or Rapporteur or a designated representative of any subsidiary organ which may be established subject to rule 47, may be accorded precedence in speaking for the purpose of explaining the conclusion arrived at by the subsidiary organ concerned and for the purpose of replying to questions.

Points of order

Rule 23

1. During the discussion of any matter, a Party may at any time raise a point of order, and the point of order shall be immediately decided by the Chairperson in accordance with the rules of procedure. A representative may appeal against the ruling of the Chairperson. The appeal shall be immediately put to the vote, and the ruling of the Chairperson shall stand unless overruled by a majority vote of the Parties present and voting.
2. A Party raising a point of order may not speak on the substance of the matter under discussion.

Time limit on speeches

Rule 24

The meeting may limit the time allowed to each speaker and the number of times each person may speak on any question, except on procedural questions, when the Chairperson shall limit each intervention to a maximum of five minutes. When debate is limited and a speaker has spoken for his/her allotted time, the Chairperson shall call him/her to order without delay.

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Closing of list of speakers

Rule 25

During the course of a debate the Chairperson may announce the list of speakers and, with the consent of the meeting, declare the list closed. The Chairperson may, however, accord the right of reply to any Party if, in his/her opinion, a speech delivered after he/she has declared the list closed renders this justified. When the debate on an item is concluded because there are no other speakers, the Chairperson, with the consent of the meeting, shall declare the debate closed.

Adjournment of debate

Rule 26

During the discussion of any matter, a Party may move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, one Party may speak in favour of and one against the motion, after which the motion shall be immediately put to the vote.

Closure of debate

Rule 27

A Party may at any time move the closure of the debate on the subject under discussion, whether or not any other Party has signified his/her wish to speak. Permission to speak on the closure of the debate shall be accorded only to two Parties opposing the closure, after which the motion shall be immediately put to the vote. If the meeting is in favour of the closure, the Chairperson shall declare the closure of the debate.

Suspension or adjournment of the meeting

Rule 28

During the discussion of any matter, a Party may move the suspension or the adjournment of the meeting. Such motion shall not be debated, but shall immediately be put to the vote.

Order of procedural motions

Rule 29

Subject to rule 23, and regardless of the order in which they are submitted, the following motions shall have precedence, in the following order, over all other proposals or motions before the meeting:

- (a) To suspend the meeting;
- (b) To adjourn the meeting;
- (c) To adjourn the debate on the subject under discussion;
- (d) To close the debate on the subject under discussion.

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Invocation of certain rules by regional economic integration organizations which are members of FAO and their member States

Rule 30

No representative of a regional economic integration organization which is a member of FAO shall invoke rules 23, 26, 27, 28, 31 and 33 if those rules have already been invoked on the same matter by any of its member States. No representative of the member States of such an organization shall invoke any of the above-mentioned rules if a representative of that organization has already done so on the same matter.

Proposals and amendments

Rule 31

Proposals and amendments shall normally be introduced in writing and submitted to the Secretariat, which shall circulate copies to the Parties. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the Parties unless copies of it have been circulated in the official languages of the meeting to all Parties not later than the day preceding the meeting. Subject to the consent of the Parties, the Chairperson may, however, permit the discussion and consideration of proposals or amendments, even though these proposals or amendments have not been circulated or have only been circulated the same day.

Decisions on competence

Rule 32

Subject to rule 29, any motion calling for a decision on the competence of the Parties to adopt any proposal or any amendment submitted to the meeting shall be put to the vote before a vote is taken on the proposal or amendment in question.

Withdrawal of proposals or motions

Rule 33

A proposal or a motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the proposal or the motion has not been amended. A proposal or motion which has thus been withdrawn may be reintroduced by another Party.

Reconsideration of proposals

Rule 34

When a proposal has been adopted or rejected, it may not be reconsidered at the same meeting unless the Parties, by a two-thirds majority of the Parties present and voting, so decide. Permission to speak on a motion to reconsider shall be accorded only to two Parties opposing the motion, after which it shall immediately be put to the vote.

Voting rights

Rule 35

1. Subject to paragraph 2 below, each Party shall have one vote.
2. In any meeting of the negotiation, a regional economic integration organization which is a member of FAO shall in matters within its competence exercise its right to vote with a number of votes equal to the number of its member States which are participating in the meeting. Such organization shall not exercise its right to vote if its member States exercise theirs and vice versa.

Adoption of decisions

Rule 36

1. The Parties shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement reached, the decision shall, as a last resort, be taken by a two-thirds majority of the Parties present and voting.
2. Decisions of the meeting on procedural matters shall be taken by a majority of the Parties present and voting.
3. Where there is disagreement as to whether a matter to be voted on is a substantive or procedural matter, that issue shall be decided by a two-thirds majority of the Parties present and voting.

Method of voting

Rule 37

Subject to rule 43, the Parties shall normally vote by show of hands, but any Party may request a roll call, which shall then be taken in the English alphabetical order of the names of the Parties, beginning with the Party whose name is drawn by lot by the Chairperson. However, if at any time a Party requests a secret ballot, that shall be the method of voting on the issue in question.

Recording of roll call

Rule 38

The vote of each Party participating in a roll call shall be recorded in the relevant documents of the meeting.

Conduct during voting

Rule 39

After the Chairperson has announced the beginning of voting, no Party shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. The Chairperson may permit Parties to explain

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their votes, either before or after the voting, except when the vote is taken by secret ballot. The Chairperson may limit the time to be allowed for such explanation. The Chairperson shall not permit the proposer of a proposal or of an amendment to explain his/her vote on his/her own proposal or amendment.

Division of proposals or amendments

Rule 40

A Party may move that parts of a proposal or of an amendment shall be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two Parties in favour and two Parties against. If the motion for division is carried, those parts of the proposal or of the amendment which are subsequently approved shall be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

Voting on amendments

Rule 41

1. When an amendment to a proposal is moved, the amendment shall be voted on first. When two or more amendments to a proposal are moved, the Parties shall vote first on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest therefrom and so on, until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. If no amendments are adopted, the proposal shall be put to the vote in its original form.

2. A motion is considered an amendment to a proposal if it adds to, deletes from or revises part of that proposal.

Voting on proposals

Rule 42

1. If two or more proposals are related to the same question, the meeting shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The meeting may, after each vote on a proposal, decide whether to vote on the next proposal.

2. Any proposals or motions requiring that no decision be taken on the substance of such proposals shall, however, be considered as previous questions and shall be put to the vote before them.

Elections

Rule 43

All elections shall be held by secret ballot unless, in the absence of any objection, the meeting decides to proceed without taking a ballot when there is an agreed candidate.

Rule 44

1. If, when one person or Party only is to be elected, no candidate obtains, in the first ballot, the majority required, a second ballot shall be taken, restricted to the two candidates obtaining the largest number of votes. If in the second ballot the votes are equally divided, the Chairperson shall decide between the candidates by drawing lots.

2. In the case of a tie in the first ballot among the candidates obtaining the second largest number of votes, a special ballot shall be held for the purpose of reducing the number of candidates to two. In the case of a tie among three or more candidates obtaining the largest number of votes, a second ballot shall be held. If a tie results among more than two candidates, the number shall be reduced to two by lot and the balloting, restricted to them, shall continue in accordance with the preceding paragraph.

Rule 45

1. When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining the required majority on the first ballot shall be elected.

2. If the number of candidates obtaining such majority is more than the number of places to be filled, those candidates obtaining the largest number of votes shall be elected.

3. If the number of candidates obtaining such majority is less than the number of places to be filled, additional ballots shall be held to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, who shall number not more than twice the places remaining to be filled. However, in the case of a tie between a greater number of unsuccessful candidates, a special ballot shall be held for the purpose of reducing the number of candidates to the required number.

4. If three restricted ballots are inconclusive, unrestricted ballots shall follow in which votes may be cast for any eligible person or member. If three such unrestricted ballots are inconclusive, the next three ballots (subject to exception in a case similar to that of the tie mentioned at the end of the previous paragraph of this rule) shall be restricted to the candidates obtaining the greatest number of votes in the third of the unrestricted ballots. The number of such candidates shall be not more than twice the number of places remaining to be filled.

5. The following three ballots thereafter shall be unrestricted and so on, until all the places are filled.

Equally divided votes

Rule 46

If a vote is equally divided on matters other than elections, the proposal shall be regarded as rejected.

IX. SUBSIDIARY ORGANS

Subsidiary organs of the meetings, such as working groups and expert groups

Rule 47

1. The Parties may establish such subsidiary organs as may be necessary for the effective discharge of their functions.
2. Subject to paragraph 2 of rule 8, each subsidiary organ shall elect its own officers. The number of such officers shall be no more than five.
3. The rules of procedure of subsidiary organs shall be those of the meetings, as appropriate, subject to such modifications as the Parties may decide upon in the light of proposals by the subsidiary organs concerned.

X. LANGUAGES AND RECORDS

Languages of the meetings

Rule 48

Arabic, Chinese, English, French, Russian and Spanish shall be the languages of the meetings.

Interpretation

Rule 49

1. Speeches made in a language of the meeting shall be interpreted into the other languages.
2. A representative may speak in a language other than a language of the meeting. In this case he/she shall himself/herself provide for interpretation into one of the languages of the meeting, and interpretation into the other languages by the interpreters of the Secretariat may be based on the interpretation given in the first language.

Languages of official documents

Rule 50

Official documents shall be made available in the languages of the meeting.

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XI. PUBLIC AND PRIVATE MEETINGS

Plenary meetings

Rule 51

The plenary meetings shall be held in public unless the meeting decides otherwise. All decisions taken at a private meeting shall be announced at an early public meeting.

Other meetings

Rule 52

Meetings of subsidiary organs, other than any drafting group that may be set up, shall be held in public unless the organ concerned decides otherwise.

XII. OBSERVERS

Participation of observers

Rule 53

Observers may participate in the work of the meeting in accordance with the established practice of the United Nations General Assembly.

Observers from non-governmental organizations

Rule 54

Non-governmental organizations participating in the meeting as observers may make their contributions to the negotiating process, as appropriate, on the understanding that these organizations shall not have any negotiating role during the process and taking into account decisions 1/1 and 2/1, adopted by the Preparatory Committee for the United Nations Conference on Environment and Development at its first and second sessions, concerning the participation of non-governmental organizations.

XIII. SUSPENSION AND AMENDMENT OF THE RULES OF PROCEDURE

Rule 55

A rule of procedure may be amended or suspended by a decision of the meeting taken by consensus, provided that twenty-four hours notice of the proposal has been given.

Annex II

REPORT OF THE WORKING GROUP ON IDENTIFICATION OF
CHEMICALS FOR INCLUSION IN THE PIC PROCEDURE

Identification of candidate chemicals for inclusion in the PIC procedure

A. Banned and Severely Restricted Chemicals

1. There was a general agreement that a chemical notified as banned or severely restricted for health or environmental reasons by at least one party would be a candidate for inclusion in the PIC procedure if specific pre-determined criteria were met and documented in the notification. A risk assessment should be part of the criteria. An Expert Group would consider the submitted documentation and whether the criteria were met. Based on its observations, the Group would make a recommendation on the inclusion of the chemical in the PIC procedure.

2. It was suggested that the documentation may emphasize the following elements:

- (a) Category of use (pesticides/industrial/consumer);
- (b) Number of uses subject to the control action and number of uses that remain allowed;
- (c) Reduction of the volume used due to the control action;
- (d) Actual/expected reduction of risk for health and the environment due to the control action in the notifying country (see annex);
- (e) Indication of ongoing trade in the chemical concerned at the global level (to avoid that chemicals no longer marketed anywhere become subject to PIC procedure).

3. The criteria and requirements for documentation should be set out in an annex to the convention. The documentation should include information on possible alternatives to the notified compound.

4. Concerning severe restrictions, it was pointed out that the existing concept of major and minor uses is more an economic consideration than a health or environmental concern. Therefore, the definition of severe restriction could be changed to:

Severely restricted chemical means a chemical:

- for which, for health or environmental reasons, virtually all uses have been prohibited nationally; or
- for which a significant reduction of health or environmental risk has been obtained;

by final government, regulatory action.

5. It was indicated that export notification could be one of several ways of collecting information on the continued use and trade of candidate chemicals.

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B. Hazardous Pesticide Formulations Which May Be Causing Problems Under Conditions of Use in Developing Countries

6. There was a general agreement that such pesticides should be identified on the basis of documented evidence of problems. It was acknowledged that documentation cannot be as comprehensive as for control actions, but the level of evidence should not be isolated or stray, but significant when compared to the extent of use.

7. It was agreed that countries and relevant international organizations could nominate such pesticides. The nominating country/organizations should submit information on the specific pesticide causing the problem and provide documentation which indicates:

- (a) An identification of the pesticide;
- (b) A description of the evidence and the problem;
- (c) Information on the use pattern (how it was applied and for which use);
- (d) Any other additional pertinent information.

8. Criteria for consideration by the Expert Group would be based on the existing multifaceted approach and would, among others, take into consideration reports of poisoning accidents from developing countries as well as documented evidence of poisoning incidents in industrialized countries, recommendations for protective clothing or other measures to minimize occupational exposure implemented in industrialized countries, and the results of the application of a grading point system which assigns a numerical score to a pesticide on the basis of a series of questions related to its use in a country.

Proposed process of recommending chemicals for inclusion in the procedure

9. Step 1. Governments notify control actions taken to ban or severely restrict a chemical or government/international organizations nominate hazardous pesticides formulations to the Secretariat, together with the submission of necessary documentation.

10. Step 2. Secretariat screens submitted information for its compliance with set criteria. For those reported actions that comply, a summary of the notified control action and a call for the submission of additional available information is sent to all DNAs. For those nominations of hazardous pesticides formulations that comply, a call for additional information is also sent to all DNAs.

11. (DNAs coordinate this information collection at national level, involving other institutions, NGOs, industry etc. Information collected could be possible alternatives, economic criteria, data relevant to various regions and trade statistics).

12. Step 3. Secretariat organizes the preparation of a draft Decision Guidance document based on all information collected.

13. Step 4. Expert Group reviews the draft for finalization, including the consideration of the risk assessment's relevance to other conditions such as climate, use conditions, etc.

14. Step 5. Expert Group considers all available information and makes a recommendation on whether the chemical is considered a candidate or not.

15. Step 6. Decision on chemical's inclusion taken in the appropriate body.

16. Step 7. DGD is circulated to all Governments for Importing Country Response.

17. It was indicated that an alternative to the proposal given above, could be that a DGD is drafted only after the Expert Group has made a recommendation on whether to include the chemical or not (step 5 before step 3).

18. It was agreed that a corresponding process for removal of chemicals from the procedure was needed, but that this process would be somewhat different from the above. The process developed in the existing implementation of PIC should be included in the considerations.

Proposed functions and tasks for Expert Group

19. There was a general agreement that an Expert Group was required to review the submitted documentation on control actions and formulations causing problems under conditions of use and make recommendations on the inclusion of chemicals in PIC.

20. Functions could include:

- (i) Review of information and documentation requirements and determination of whether criteria are fulfilled;
- (ii) Based on the review, make recommendation on the inclusion of candidate chemicals into the procedure;
- (iii) Review draft DGDs, especially for consideration of their relevance to other conditions.

21. The Expert Group would not perform a peer review of the national bans or severe restrictions and the basis for it.

Decisions on PIC chemicals and the proposed mandate of the Expert Group

22. The Expert Group would make recommendations on the inclusion of chemicals in the PIC procedure.

23. The Conference of the Parties would decide which body would approve the inclusion of chemicals in the PIC procedure. The meeting had different opinions on which body should do so: some preferred the Conference of the Parties, others indicated that a subsidiary body may be mandated. Some parties indicated that the Expert Group itself may be designated to take decisions.

24. Members indicated that expedience of decisions and resource implications should be a major factor in deciding which body would take these decisions.

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25. It was agreed that the role, mandate and institutional arrangement of the Expert Group should be set out in an annex to the instrument to maintain flexibility.

26. It was also recommended that the Secretariat prepare a paper for the next session of the INC which describes various institutional options, together with estimation of costs for each option.

Composition and designation of the Expert Group

27. The view was expressed that the Expert Group should be independent and scientific in nature. It was also emphasized that the Group should have an equitable geographic representation. NGOs could participate as observers in the meetings. The procedure for appointment of experts to the Group would have to be determined by the Conference of the Parties. A preference was expressed for the appointment of government-designated experts as members of the Group.

Appendix

The health and environment concerns emphasized in the submitted documentation could include, but not be limited to:

Health criteria:

- Serious acute injury;
- Orogenic and mutagenic effects;
- Reproductive or developmental effect;
- Chronic or delayed toxic effect;
- Other chronic, systemic effects of importance,

Environmental criteria:

- Residues in the environment of non-target organisms, which are acutely or chronically toxic to such organisms;
- Risk to the continued existence of non-target animals or plants (including, but not limited to: soil, water, air, flora, fauna);
- Persistent residues that pose continued risk; effects seen at low doses; effect not limited to specific use conditions.
