



**United Nations  
Environment Programme**

**Food and Agriculture Organization  
of the United Nations**

Distr.  
GENERAL

UNEP/FAO/PIC/INC.10/INF/3  
28 October 2003

ENGLISH ONLY

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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

Tenth session

Geneva, 17-21 November 2003

Item 5 of the provisional agenda\*

**Preparations for the Conference of the Parties**

**Note by the Secretariat**

1. In its resolution on interim arrangements,<sup>1</sup> the Conference of Plenipotentiaries "[i]nvites the Executive Director of the United Nations Environment Programme and the Director-General of the Food and Agriculture Organization of the United Nations to convene such further sessions of the Intergovernmental Negotiating Committee (hereinafter referred to as the "Committee") during the period between the date on which the Convention is opened for signature and the date of the opening of the first meeting of the Conference of the Parties as are necessary to oversee the operation of the interim PIC procedure and to prepare for and service the Conference of the Parties until the end of the fiscal year in which the first meeting of the Conference of the Parties takes place."
2. In preparing for the first meeting of the Conference of the Parties, the Committee has considered a large number of issues arising out of the Convention and the resolutions made by the Conference of Plenipotentiaries, and has made a number of recommendations to the Conference of the Parties. The Committee has also made recommendations in a number of other areas related to the implementation of the interim PIC procedure.
3. The Secretariat has the honour to present to the Committee, in the annex to this note, an overview of those recommendations.

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\* UNEP/FAO/PIC/INC.10/1.

<sup>1</sup> Final Act of the Conference of Plenipotentiaries on the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO/PIC/CONF/5), annex I, resolution 1.

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Annex

<b>Decisions and actions required at the first meeting of the Conference of the Parties by the Convention, the resolution on interim arrangements and the resolution concerning the Secretariat</b>	
<b>Reference</b>	<b>Action taken by the Committee</b>
<p>“The composition of the Prior Informed Consent regions shall be defined in a decision to be adopted by consensus at the first meeting of the Conference of the Parties.” (<i>Convention, Article 5, paragraph 5, second sentence</i>)</p>	<p>At its ninth session, the Committee decided to forward the following two options to the first meeting of the Conference of the Parties:</p> <p>(a) “That the PIC regions to be adopted at the first Conference of the Parties should be based on the geographical distribution of the Parties at that time;</p> <p>(b) That the PIC regions to be adopted at the first Conference of the Parties should be based on the regions used during the interim PIC procedure, pending consideration of the geographical distribution of Parties at that time.” (<i>UNEP/FAO/PIC/INC.9/21, para. 125</i>)</p>
<p>“For any chemical, other than a chemical listed in Annex III, that has been included in the voluntary Prior Informed Consent procedure before the date of the first meeting of the Conference of the Parties, the Conference of the Parties shall decide at that meeting to list the chemical in Annex III, provided that it is satisfied that all the requirements for listing in that Annex have been fulfilled.” (<i>Article 8</i>)</p>	<p>During the interim period, the Committee has included the following chemicals in the interim PIC procedure: Binapacryl, toxaphene, ethylene dichloride, ethylene oxide and monocrotophos. At its tenth session, the Committee will consider including five additional forms of the chemicals asbestos, DNOC and the severely hazardous pesticide formulation: dustable powder formulations of benomyl, carbofuran and thiram.</p>
<p>“The Conference of the Parties shall by consensus agree upon and adopt at its first meeting <i>rules of procedure</i> and financial rules for itself and any subsidiary bodies, as well as financial provisions governing the functioning of the Secretariat.” (<i>Convention, Article 18, paragraph 4</i>)</p>	<p>At its eighth session, the Committee reached agreement on the rules of procedure and decided to forward them to the Conference of the Parties. (<i>UNEP/FAO/PIC/INC.8/19, para. 80</i>)</p> <p>However, at its ninth session it decided to consider an outstanding issue regarding paragraph 1 of Rule 45 at a future session. (<i>UNEP/FAO/PIC/INC.9/21, para. 49</i>)</p>

<p>“The Conference of the Parties shall by consensus agree upon and adopt at its first meeting rules of procedure and <i>financial rules for itself and any subsidiary bodies, as well as financial provisions governing the functioning of the Secretariat.</i>” (Convention, Article 18, paragraph 4)</p>	<p>The Committee considered the draft financial rules at its eighth and ninth sessions. The Committee will continue its work on the draft financial rules at its tenth session.</p>
<p>“The Conference of the Parties shall, at its first meeting, establish a subsidiary body, to be called the Chemical Review Committee, for the purposes of performing the functions assigned to that Committee by this Convention.” (Convention, Article 18, paragraph 6, first sentence)</p>	<p>At its sixth session, the Committee established an interim Chemical Review Committee and nominated 29 members for a period of up to three years. (Decision INC-6/2).</p> <p>At its ninth session, the Committee reaffirmed the provisions of decision INC-6/2 as regards the conditions of service of the experts, and nominated 29 members for the period until the first meeting of the Conference of the Parties. (Decision INC-9/3)</p>
<p>“Decides that the interim PIC procedure shall cease to operate on a date to be specified by the Conference of the Parties at its first meeting[.]” (Paragraph 13 of the resolution on interim arrangements)</p>	<p>The Committee has carefully examined the implications of a transition from the interim PIC procedure to the procedure specified by the Convention.</p> <p>The Committee, at its seventh session, gave wide support to a period of transition once the Convention comes into force. The aim of the transition period would be to retain the accomplishments and experience gained in the application of the interim PIC procedure.</p> <p>A working group established by the Committee at its eighth session identified the following basis for a recommendation: That the transition period be limited to two years from the date of entry into force of the Convention. (UNEP/FAO/PIC/INC.9/18, annex I, para. 47)</p>
<p>“Calls upon the Director-General of the Food and Agriculture Organization of the United Nations and the Executive Director of the United Nations Environment Programme to consider the offers received from Germany and from Italy and Switzerland jointly, as well as any other offers, and to provide a comparative analysis of those offers regarding the physical location of the secretariat for consideration by the Conference</p>	<p>The Committee has gone through a process of developing elements of information for further consideration; it has solicited and collected offers from Germany and from Italy and Switzerland, acting jointly, and it agreed at its eighth session “to submit them to the Conference of the Parties for a decision on the matter at its first session”. (UNEP/FAO/PIC/INC.8/19, para. 129)</p>

<sup>2</sup> Final Act of the Conference of Plenipotentiaries on the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO/PIC/CONF/5), annex I, resolution 2.

<p>of the Parties at its first meeting. The preparation of such analyses should be carried out in consultation with the Intergovernmental Negotiating Committee.” (Paragraph 3 of the resolution concerning the Secretariat)<sup>2</sup></p>	
<b>Other functions required of the Conference of the Parties by the Convention</b>	
<b>Reference</b>	<b>Action taken by the Committee</b>
<p>“The Conference of the Parties shall encourage the World Customs Organization to assign specific Harmonized System customs codes to the individual chemicals or groups of chemicals listed in Annex III, as appropriate.” (Convention, Article 13, paragraph 1, first sentence)</p>	<p>At its 6th session, the Committee invited the secretariat to initiate contacts with the World Customs Organization. The Secretariat has participated in the meetings of the relevant WCO Committees and provided clarification and advice on matters related to the Rotterdam Convention, and it is the understanding of the Secretariat that the process of assigning HS Custom Codes to the chemicals in the Rotterdam Convention is progressing favorably.</p>
<p>“The Conference of the Parties shall, as soon as practicable, develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Convention and for treatment of Parties found to be in non-compliance.” (Convention, Article 17)</p>	<p>The Committee has made good progress in discussing and developing procedures and mechanisms regarding non-compliance and will continue its work at the 10th session.</p>
<p>“The secretariat functions for this Convention shall be performed jointly by the Executive Director of UNEP and the Director-General of FAO, subject to such arrangements as shall be agreed between them and approved by the Conference of the Parties.” (Convention, Article 19, paragraph 3)</p>	<p>N/A</p>
<p>Adopt arbitration procedures. (Convention, Article 20, paragraph 2 (a))</p>	<p>At its ninth session, the Committee reached agreement on draft rules for arbitration. (UNEP/FAO/PIC/INC.9/21, annex IV)</p>
<p>“Additional procedures relating to the conciliation commission shall be included in an annex to be adopted by the Conference of the Parties no later than the second meeting of the Conference.” (Convention, Article 20, paragraph 6, last sentence)</p>	<p>At its ninth session, the Committee reached agreement on draft rules for dispute settlement. (UNEP/FAO/PIC/INC.9/21, annex IV)</p>

<b>Other actions taken by the Committee</b>	
<b>Issue</b>	<b>Action taken by the Committee</b>
Implementation of the interim PIC procedure:	
Contaminants	At its seventh session, the Committee adopted a general policy on contaminants. <i>(Decision INC-7/4)</i>
Contaminants	At its seventh session, the Committee adopted a policy on maleic hydrazide as a contaminant. <i>(Decision INC-7/5)</i>
Process for drafting of decision guidance documents	At its seventh session, the Committee adopted a process for drafting decision guidance documents. <i>(Decision INC-7/6)</i>
Conflict of interest procedures for members of the Interim Chemical Review Committee	At its eighth session, the Committee adopted rules and procedures for preventing and dealing with conflicts of interest relating to the activities of the ICRC. <i>(Decision INC-8/1)</i>
Achievements by the Interim Chemical Review Committee	An overview of the achievements by the Interim Chemical Review Committee is available as document UNEP/FAO/PIC/INC.10/13.
Issues related to the discontinuation of the interim PIC procedure:	
Chemicals subject to the interim PIC procedure but not yet listed in Annex III to the Convention	Parties could be given up to nine months from the date of the first meeting of the Conference of the Parties to provide a response in line with Article 10, paragraph 2. After that period, exporting Party obligations under Article 11 would only take effect six months after the exporting Party received information from the secretariat under Article 10, paragraph 10, that the importing Party had failed to transmit a response, and would then apply for one year. <i>(UNEP/FAO/PIC/INC.9/21, Annex III, para. 3)</i>
Notifications of final regulatory action and proposals for severely hazardous pesticide formulations	“The Secretariat shall consult with each relevant designated national authority (in writing) concerning their proposals for a severely hazardous pesticide formulation that had been submitted during the interim period. Unless notified otherwise by the relevant designated national authority, each proposal for a severely hazardous pesticide formulation is deemed, by a decision at the first meeting of the Conference of the Parties, to be resubmitted for the purposes of the Convention.” <i>(UNEP/FAO/PIC/INC.9/21, Annex III, para. 4)</i>
Status of notifications and proposals submitted by Participating States	It was agreed that the actions of non-Parties (including Participating States) cannot result in obligations on Parties following entry into force of the Convention.  Verified notifications and proposals from Participating States submitted to the Secretariat as at the date of entry into force of the Convention and included in the first PIC Circular distributed after the entry into force of the Convention would remain eligible for consideration by the Chemical Review Committee during the transition period.

	<p>Two notifications, each from a Party from a different region, would trigger review by the Chemical Review Committee and, if appropriate, development of a decision guidance document and subsequent recommendation to the Conference of the Parties as per Article 5 and in line with decision INC-7/6.</p> <p>In the situation where the notifications include one from a Party and another from a Participating State, or two Participating States (included in the above noted PIC Circular), a review by the Chemical Review Committee may be initiated and, if appropriate, a decision guidance document developed. However, any associated recommendation on inclusion, or otherwise, in Annex III may not be forwarded to the Conference of the Parties until the Participating State(s) becomes a Party.</p> <p>A proposal for a severely hazardous pesticide formulation from a Party would initiate a review by the Chemical Review Committee and, if appropriate, development of a decision guidance document and subsequent recommendation to the Conference of the Parties as per Article 6 and in line with decision INC7/6.</p> <p>A proposal from a Participating State may prompt a review by the Chemical Review Committee and, if appropriate, the development of a decision guidance document. However, any associated recommendation on inclusion, or otherwise, in Annex III may not be forwarded to the Conference of the Parties until the Participating State becomes a Party.</p> <p>In setting their priorities in reviewing chemicals, the Chemical Review Committee should consider the following:</p> <p style="padding-left: 40px;">Priority should be given to chemicals supported by notifications from two Parties and any proposal for a severely hazardous pesticide formulation by a Party.</p> <p style="padding-left: 40px;">Where a chemical is supported by a notification or proposal from a Participating State, the likelihood and timeliness of ratification by that Participating State.</p> <p style="padding-left: 40px;">It was recognized that the Conference of the Parties would need to approve consideration by the Chemical Review Committee of notifications and proposals from Participating States (with a notification or proposal included in the first PIC Circular distributed after entry into force of the Convention) in order that this function could be undertaken by the Chemical Review Committee during the transition period. <i>(UNEP/FAO/PIC/INC.9/21, Annex III, para. 5)</i></p>
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<p>The post-transition period – discontinuation of the interim PIC procedure</p>	<p>As of the end of the transition period, import responses and the list of national contact points from non-Parties will be retained, but not updated nor circulated, by the Secretariat. This information will only be retained on the Rotterdam Convention website. It will carry a clear caveat addressing the date of publication, absence of updates and the lack of liability accepted for the use of potentially outdated information, etc.</p> <p>A decision on whether to continue to retain this information, and for how long, should be made by the first meeting of the Conference of the Parties after the end of the transition period.</p> <p><i>(UNEP/FAO/PIC/INC.9/21, Annex III, para. 5)</i></p>
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