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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

Second session

Nairobi, 16-20 September 1996

TENTATIVE DRAFT KEY ARTICLES FOR AN INTERNATIONAL LEGALLY BINDING
INSTRUMENT FOR THE APPLICATION OF THE PRIOR INFORMED CONSENT
PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS
AND PESTICIDES IN INTERNATIONAL TRADE

Note by the Secretariat

The Secretariat has the honour to submit as annexes to the present note for the second meeting of the Intergovernmental Negotiating Committee (INC) the letter from the Chairperson of the INC, together with the tentative draft key articles for an international legally binding instrument for the application of the PIC procedure for certain hazardous chemicals and pesticides in international trade.

Annex I

BRUSSELS, 25TH JULY 1996

DEAR DELEGATE,

AS AGREED DURING INC-1, PLEASE FIND ENCLOSED A DRAFT DISCUSSION TEXT OF KEY ARTICLES FOR A PIC INSTRUMENT FOR USE AT INC-2, WHICH I HOPE WILL HELP US IN OUR DELIBERATIONS IN NAIROBI.

PLEASE NOTE THAT THE WHOLE OF THE DRAFT AS WELL AS SPECIFIC ARTICLES THEREIN ARE BRACKETED. FURTHERMORE, I AM WELL AWARE THAT MANY POINTS MAY NOT HAVE BEEN COVERED BY THE DRAFT. I AM COUNTING ON YOUR COOPERATION TO BOTH REMOVE THE TEXT OF ITS BRACKETS AND TO COVER ANY OMISSIONS.

TRANSLATING THESE DRAFT ARTICLES INTO A DRAFT AGREEMENT IS THE CHALLENGE WE HAVE TO FACE IN SEPTEMBER. I LOOK FORWARD TO WORKING WITH YOU.

BEST REGARDS,

(signed)

MARIA CELINA DE AZEVEDO RODRIGUES
MINISTER COUNSELLOR
CHAIRPERSON INC-1

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Annex II[**TENTATIVE DRAFT KEY ARTICLES FOR A PIC INSTRUMENT**Article 1Objective

The objective of this Convention¹ is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect the environment and human, animal and plant life and health from potential harm from such chemicals and to contribute to their environmentally sound use, by promoting and facilitating information exchange about the characteristics of certain potentially hazardous chemicals and pesticides in international trade and by providing for a national decision-making process on the future import of these chemicals and the dissemination of these decisions to Contracting Parties [and, when agreed by the Parties, prohibiting the use of, or phasing out of these chemicals].

Article 2Use of Terms

1. For the purposes of this Convention:

(a) "Chemical" means a chemical substance whether by itself or in a mixture or preparation and whether manufactured or obtained from nature and includes such substances used as industrial chemicals or pesticides;

(b) "Banned chemical" means a chemical any use of which has, for health or environmental reasons, been prohibited by final governmental regulatory action;

(c) "Severely restricted chemical" means a chemical virtually all uses of which, for health or environmental reasons, have been prohibited by final government regulatory action, but for which certain specific uses remain authorized;

(d) "International trade" means export or import;

(e) "Export" and "import" mean, in their respective connotations, the movement of a chemical from one Party to another Party, but exclude mere transit operations;

(f) "Party" means a State or regional economic integration organization which has consented to be bound by this Convention and for which the Convention is in force;

¹ The term "Convention" is used to denote the international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade, without prejudice to the title or form of the future instrument.

(g) "Exporting Party" means a Party exporting chemicals under this Convention;

(h) "Importing Party" means a Party importing chemicals under this Convention;

(i) "Prior Informed Consent" means the principle that international shipment of a chemical that is banned or severely restricted in order to protect human health or the environment should not proceed without the agreement, where such agreement exists, or contrary to the decision of the designated national authority in the participating importing country;

(j) "Prior Informed Consent Procedure" means the procedure for formally obtaining and disseminating the decisions of importing countries as to whether they wish to receive future shipments of chemicals that have been banned or severely restricted;

(k) "Regional Economic Integration Organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention [or its protocols] and [which] has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it [the instruments concerned].

NOTE:

[Other terms such as environment, health, chemical products, Designated National Authority, control action, hazardous pesticide formulations, etc. may need to be added following negotiation and agreement among Governments on the substantive content of these terms.]

Article 3

Scope of the Convention

1. This Convention applies to:

(a) Banned or severely restricted chemicals;

(b) Hazardous pesticide formulations which may cause health [and/or environment] problems under conditions of use in countries that do not have adequate infrastructure for their safe management.

2. This Convention does not apply to:

(a) Pharmaceuticals, including narcotics, psychotropic substances and [human and veterinary] drugs;

(b) Radioactive materials;

(c) Chemicals imported for the purpose of research or analysis in quantities not likely to affect the environment or human health;

(d) Chemicals imported [by an individual] as personal or household effects, in quantities reasonable for these uses [and not likely to affect the environment or human health];

(e) Food additives and chemical contaminants, including pesticides residues;

(f) [Chemical] waste covered by [other] [the Basel] convention(s);]

(g) [Genetically engineered organisms with pesticide properties].

Article 4

General Obligations

[1. The Parties shall, in accordance with this Convention, exchange information on chemicals in international trade with the objective of protecting human health and the environment.]

[2. The Parties shall, in particular, provide information to other Parties on all control actions taken to ban or severely restrict chemicals for health and environmental reasons.]

[3. Parties that import chemicals shall provide information to other Parties on their decisions regarding future imports of chemicals subject to the Prior Informed Consent Procedure.]

4. Parties that export chemicals shall take, in accordance with this Convention, such measures, including legislative, administrative and other measures, as may be necessary to ensure that the international shipment of a chemical that is banned or severely restricted in order to protect human health or the environment does not proceed without the Prior Informed Consent of the Importing Party.

5. The Parties shall ensure that measures taken to regulate the chemicals under this Convention do not create unnecessary obstacles to and/or constitute a means of arbitrary or unjustifiable discrimination or disguised restrictions on international trade.

6. Nothing in this Article shall restrict the right of the Parties to take action more stringently protective of health and the environment than that called for in this Convention.

Article 5

Designated National Authority

1. Each Party shall designate a national [governmental] authority (or authorities) that shall be authorized to act on behalf of that Party and that shall be competent to perform the administrative functions required under this Convention. [A notification by the Designated National Authority of a Party to be undertaken pursuant to Articles ____, with the name and identity stamp of the designated authority, shall be deemed an official communication of the Party.]

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2. The Parties shall ensure that Designated National Authorities have sufficient national resources and other necessary means to assume and effectively implement responsibilities under the relevant provisions of this Convention.

3. Each Party shall, as soon as possible, but not later than ... days after the entry into force of this Convention for that Party, notify the name and address of its Designated National Authority (authorities) to the Secretariat. It shall similarly notify any subsequent changes as soon as possible after the change has occurred.

Article 6

Notification of Control Actions

1. Each Party having taken control action to ban or severely restrict a chemical shall notify the Secretariat [through the Designated National Authority] of such action and the reasons therefore substantially in the form set out in Annex ___ to this Convention. Such notification should clearly indicate what use or uses of the chemical in question has or have been banned or severely restricted.

2. Notification of a control action shall be provided as soon as practicable, but not later than ... months after the control action is taken.

3. Each Party shall provide the Secretariat with an inventory of control actions to ban or severely restrict chemicals taken before the entry into force of this Convention for that Party.

4. The Party issuing the notification shall, to the extent practicable, provide information concerning relevant alternative measures.

Article 7

[Identification of Chemicals for Inclusion in the PIC Procedure]

[Procedure and Criteria for Identification of Substances that Should be Included in or taken out of the PIC Procedure]

Article 8

Processing of Notification of Control Actions

1. The Secretariat shall, as soon as possible, after receipt of a notification under Article 6:

(a) Review the notification of control action in order to identify whether the control action to ban or severely restrict the chemical was taken for human health or environmental reasons;

[(b) Notify the Parties of each chemical identified above;]

(c) Prepare Prior Informed Consent decision guidance documents in accordance with the guidelines set out in Annex ___ to this Convention and distribute them to the Designated National Authority of each Party;

(d) Invite each Party to make a response in accordance with Article 9.

Article 9

Obligations of Parties that Import Chemicals

1. Each Party that imports chemicals shall transmit to the Secretariat, within ... days after receipt of the decision guidance document for the chemical referred to in Article 7, its response, substantially in the form set out in Annex ___ to this Convention, concerning the future import by that Party of a chemical that has become subject to the PIC procedures.

2. A response shall take one of the following forms:

(a) A final decision, pursuant to relevant national legislative or administrative measures, to:

- (i) consent to importation;
- (ii) not consent to importation; or
- (iii) consent to importation only under specified conditions;
or

(b) An interim response which may contain a statement consenting to importation with or without specified conditions or prohibiting importation during the interim period until a final decision is made, and may be:

- (i) a statement that importation is under active review, but that a final decision has not yet been reached;
- (ii) a request for further information; and/or
- (iii) a request for assistance in evaluating the chemical.

3. A response in the form of a final decision shall be accompanied by information on the national legislative or administrative measures on which the decision is based.

4. If an Importing Party fails to make a response or makes an interim response that does not address importation, the status quo with respect to the importation of the chemical shall continue.

5. The Secretariat shall, periodically and in a timely fashion, inform each Party, through its Designated National Authority, of the responses received from Importing Country Parties and the decisions communicated therein. [The Parties shall abide by an import decision ___ days after the date of dispatch by the Secretariat of the notification with respect to the import decision.]

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6. Each Party undertakes to make import decisions available to industry and other concerned persons and entities in its territory in accordance with its national legislative or administrative measures.

7. Each Party shall ensure that import decisions apply uniformly to all sources of import and to domestic production of chemicals for domestic use.

Article 10

Obligations of Parties that Export Chemicals

1. Each Party that exports chemicals shall:

(a) Adopt appropriate legislative or administrative measures to communicate Prior Informed Consent decisions to its industry involved in the export of chemicals and to other concerned persons or entities;

(b) Take appropriate legislative and administrative measures to ensure that no chemicals are exported from its territory:

(i) contrary to Prior Informed Consent decisions of the Importing Party; or

(ii) in the case of chemicals for which the status quo in respect of importation continues in accordance with Article 9, paragraph 4, subject to paragraph 2 of this article, without the explicit consent of the Importing Party;

(c) On receipt of information on exports from its territory ensure the prompt transmittal of such information to the Designated National Authority in the Importing Party concerned;

(d) Advise and assist the appropriate import control authorities in the Importing Party:

(i) in order that they may be in a position to take appropriate import control actions under their authority, and

(ii) to strengthen the national capabilities and capacities of the Importing Party to control imports as well as to manage chemicals safely.

2. An Exporting Party shall not be required to prevent the export of a chemical under paragraph 1(b)(ii) above where:

(a) The chemical is a pesticide which is registered in the Importing Party; or

(b) The use or importation of the chemical has been allowed by other governmental action of the Importing Party.

[Article 11

Export Notification]

[1. Parties that export chemicals shall, when the first export occurs of a chemical banned or severely restricted in its territory, notify the Importing Party concerned through its Designated National Authority in the Export Notification Form set out in Annex ___ of such export and provide it with relevant information.]

[Article 12

Classification, Packaging and Labelling]

[1. Each party exporting any chemical subject to the PIC Procedure shall ensure that it is clearly labelled as such.]

[2. Parties shall ensure that chemicals exported from their territories are subject to no less stringent requirements of classification, packaging and labelling than comparable products destined for use in the Party of export.]

Article 13

Confidential Data

1. Parties receiving notifications and information regarding exports under [this Convention] shall take account of the need to protect proprietary rights and the confidentiality of data received.

2. The following data shall not be regarded as confidential:

- the names of the substance;
- the names of the preparation;
- the names of the substances contained in the preparation and their percentage in the preparation;
- the names of the main impurities in the substances;
- the name of the manufacturer or exporter;
- information on the precautions to be taken, including the category of danger, the nature of the risk and the relevant warnings;
- physico-chemical data concerning the substances;
- the summary results of the toxicological and ecotoxicological tests;
- the possible ways of rendering the substance harmless;
- the information contained in the safety data sheet;

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- the country of destination.

3. The Parties shall establish appropriate internal procedures and designate an appropriate authority for the receipt and handling of information received under this Convention.

Article 14

Control of Trade with Non-Parties

[1. Non-Parties that are in compliance with the substantive provisions of this Convention should, as far as the application of trade measures is concerned, be treated on an equal basis with Parties that are in compliance.]

Article 15

Implementation of the Convention

1. The Parties agree to take such measures as may be necessary to strengthen, as appropriate, existing national infrastructures and institutions in both Importing and Exporting Parties. Such measures may include:

(a) Adopting national legislation or amending existing legislation to enable the taking of the necessary measures to implement this Convention, including, in particular, the prevention of exports that contravene Prior Informed Consent decisions taken by Importing Country Parties in accordance with this Convention;

[(b) Establishing national registers and databases, including safety information, for chemicals;]

[(c) Promoting voluntary agreements and initiatives by industry.]

[2. Each Party shall ensure [take appropriate measures to ensure] to the extent practicable, that each individual has appropriate access to information [on stockpiles], [chemical handling, accident management], on environmentally safer alternatives and [on emission inventories] concerning the chemicals subject to Prior Informed Consent procedures under this Convention.]

[3. The Parties agree to employ good management practices in the sale and purchase of chemicals, which include: ensuring that the products meet internationally agreed specifications (such as those referred to in the FAO International Code of Conduct on Distribution and Use of Pesticides); purchase the correct amount of pesticide products, ensure that the pesticide product used is appropriate to the problem; counter other provisions to address problems relating to the shipment and stockpiling of obsolete pesticides, in coordination with the relevant provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.]

[4. The Parties agree to cooperate, directly or, where appropriate, through competent international organizations, for the implementation of this Convention at the subregional, regional and global levels.]

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Article 16

Technical Assistance

1. The Parties shall, taking into account in particular the needs of developing countries and countries with economies in transition, cooperate in promoting technical assistance for the development of the infrastructure and necessary capacity to manage chemicals for the implementation of this Convention. Parties with more advanced chemical-regulating programmes should provide technical assistance, including training to other Parties in developing infrastructure and capacity to manage chemicals within their countries.

[Article 17

Compliance Measures]

[1. The Parties, at their first meeting, shall consider 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, including monitoring and reporting procedures and dealing with mechanisms for identifying non-compliance.]

[2. The Parties shall take appropriate legal or administrative action in the event of infringement of the provisions of this Convention.]

[Article 18

Liability and Compensation]

[1. The Conference of the Parties shall examine the issue of liability and compensation.]

Article 19

Financial Resources and Mechanisms

For a discussion paper on Financial Resources and Mechanisms, see document UNEP/FAO/PIC/INC.2/4.

Article 20

Conference of the Parties

For a discussion paper on the Conference of the Parties, see UNEP/FAO/PIC/INC.2/2.

Article 21 to end

Final Provisions

For a discussion paper on Final Provisions, see UNEP/FAO/PIC/INC.2/3.]

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