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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

Fifth session

Brussels, 9-14 March 1998

COMPLETION OF A LEGALLY BINDING INSTRUMENT FOR
THE APPLICATION OF THE PRIOR INFORMED CONSENT
PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND
PESTICIDES IN INTERNATIONAL TRADE

Consolidated negotiating text by the Chair of
the Intergovernmental Negotiating Committee

Note by the secretariat

1. At its fourth session, held in Rome from 20 to 24 October 1997, the Intergovernmental Negotiating Committee (INC) agreed that "in the inter-sessional period, the Chair should work with the secretariat and the Chairs of the Technical Working Group and the Legal Drafting Group in order to review the current version of the draft articles and produce a restructured text for the next session of the Committee. In addition to the renumbering of the articles, as appropriate, the aim should be a coherently presented and well structured text. An attempt might also be made to remove some of the non-contentious bracketed text, in order to expedite the Committee's work at its fifth session. The secretariat should also endeavour to ensure that the terminology used in the draft was accurate and consistent in all official languages" (UNEP/FAO/PIC/INC.4/2, para.58).

2. The attached revised text by the Chair has been prepared in response to the above mandate. It is derived from the outcome of the work of the fourth session as well as consultations with the Bureau and the Chairs of the Legal

Drafting Group and the Technical Working Group of the Intergovernmental Negotiating Committee.

3. The consolidated negotiating text is presented to the Intergovernmental Negotiating Committee for its consideration, without prejudice to the text of the draft articles as revised by the Committee at its second, third and fourth sessions (UNEP/FAO/PIC/INC.4/2, annex II), which remains before the Committee.

4. At its fifth session, the Intergovernmental Negotiating Committee is invited to focus its negotiations on the attached consolidated negotiating text, in order to reach agreement on the final text of the draft convention, and thereby fulfil the mandate given to it by the governing bodies of the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Environment Programme (UNEP).

Annex

CONSOLIDATED NEGOTIATING TEXT BY THE CHAIR OF THE INTERGOVERNMENTAL
NEGOTIATING COMMITTEE

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Preamble

The Parties to this Convention,

Aware of the potentially harmful impact on human health and the environment from certain hazardous chemicals and pesticides in international trade,

Recalling the pertinent provisions of the Rio Declaration on Environment and Development,

Recalling also that one of the objectives of programme area C of chapter 19 of Agenda 21 is to achieve by the year 2000, if possible, full participation in and implementation of the Prior Informed Consent procedure, including possible mandatory applications through legally binding instruments contained in the Amended London Guidelines for the Exchange of Information and Chemicals in International Trade of the United Nations Environment Programme and in the International Code of Conduct on the Distribution and the Use of Pesticides of the Food and Agriculture Organization of the United Nations.

Taking into account the circumstances and particular requirements of developing countries, in particular the need to strengthen national capabilities and capacities for the management of chemicals,

Mindful of the work undertaken by the United Nations Environment Programme (UNEP) and the Food and Agriculture Organization of the United Nations (FAO) in the operation of the Prior Informed Consent procedure set out in the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade (London Guidelines) of UNEP, and the FAO International Code of Conduct on the Distribution and Use of Pesticides (International Code of Conduct),

Recognizing that good management practices for chemicals should be promoted in all countries, taking into account, inter alia, the voluntary standards laid down in the Food and Agriculture Organization of the United Nations International Code of Conduct on the Distribution and Use of Pesticides and the United Nations Environment Programme Code of Ethics on the International Trade in Chemicals.

Determined to protect human health and the environment against potentially harmful impacts from certain hazardous chemicals and pesticides in international trade,

HAVE AGREED AS FOLLOWS:

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Article 1

Objective

The objective of this Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by promoting and facilitating information exchange about their characteristics and by providing for a national decision-making process on their import and by disseminating these decisions to Parties.

Article 2

Definitions

For the purposes of this Convention:

(a) "Chemical" means a substance whether by itself or in a mixture or preparation and whether manufactured or obtained from nature. It includes the following categories: pesticide (including hazardous pesticide formulations) [, consumer] and industrial, but does not include any living organism;

(b) "Banned chemical" means a chemical all uses of which within one or more categories have been prohibited by final regulatory action, in order to protect human health or the environment. It includes a chemical that has been refused approval for first-time use or withdrawn by industry either from the domestic market or from further consideration in the domestic approval process and where there is clear evidence that such an action has been taken in order to protect human health or the environment;

(c) "Severely restricted chemical" means a chemical virtually all use[s] of which within one or more categories have been prohibited by final regulatory action in order to protect human health or the environment, but for which certain specific uses remain allowed. [It also includes a chemical for which a substantial reduction of health or environmental risk has been obtained by a reduction of use[s] in one or more categories, through final regulatory action];

(d) "Hazardous pesticide formulation" means a chemical formulated for pesticidal use that [is likely to] produce [severe] [acute] health [or environmental] effects through [single or multiple] exposure [over a short period of time];

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(e) "Final regulatory action" means an action taken by a Party, which does not require subsequent regulatory action, the purpose of which is to ban or severely restrict a chemical;

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

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

(h) "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 and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Convention.

Article 3

Scope of the Convention

1. This Convention applies to:

- (a) Banned or severely restricted chemicals; and
- (b) Hazardous pesticide formulations.

2. This Convention does not apply to:

- (a) Narcotic drugs and psychotropic substances;
- (b) Radioactive materials;
- (c) Wastes;
- (d) Chemical weapons [and their precursors];
- (e) Pharmaceuticals, including human and veterinary drugs;
- (f) Chemicals used as food additives;
- (g) Chemicals imported for the purpose of research or analysis in quantities not likely to affect human health or the environment; and

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(h) Chemicals imported by an individual for his or her own personal use in quantities reasonable for such use and in quantities not likely to affect human health or the environment.

Article 4

Designated national authorities

1. Each Party shall designate one or more national authorities as appropriate that shall be authorized to act on its behalf. The administrative functions of the Parties required by this Convention shall be performed by those authorities.
2. Each Party shall seek to ensure that its designated national authority or authorities have sufficient resources to perform their tasks effectively.
3. Each Party shall, no later than the date of the entry into force of this Convention for it, notify the name and address of its designated national authority or authorities to the Secretariat. Each Party shall also immediately notify the Secretariat of any subsequent changes.
4. The Secretariat shall forthwith inform the Parties of the notifications it receives under paragraph 3.

Article 5

Banned or severely restricted chemicals

1. Each Party that has adopted a final regulatory action shall notify the Secretariat in writing of such action. Such notification shall be made as soon as possible, but not later than ninety days after the date on which the final regulatory action has taken effect, and shall include the information required by Annex I, where available.
2. Each Party shall, at the date of entry into force of this Convention for it, notify the Secretariat in writing of its final regulatory actions in effect at that time, except that each Party that has submitted notifications of final regulatory actions under the London Guidelines or the International Code of Conduct need not resubmit those notifications.
3. The Secretariat shall, as soon as possible, and in any event no later than six months after receipt of a notification under paragraphs 1 and 2, verify whether the notification includes the information required by Annex I. If the notification contains the information required, the Secretariat shall forthwith forward to all Parties a summary of the information received and if

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the notification does not contain the information required, it shall inform the notifying Party accordingly.

4. The Secretariat shall every six months communicate to the Parties a synopsis of the information received pursuant to paragraphs 1 and 2 including information regarding those notifications which do not contain all the information required in Annex I.

5. When the Secretariat has received [X] notification[s] [from [XX] FAO regions] regarding a particular chemical that it has verified meet[s] the requirements of Annex I, it shall forward [it] [them] to the subsidiary body referred to in paragraph 5 (b) of Article 19.

6. That subsidiary body shall review the information provided in such notification[s] and, in accordance with the criteria set out in Annex II, recommend to the Conference of the Parties whether the chemical should be made subject to the prior informed consent procedure and listed in Annex III accordingly.

Article 6

Hazardous pesticide formulations

1. Any Party [that is a developing country or a country with an economy in transition] experiencing problems caused by a hazardous pesticide formulation under conditions of use in its territory, may propose to the Secretariat the inclusion of the hazardous pesticide formulation in Annex III. In developing a proposal, the Party may draw upon technical expertise from any relevant source. The proposal shall include the information required by part 1 of Annex IV.

2. The Secretariat shall, as soon as possible, and in any event no later than six months after receipt of a proposal under paragraph 1, verify whether the proposal includes the information required by part 1 of Annex IV. If the proposal contains the information required, the Secretariat shall forthwith forward to all Parties a summary of the information received and if the proposal does not contain the information required, it shall inform the proposing Party accordingly.

3. The Secretariat shall collect the additional information set out in part 2 of Annex IV regarding the proposals forwarded under paragraph 2.

4. When the Secretariat has received [X] proposal[s] regarding a particular hazardous pesticide formulation that it has verified meet[s] the requirements of part 1 of Annex IV and has collected the additional information referred to

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in paragraph 3, it shall forward [it] [them] to the subsidiary body referred to in paragraph 5 (b) of Article 19.

5. That subsidiary body shall review the information provided in such proposal[s] and any additional information collected and, in accordance with the criteria set out in part 3 of Annex IV, recommend to the Conference of the Parties whether the hazardous pesticide formulation should be made subject to the prior informed consent procedure and listed in Annex III accordingly.

Article 7

Listing of chemicals in Annex III

1. For each chemical that the subsidiary body referred to in paragraph 5 (b) of Article 19 has decided to recommend for inclusion in Annex III, that subsidiary body shall prepare a draft decision guidance document.

2. The recommendation referred to in paragraph 1 together with its draft decision guidance document shall be forwarded to the Conference of the Parties. The Conference of the Parties shall decide whether the chemical should be made subject to the Prior Informed Consent procedure, to include the chemical in Annex III and to approve the draft decision guidance document.

3. A decision guidance document approved by the Conference of the Parties shall be circulated forthwith by the Secretariat to all Parties.

Article 8

Chemicals in the voluntary procedure

For any chemical other than a chemical 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 its first meeting to include the chemical in Annex III, provided that the Conference of the Parties is satisfied that all the requirements for listing in that Annex have been fulfilled.

Article 9

Removal of chemicals from Annex III

1. If information that was not available at the time of the decision to include a chemical in Annex III indicates that its inclusion is no longer

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justified in accordance with the relevant criteria in Annex II or IV, the subsidiary body referred to in paragraph 5 (b) of Article 19 may decide to recommend to the Conference of the Parties the removal of that chemical from Annex III.

2. Recommendations to remove a chemical from Annex III shall be communicated to the Parties by the Secretariat at least six months before the ordinary meeting of the Conference of the Parties.

3. The recommendation referred to in paragraph 1 shall be forwarded to the Conference of the Parties. The Conference of the Parties shall decide whether to remove the chemical from Annex III.

4. A decision by the Conference of the Parties to remove a chemical from Annex III shall be notified forthwith by the Secretariat to all Parties.

Article 10

Obligations in relation to imports of chemicals listed in Annex III

1. Each Party shall implement legislative or administrative measures to ensure timely decisions with respect to the import of chemicals listed in Annex III.

2. Each Party shall transmit to the Secretariat, as soon as possible but not later than nine months after the date of dispatch of the decision guidance document referred to in paragraph 3 of Article 7, a response concerning its future importation of the chemical concerned.

3. The Secretariat shall, at the expiration of the time period in paragraph 2, forthwith address to the Party that has not provided such a response, a written request to do so. Should the Party be unable to provide a response, the Secretariat shall, where appropriate, assist it to provide a response within the time-period specified in paragraph 3 of Article 11.

4. A response shall consist of either:

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

(i) To consent to importation;

(ii) Not to consent to importation; or

(iii) To consent to importation only subject to specified conditions; or

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(b) An interim response, which may include:

- (i) An interim decision consenting to importation with or without specified conditions, or not consenting to importation during the interim period;
- (ii) A statement that a final decision is under active consideration;
- (iii) A request for further information to the Secretariat or to the Party that notified the final regulatory action;
- (iv) A request to the Secretariat for assistance in evaluating the chemical.

5. A response under (a) or (b) of paragraph 4 shall apply to the category or categories specified for the chemical in Annex III.

[6. Each Party [shall] [should] ensure that its decisions with respect to imports of a chemical take into account, in the context of its national conditions, the information contained in the decision guidance document.]

7. A final decision should be accompanied by information describing any legislative or administrative measures on which it is based.

8. Each Party shall make its responses pursuant to paragraph 2 available to the natural and legal persons concerned under its jurisdiction in accordance with its legislative or administrative measures.

9. Each Party shall, upon the date of entry into force of this Convention for it, provide the Secretariat with its responses pursuant to paragraph 2 with respect to each chemical listed in Annex III. Each Party that has provided such responses under the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade of the United Nations Environment Programme or the International Code of Conduct on the Distribution and Use of Pesticides of the Food and Agriculture Organization of the United Nations need not resubmit those responses.

10. A Party that, pursuant to paragraphs 2 and 4, and paragraph 2 of Article 10, takes a decision not to consent to importation of a chemical or to consent to its importation only under specified conditions shall, if it has not already done so, simultaneously prohibit, or make subject to the same conditions:

- (a) The importation of the chemical from any source; and

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- (b) The domestic production of the chemical for domestic use.

11. The Secretariat shall every six months, inform all Parties of the responses received from importing Parties pursuant to paragraph 2, including information describing the legislative or administrative measures on which the decisions are based, if available.

Article 11

Obligations in relation to exports of chemicals listed in Annex III

1. Each exporting Party shall:

- (a) Implement appropriate legislative or administrative measures to communicate the responses forwarded by the Secretariat under paragraph 11 of Article 10 to the natural and legal persons concerned under its jurisdiction;

- (b) Take appropriate legislative or administrative measures to ensure that exporters under its jurisdiction comply with decisions in such responses no later than one hundred and twenty days after the date of dispatch by the Secretariat of the response pursuant to paragraph 11 of Article 10;

- (c) Advise and assist importing Parties, upon request and as appropriate:

- (i) In obtaining further information to help importing Parties to take decisions pursuant to paragraphs 2 and 4 of Article 10 and paragraph 2 with respect to a chemical listed in Annex III; and

- (ii) In strengthening their capacities and capabilities to manage chemicals safely during their life-cycle.

2. Subject to paragraph 3 below, if, in exceptional circumstances, an importing Party fails to transmit a response or transmits an interim response that does not contain an interim decision, a Party shall not export the chemical concerned to that importing Party, unless:

- (a) It is a chemical that, at the time of importation, is registered in the importing Party; or

- (b) It is a chemical for which evidence exists that it has previously been used in, or imported into, the territory of the importing Party, and in relation to which no regulatory action to prohibit its use has been taken; or

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(c) Explicit consent to the import into the importing Party's territory of that chemical is sought and received by the exporter from a competent national authority of the importing Party. The importing Party shall respond within sixty days to such a request.

3. Paragraph 2 shall apply from one hundred and twenty days after the date of dispatch, pursuant to paragraph 11 of Article 10, of the responses received from Parties immediately following the expiry of the time period laid down in paragraph 2 of Article 10, and shall cease to apply one year later.

Article 12

Export notification of chemicals banned or severely restricted within the territory of a Party

1. In addition to the requirements of paragraph 1 of Article 5, a Party, when exporting a chemical banned or severely restricted in its territory, shall give an export notification to the importing Party. The export notification shall include the information set out in Annex V.

2. The export notification shall be given when the [first export][first export of any calendar year][first two exports of any calendar year] occur[s]. The first export notification after the adoption of the final regulatory action in the notifying Party shall be given [on a timely basis when] [before] the first export occurs.

[3. The importing Party shall acknowledge receipt of each export notification to the exporting Party. If the exporting Party does not receive the acknowledgement within thirty days, it shall resubmit the export notification.]

4. An updated export notification shall be given after a major change concerning the ban or severe restriction of the chemical in the exporting Party has been adopted by a final regulatory action.

5. The obligation of a Party to give an export notification to an importing Party for a specific chemical shall end when the chemical has been included in Annex III, the importing Party has provided a response for such chemical to the Secretariat in accordance with paragraph 2 of Article 10 and the Secretariat has distributed the response to Parties according to paragraph 11 of Article 10.

[6. For any export of a chemical that takes place after an export notification has been given, the exporting Party [shall] [should] ensure that the exported chemical is accompanied by a reference to that export

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notification. The obligation of a Party to comply with this paragraph shall end when the obligation to give export notification for a specific chemical ends, in accordance with paragraph 5.]

[7. In instances in which a regional economic integration organization that is a Party to this Convention gives export notifications instead of its member States, it shall give an export notification when any member State would have such obligation, were the member State not a member of the regional economic integration organization.]

Article 13

Information to accompany exported chemicals

1. 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. [Each Party shall require that, whenever a code has been assigned by the World Customs Organization to a chemical listed in Annex III, the shipping document [and/or label] for that chemical bears this code when exported.]

[2. Without prejudice to any requirements of the importing Party, each Party [should] [shall] require that chemicals [listed in Annex III] [listed in Annex III and those banned or severely restricted in their territory] [considered hazardous in accordance with its legislation] that are exported from its territory are subject to no less stringent classification, packaging and labelling requirements than they would be subject to if they were destined for use within its own territory.]

3. With respect to the chemicals in paragraph 2, each exporting Party [should] [shall] require that a safety data sheet that follows an internationally accepted format, setting out the most up-to-date information available, is sent to the importer [with each shipment].

4. The information on the label and on the safety data sheet should, as far as practicable, be given in one or more of the official languages of the importing Party.

Article 14

Information exchange

1. The Parties shall, as appropriate and in accordance with the objectives of this Convention, facilitate:

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(a) The exchange of scientific, technical, economic and legal information concerning the chemicals within the scope of this Convention, including toxicological, ecotoxicological and safety information;

(b) The provision of publicly available information on domestic regulatory actions relevant to the objectives of this Convention.

2. Each Party receiving information pursuant to this Convention shall take into account the need to protect any [existing proprietary rights, and] confidential information received[, and shall establish appropriate internal procedures for this purpose].

3. The following information shall not be regarded as confidential for the purpose of this Convention:

(a) The information contained in Annexes I and IV, submitted pursuant to Articles 5 and 6, respectively;

(b) The information contained in safety data sheets referred to in paragraph 3 of Article 13,;

(c) The production and expiration dates of the chemical;

(d) Information on precautionary measures, including hazard classification, the nature of the risk and the relevant safety advice;

(e) The summary results of the toxicological and ecotoxicological tests.

Article 15

Implementation of the Convention

1. Each Party shall take such measures as may be necessary to establish and strengthen its national infrastructures and institutions for the effective implementation of this Convention. These measures may include, as required, the adoption or amendment of national legislation or administrative actions and may also include:

(a) The establishment of national registers and databases, including safety information for chemicals;

(b) The encouragement of initiatives by industry; and

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(c) The promotion of voluntary agreements, taking into consideration the provisions of Article 16.

2. Each Party shall ensure, to the extent practicable, that the public has appropriate access to information on chemical handling and accident management and on alternatives that are safer for human health or the environment than the chemicals listed in Annex III.

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

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

[5. The provisions of this Convention shall not apply to the movements of the chemicals within the scope of this Convention between the member States of a regional economic integration organization which is itself a Party to the Convention and has specific legislation on those chemicals, provided that this legislation is compatible with the environmentally sound management of chemicals as required by this Convention.]

6. Nothing in this Convention shall be interpreted as restricting the right of the Parties to take action more stringently protective of human health and the environment than that called for in this Convention, provided that this action is consistent with the provisions of this Convention and is in accordance with international law.

Article 16

Technical assistance

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 the capacity necessary to manage chemicals to enable implementation of this Convention. Parties with more advanced programmes for regulating chemicals should provide technical assistance, including training to other Parties in developing their infrastructure and capacity to manage chemicals throughout their life-cycle.

Article 17

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Compliance

The Conference of the Parties shall, as soon as practicable, consider the need to 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.

[Article 18]

Relationship with other agreements

The provisions of this Convention shall not affect the rights and obligations of any Party deriving from any [existing] international agreement[, except where the exercise of those rights or the performance of those obligations would cause serious damage or threat to human health or the environment].]

Article 19

Conference of the Parties

1. A Conference of the Parties is hereby established.
2. The first meeting of the Conference of the Parties shall be convened by the Executive Director of the United Nations Environment Programme and the Director-General of the Food and Agriculture Organization of the United Nations, acting jointly, not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference of the Parties.
3. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that it is supported by at least [one third] of the Parties.
4. The Conference of the Parties shall [by consensus] [by a two-thirds majority] [by a three-fourths majority] agree upon and adopt [at its first meeting] rules of procedure and financial rules for itself and any subsidiary bodies it may establish, as well as financial provisions governing the functioning of the Secretariat.
5. The Conference of the Parties, as the supreme body of this Convention, shall keep under continuous review and evaluation the effective implementation of this Convention, and, in addition, shall:

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(a) Execute the functions assigned to it in this Convention;

(b) Establish, at its first meeting, a subsidiary body for the purposes of implementation of Articles 5, 6, 7 and 9. The membership and terms of reference of this subsidiary body shall be decided by the Conference of the Parties. This subsidiary body shall make every effort to make the recommendations referred to in paragraph 6 of Article 5, paragraph 5 of Article 6, paragraph 1 of Article 7 and paragraph 1 of Article 9 by consensus. If all efforts at consensus have been exhausted, and no consensus reached, such recommendation shall as a last resort be adopted by a [two-thirds] [three-fourths] majority vote of the members present and voting;

(c) Establish such other subsidiary bodies as it may consider necessary for the implementation of this Convention;

(d) Cooperate, where appropriate, with competent international organizations and intergovernmental and non-governmental bodies; and

(e) Consider and undertake any additional action that may be required for the achievement of the objectives of this Convention.

6. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not party to this Convention, may be represented at meetings of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, qualified in matters covered by the Convention, and which has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer may be admitted unless [at least one third of the Parties present object] [a Party objects]. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

Article 20

Secretariat

1. A Secretariat is hereby established.

2. The functions of the Secretariat shall be:

(a) To make arrangements for meetings of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;

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(b) To facilitate assistance to the Parties, particularly developing Parties and Parties with economies in transition, on request, in the implementation of this Convention;

(c) To ensure the necessary coordination with the secretariats of other relevant international bodies;

(d) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and

(e) To perform the other secretariat functions specified in this Convention and such other functions as may be determined by the Conference of the Parties.

3. The secretariat functions for this Convention shall be performed jointly by the Executive Director of the United Nations Environment Programme and the Director-General of the Food and Agriculture Organization of the United Nations, subject to such arrangements as shall be agreed between them and approved by the Conference of the Parties.

4. The Conference of the Parties may decide, by a three-fourths majority of the Parties present and voting, to entrust the secretariat functions to one or more other competent international organizations, should it find that the secretariat mechanism cannot function as intended.

Article 21

Settlement of disputes

1. Parties shall settle any dispute between them concerning the interpretation or application of the Convention through negotiation or other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party that is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, with respect to any dispute concerning the interpretation or application of the Convention, it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

(a) Arbitration in accordance with procedures adopted by the Conference of the Parties in an annex as soon as practicable; and

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(b) Submission of the dispute to the International Court of Justice.

3. A Party that is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedure referred to in paragraph 2 (a).

4. A declaration made pursuant to paragraph 2 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

5. The expiry of a declaration, a notice of revocation or a new declaration shall not in any way affect proceedings pending before an arbitral tribunal or the International Court of Justice unless the parties to the dispute otherwise agree.

6. If the parties to a dispute have not accepted the same or any procedure pursuant to paragraph 2, and if they have not been able to settle their dispute within twelve months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted to conciliation at the request of any Party to the dispute in accordance with procedures adopted by the Conference of the Parties in an annex as soon as practicable.

[Canadian proposal for settlement of disputes]

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Convention, and shall make every effort through cooperation and consultation to arrive at a mutually satisfactory resolution of any matter that may affect its operation.

2. The Parties may submit to the conciliation commission, pursuant to Annex A any dispute concerning the interpretation or application of this Convention, provide that Parties to the conciliation proceedings agree.

3. If the conciliation commission has convened pursuant to Annex A and the dispute has not been resolved within ninety days thereafter, any Party may, in accordance with the procedures adopted by the Conference of the Parties request that the dispute be referred to either:

(a) Binding arbitration pursuant to Annex B; or

(b) The International Court of Justice.

4. This Article shall apply with respect to any protocol under this Convention except as otherwise provided in that protocol].

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Article 22

Amendments to the Convention

1. Amendments to this Convention may be proposed by any Party.
2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. The text of any proposed amendments to this Convention shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the signatories to this Convention and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The amendment shall be submitted by the Depositary to all Parties for ratification, acceptance or approval.
4. Ratification, acceptance or approval of amendments shall be notified to the Depositary in writing. Amendments adopted in accordance with paragraph 3 shall enter into force for the Parties having accepted them on the ninetieth day after the date of deposit of instruments of ratification, acceptance or approval by at least three-fourths of the Parties. Thereafter, the amendments shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of ratification, acceptance or approval of the amendments.
5. For the purposes of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 23

Adoption and amendment of annexes

1. Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any annexes thereto.
2. Annexes, other than Annex III, shall be restricted to procedural, scientific, technical or administrative matters.
3. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:

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(a) Additional annexes shall be proposed and adopted according to the procedure laid down in paragraphs 1, 2 and 3 of Article 22;

[(b) Any Party that is unable to accept an additional annex shall so notify the Depositary, in writing, within one year from the date of communication of the adoption of the additional annex by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous notification of non-acceptance in respect of any additional annex and the annexes shall thereupon enter into force for that Party subject to subparagraph (c) below:] and

(c) On the expiry of one year from the date of the communication by the Depositary of the adoption of an additional annex, the annex shall enter into force for all Parties that have not submitted a notification in accordance with the provisions of subparagraph (b) above;

4. Except in the case of Annex III, the proposal, adoption and entry into force of amendments to annexes to this Convention shall be subject to the same procedure as for the proposal, adoption and entry into force of additional annexes to the Convention.

5. The following procedure shall apply to the proposal, adoption and entry into force of amendments to Annex III:

(a) Amendments to Annex III shall be proposed and adopted according to the procedure laid down in Articles 5, 6, 7 and 9;

(b) The Conference of the Parties shall [make every effort to] take its decisions on adoption by consensus. [If all efforts at consensus have been exhausted, and no consensus reached, such decisions shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting.]

(c) The decision to amend Annex III in order to include a chemical in, or remove a chemical from, that Annex, shall forthwith be communicated to the Parties by the Depositary. The amendments shall enter into force for all Parties on the expiry of six months from the date of communication of the amendment by the Depositary, unless another date for entry into force is specified in such decision.

6. If an additional annex or an amendment to an annex is related to an amendment to this Convention, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention enters into force.

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Article 24

Right to vote

1. Subject to paragraph 2 below, each Party to this Convention shall have one vote.
2. A regional economic integration organization, on matters within its competence, shall exercise its right to vote with a number of votes equal to the number of its member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercise their right to vote, and vice versa.

Article 25

Signature

This Convention shall be open for signature at _____ by all States and regional economic integration organizations from ___ to ___, and at the United Nations Headquarters in New York from ___ to ___.

Article 26

Ratification, acceptance, approval or accession

1. This Convention shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. It shall be open for accession by States and by regional economic integration organizations from the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization that becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.
- [3. In its instrument of ratification, acceptance, approval or accession, a regional economic integration organization shall declare the extent of its competence in respect of the matters governed by this Convention. Any such

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organization shall also inform the Depositary, who shall in turn inform the Parties, of any relevant modification in the extent of its competence.]

Article 27

Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.
2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.
3. For the purpose of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such an organization.

Article 28

Reservations

No reservations may be made to this Convention.

Article 29

Withdrawal

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such date as may be specified in the notification of withdrawal.

Article 30

Depositary

The Secretary-General of the United Nations shall be the Depositary of this Convention.

Article 31

Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at _____ on this __ day of __, one thousand nine hundred and ninety-eight.

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Annex I

INFORMATION REQUIREMENTS FOR NOTIFICATIONS MADE PURSUANT TO ARTICLE 5

Notifications shall include:

1. Chemical properties, identification and uses

- (a) Common name;
- (b) Chemical name according to an internationally recognized nomenclature (for example International Union of Pure and Applied Chemistry (IUPAC)), where such nomenclature exists;
- (c) Trade names and names of preparation;
- (d) Code numbers: Chemicals Abstract Service (CAS) number, Harmonized System custom code and other numbers;
- (e) Information on hazard classification, where the chemical is subject to classification requirements;
- (f) Uses of the chemical;
- (g) The physico-chemical, toxicological and ecotoxicological properties of the chemical.

2. Final regulatory action

- (a) Information specific to the final regulatory action:
 - (i) Summary of the final regulatory action;
 - (ii) Reference to the regulatory document;
 - (iii) Date of entry into force of the final regulatory action;
 - [(iv) Indication of whether the final regulatory action was taken on the basis of a risk/hazard evaluation and, if so, include information on such an evaluation, including a reference to the relevant documentation;]
 - (v) Reasons for the final regulatory action relevant to human health or the environment;

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- (vi) Summary of the hazards and risks presented by the chemical to human health or the environment and the expected effect of the final regulatory action;

- (b) Categories where the final regulatory action has been taken, and for each category:
 - (i) Use(s) subject to the regulatory action prohibited;

 - (ii) Use(s) that remain allowed;

 - (iii) Estimation of quantities of the chemical produced, imported, exported and used, where available;

 - (c) An indication of the likely relevance of the final regulatory action to other States and regions, to the extent possible;

 - (d) Other relevant information that may cover:
 - (i) Assessment of socio-economic effects of the final regulatory action;

 - (ii) Information on alternatives and their relative risks, where available, which may include:
 - a. Integrated pest management strategies;

 - b. Industrial practices and processes, including cleaner technology.

Annex II

CRITERIA FOR THE INCLUSION OF BANNED OR SEVERELY RESTRICTED
CHEMICALS IN ANNEX III

In reviewing the notifications forwarded to it by the Secretariat pursuant to paragraph 5 of Article 5, the subsidiary body shall:

- (a) Confirm that the final regulatory action has been taken in order to protect human health or the environment;
- (b) Establish that the final regulatory action has been taken as a consequence of a risk/[hazard] evaluation. This evaluation shall be based on a review of scientific data in the context of the conditions prevailing in the Party in question. For this purpose, the documentation provided shall demonstrate that:
 - (i) Data have been generated according to scientifically recognized methods;
 - (ii) Data reviews have been performed and documented according to generally recognized scientific principles and procedures;
 - (iii) The final regulatory action was based on a [risk assessment] [risk/hazard evaluation] involving prevailing conditions within the Party taking the action;
- (c) Consider whether the final regulatory action provides a sufficiently broad basis to merit inclusion of the chemical in Annex III, by taking into account:
 - (i) Whether the final regulatory action led or would be expected to lead to a significant decrease in the quantity of the chemical used or the number of uses;
 - (ii) Whether the final regulatory action led to an actual reduction of risk or would be expected to result in a significant reduction of risk for human health or the environment of the Party that submitted the notification in question;
 - [(iii) Whether the considerations which led to the final regulatory action being taken are sufficiently applicable in a global context;]

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(iv) Whether there is evidence of ongoing international trade in the chemical;

(d) Take into account that intentional misuse is not in itself an adequate reason to include a chemical in Annex III.

Annex III

CHEMICALS SUBJECT TO THE PRIOR INFORMED CONSENT PROCEDURE

Chemical identity	Category on which inclusion in Annex is based
2,4,5-T	Pesticide
Aldrin	Pesticide
Captafol	Pesticide
Chlordane	Pesticide
Chlordimeform	Pesticide
Chlorobenzilate	Pesticide
DDT	Pesticide
Dieldrin	Pesticide
Dinoseb and dinoseb salts	Pesticide
1,2-dibromoethane (EDB)	Pesticide
Fluoroacetamide	Pesticide
HCH (mixed isomers)	Pesticide
Heptachlor	Pesticide
Hexachlorobenzene	Pesticide
Lindane	Pesticide
Mercury compounds, including inorganic mercury compounds, alkyl mercury compounds and alkyloxyalkyl and aryl mercury compounds	Pesticide
Pentachlorophenol	Pesticide
Monocrotophos (600 g/l (SL) formulation and higher)	Hazardous pesticide formulation
Methamidophos (600 g/l (SL) formulation and higher)	Hazardous pesticide formulation
Phosphamidon (1000 g/l (SL) formulation and higher)	Hazardous pesticide formulation
Methyl-parathion (dust formulations, emulsifiable concentrates)	Hazardous pesticide formulation
Parathion (currently available formulations)	Hazardous pesticide formulation
Crocidolite	Industrial
Polybrominated biphenyls (PBB)	Industrial

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Polychlorinated biphenyls (PCB), except mono- & dichlorinated	Industrial
Polychlorinated terphenyls (PCT)	Industrial
Tris (2,3 dibromopropyl) phosphate	Industrial

Annex IV

INFORMATION AND CRITERIA FOR INCLUSION OF HAZARDOUS PESTICIDE
FORMULATIONS IN ANNEX III

Part 1. Documentation required from a proposing Party

Proposals submitted pursuant to paragraph 1 of Article 6 shall include adequate documentation containing the following information:

- (a) The name of the pesticide formulation;
- (b) The name of the active ingredient;
- (c) Percentage of active ingredient in the formulation;
- (d) Type of formulation;
- (e) Trade name(s) and name(s) of producer(s), if available;
- (f) Common and recognized patterns of use of the pesticide formulation in the proposing Party;
- (g) A clear description of each incident related to the problem, including the adverse effect and the way in which the pesticide formulation was used;
- (h) Any regulatory, administrative or other measure taken, or intended to be taken, by the proposing Party in response to such incidents.

Part 2. Information to be collected by the Secretariat

Pursuant to paragraph 3 of Article 6 the Secretariat shall collect relevant information relating to the pesticide formulation, including:

- (a) The physico-chemical, toxicological and ecotoxicological properties of the pesticide formulation;
- (b) The existence of handling or applicator restrictions in other States;
- (c) Information on incidents related to the pesticide formulation in other States;

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(d) Information submitted by other Parties, international organizations, non-governmental organizations or other relevant sources, whether national or international;

(e) Risk and/or hazard assessment, where available;

(f) Indications of the extent of use of the pesticide formulation, such as the number of registrations, or production or sales quantity, if available;

(g) Other formulations of the pesticide in question, and incidents relating to these formulations, if any;

(h) Alternative pest-control practices;

(i) Other information which the subsidiary body may identify as relevant.

Part 3. Criteria for inclusion of hazardous pesticide formulations in Annex III

In reviewing the proposals forwarded to it by the Secretariat pursuant to paragraph 5 of Article 6, the subsidiary body shall take into account:

(a) The reliability of the evidence indicating that the use of the pesticide formulation, in accordance with common or recognized practices within the proposing Party, resulted in the reported incident(s);

(b) The relevance of such incidents to other States with similar climate, conditions and patterns of use of the pesticide formulation;

(c) The existence of handling or applicator restrictions involving technology or techniques that may not reasonably or widely be applied in States lacking the infrastructure;

(d) The significance of reported effects in relation to the quantity used of the pesticide formulation; and

(e) That incidents resulting from intentional misuse are not an adequate basis for including a pesticide formulation in Annex III.

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Annex V

INFORMATION REQUIREMENTS FOR EXPORT NOTIFICATIONS MADE PURSUANT TO ARTICLE 12

1. Export notifications shall include the following information:

(a) The name, address, telephone, telex and fax numbers and e-mail address of the relevant designated national authority of the exporting Party and of the importing Party;

(b) The expected date of the export to the importing Party;

(c) The name of the banned or severely restricted chemical and a copy of the information specified in Annex I. Where more than one such chemical is included in a product, the information specified in Annex I will be provided for each;

(d) In the case of a mixture or preparation, the concentration of the banned or severely restricted chemical(s);

(e) The Harmonized System custom code for the chemical;

(f) A statement indicating the foreseen use-category and the foreseen use within the use-category, if known, in the importing Party;

(g) Information on precautionary measures to reduce exposure and emission of the chemical;

(h) Name and address of the importer in the importing Party;

(i) Any additional information that is readily available to the designated national authority of the exporting Party that would be of assistance to the designated authority of the importing Party in evaluating the export notification.

2. Should the Party providing the information so request, the information listed in subparagraphs 1 (b), (d) and (h) will be regarded as confidential, in accordance with paragraph 2 of Article 14.
