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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

Eighth session

Rome, 8-12 October 2001

Item 4 (e) and (f) of the provisional agenda*

IMPLEMENTATION OF THE INTERIM PRIOR INFORMED CONSENT PROCEDURE

Issues arising out of the second session of the Interim Chemical Review Committee

Note by the secretariat

1. The purpose of this note is to support the Intergovernmental Negotiating Committee's discussions of agenda items 4 (e) and (f). These sub-items are intended to cover discussion of the outcome of the Interim Chemical Review Committee's deliberations on some of the issues it was requested by the Intergovernmental Negotiating Committee to review at its second session, or issues that arose during its discussions. This note provides relevant background information and a summary of the Interim Chemical Review Committee's deliberations and recommendations on each issue. Also included, where appropriate, are the secretariat's suggestions for possible action by the Intergovernmental Negotiating Committee.

A. Contaminants (item 4 (e))

1. Background

2. At its sixth session, in decision INC-6/3, the Intergovernmental Negotiating Committee requested the Interim Chemical Review Committee to review the chemical maleic hydrazide, addressing, in particular, the impurity hydrazine and the overall policy issues related to adding chemicals to the prior informed consent (PIC) procedure on the basis of control actions related to contaminants within the chemical, rather than to the

* UNEP/FAO/PIC/INC.8/1.

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chemical itself and, should it so decide, review and revise, as appropriate, the draft decision guidance document for that chemical for presentation to the Intergovernmental Negotiating Committee at its next session.

3. At its first session the Interim Chemical Review Committee discussed the issue of contaminants and the question of whether chemicals could be included in the PIC procedure on the basis of specified levels of contaminants, rather than the nature of the chemicals themselves. It identified a number of possible scenarios involving contaminants and their possible effect on the candidature of chemicals for inclusion in the PIC procedure. It made a general recommendation to the Intergovernmental Negotiating Committee related to the issue of contaminants, but decided to refer the issue of chemicals whose use had been notified as banned or severely restricted on the basis of specified levels of contaminants back to the Intergovernmental Negotiating Committee for further consideration. It also decided not to address the draft decision guidance document on maleic hydrazide until after the seventh session of the Intergovernmental Negotiating Committee.

4. The Intergovernmental Negotiating Committee, at its seventh session, adopted a general policy to guide the Interim Chemical Review Committee in its consideration of whether to recommend that a pesticide containing a contaminant be made subject to the interim PIC procedure, in line with article 5, paragraph 6 of the Convention. Decision INC-7/4 reads as follows:

"The Intergovernmental Negotiating Committee

"Adopts a policy on contaminants that includes final regulatory actions to ban a pesticide that have been taken by at least two countries in two prior informed consent regions on the basis of a contamination contained in that substance, where the notification also meets the requirements of annexes I and II to the Convention."

5. In addition, by decision INC-7/5, the Intergovernmental Negotiating Committee requested that the Interim Chemical Review Committee, on a pilot basis, and without prejudice to any future policy on contaminants, apply two approaches in its consideration of maleic hydrazide and its impurity hydrazine and report on the outcome at the eighth session of the Intergovernmental Negotiating Committee.

6. The results of the Interim Chemical Review Committee's deliberations on maleic hydrazide are described in document UNEP/FAO/PIC/INC.8/6.

2. Possible action by the Intergovernmental Negotiating Committee

7. At the seventh session of the Intergovernmental Negotiating Committee, one representative drew attention to the fact that there had been no consideration by the Committee of contaminants in industrial chemicals. The Committee agreed to address that issue once it had concluded its discussion on maleic hydrazide. The Committee might consider whether it wishes to initiate further work on the issue of contaminants at this time.

B. Issues associated with the operational procedures for the Interim Chemical Review Committee (item 4 (f))

1. Cooperation and coordination in the submission of notifications of final regulatory action

(a) Background

8. The Interim Chemical Review Committee, at its second session, considered possible avenues of cooperation and coordination among countries in preparing notifications and proposals under articles 5 and 6 of the Convention, as well as the question of how the Committee should deal with "old" notifications of final

regulatory action, i.e., those submitted prior to implementation of the interim PIC procedure that did not satisfy the criteria set out in annex I of the Convention.

9. The Interim Chemical Review Committee established an inter-sessional task group to further develop the process of prioritizing work on "old" notifications pertaining to chemicals. The task group would review the criteria and revise the process as a result of experience gained in its application. A further output would be the identification of an initial list of "priority chemicals" that could be the subject of further work by the Committee. That same task group would also draft an issue paper on the compatibility of current regulatory practices with the notification requirements of the interim PIC procedure as a possible basis for practical guidance to countries. In addition, the Committee requested the secretariat to assist it in its work on reviewing "old" notifications and, where possible, in determining whether there was ongoing trade in those chemicals the Committee identified as "priority chemicals".

(b) Possible action by the Intergovernmental Negotiating Committee

10. The Intergovernmental Negotiating Committee might consider the following recommendations made by the Interim Chemical Review Committee (UNEP/FAO/PIC/ICRC.2/11, annex I):

"The Interim Chemical Review Committee recommends that the Intergovernmental Negotiating Committee:

"(a) Call upon Parties to the Convention, to the extent possible, to update and resubmit their notifications of final regulatory action, that did not satisfy the information requirements of annex I of the Convention, in line with the requirements of the interim PIC procedure;

"(b) Call upon designated national authorities and non-governmental organizations to facilitate efforts to delineate the scope of ongoing international trade in certain chemicals to be designated by the Committee upon the conclusion of its efforts to screen and prioritize chemicals subject to previously submitted notifications of final regulatory action;

"(c) Consider the question of whether countries wishing to present supplementary data to support old notifications regarding industrial chemicals (which, unlike pesticides, have not been the subject of government re-evaluation programmes) should be permitted to utilize scientific data, such as risk evaluations, that did not exist at the time the relevant final regulatory action was taken and therefore did not form the basis for such action."

2. Use of CAS numbers and precise chemical descriptions to identify chemicals subject to the interim PIC procedure

(a) Background

11. The issue of the possible inconsistent use of Chemical Abstract Service numbers (CAS numbers) and chemical descriptions in annex III of the Convention was brought to the attention of the secretariat in January 2001, through a letter from the Pesticide Action Network (PAN) - North America (UNEP/FAO/PIC/ICRC.2/INF/2). In consultation with the Chair and the Bureau of the Interim Chemical Review Committee, the secretariat developed a brief note on the issues raised by PAN-North America (UNEP/FAO/PIC/ICRC.2/10), providing a basis for their possible consideration by the Interim Chemical Review Committee as part of its ongoing discussions on operational procedures.

12. The Interim Chemical Review Committee discussed the issues raised and developed an approach in order to ensure that precise chemical descriptions and relevant CAS numbers are incorporated into future decision guidance documents and recommendations from the Interim Chemical Review Committee to the Intergovernmental Negotiating Committee regarding inclusion of chemicals in the interim PIC procedure.

13. The Interim Chemical Review Committee concluded that, in submitting notifications of final regulatory action, countries must describe the chemical subject to the regulatory action accurately by name and CAS number. It also agreed that Governments should be encouraged to require that chemical importers provide them with such information.

14. The Interim Chemical Review Committee noted that annex III of the Convention can be amended only by the Conference of the Parties in accordance with the procedures laid out in the Convention.

(b) Possible action by the Intergovernmental Negotiating Committee

15. The Intergovernmental Negotiating Committee might wish to encourage Governments, when submitting notifications of final regulatory action, to describe all the chemicals subject to the regulatory action accurately by chemical name and CAS number.
