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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

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Item 5 (f) of the provisional agenda\*

PREPARATION FOR THE CONFERENCE OF THE PARTIES

ISSUES ASSOCIATED WITH THE DISCONTINUATION OF THE  
INTERIM PRIOR INFORMED CONSENT PROCEDURE

Options and feasible solutions

Note by the secretariat

1. The Intergovernmental Negotiating Committee for an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade held its seventh session in Geneva from 29 October to 3 November 2000. At that session, the Committee considered a note prepared by the secretariat on "Issues associated with the discontinuation of the prior informed consent procedure" (UNEP/FAO/PIC/INC.7/12).
2. In decision INC-7/7, the Committee requested the secretariat to prepare a further paper for consideration at its eighth session setting out options for the issues related to the discontinuation of the interim prior informed consent (PIC) procedure and indicating the most feasible solutions. States and regional economic integration organizations agreed to provide written comments to the secretariat by 1 February 2001. The present note has been prepared in response to that decision. It identifies options and proposes feasible solutions that could be reflected in any recommendations to the Conference of the Parties or the governing bodies of the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Environment Programme (UNEP) related to the discontinuation of the interim PIC procedure.

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

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## I. INTRODUCTION

3. In preparing this note the secretariat has taken into account points raised in the course of the discussion at the seventh session of the Committee, as well as the written comments submitted by Australia, Canada, the European Commission, Samoa and the United States of America. The specific comments provided are not identified in the text, but copies of the comments submitted may be found in UNEP/FAO/PIC/INC.8/INF/2.

4. In reviewing the discussion at the Committee's seventh session and the written comments, some common themes or principles emerge which may serve as guidance in a discussion of the issues associated with the discontinuation of the interim PIC procedure and the consideration of feasible solutions:

(a) The progress achieved under the interim PIC procedure should be maintained and experience gained in its application retained;

(b) States and regional economic integration organizations that have not ratified or acceded to the Convention at its entry into force should be given sufficient time to do so. This transition period should allow for a gradual shift from the interim PIC procedure to the Convention PIC procedure;

(c) There must be clear incentives for countries to adhere to the Convention. Parties and non-Parties to the Convention cannot continue to have the same rights and privileges for an unlimited time after entry into force of the Convention;

(d) In order to facilitate the transition from the interim PIC procedure to the Convention PIC procedure and to minimize confusion, the measures adopted for the transition period should be as simple, pragmatic and straightforward as possible.

5. The issues considered in the present note are those identified in the note prepared for the seventh session (UNEP/FAO/PIC/INC.7/12). This document is displayed on the Rotterdam Convention Web site ([www.pic.int](http://www.pic.int)). The issues have been reordered in this note, but the headings have been maintained to retain the link between the two documents. For each of the issues, and on the basis of the comments made at the Committee's seventh session and the additional comments submitted, the secretariat has, where possible, identified options and feasible solutions for consideration by the Committee at its eighth session. These options and proposed solutions should facilitate discussion of the issues by the Committee and might be reflected in any recommendations to the Conference of the Parties or the governing bodies of FAO and UNEP regarding the discontinuation of the interim PIC procedure. It is recognized, however, that given the limited number of comments received, further options and solutions not described in this note might also be considered.

6. The present note is divided into sections. Section III – "Making the transition – interim PIC to Convention PIC" - addresses those aspects of the interim PIC procedure that will need to be amended in moving to the Convention PIC procedure. Section IV – "The transition period" – outlines possible measures that could be implemented during the period of transition between the time the Convention enters into force and the termination of the interim PIC procedure. Section V – "The post-transition period – discontinuation of the interim PIC procedure" – considers the issues associated with termination of the interim PIC procedure and possible options for interaction among Parties and non-Parties. Section VI – "Possible recommendations to mitigate possible negative effects resulting from termination of the interim PIC procedure" – proposes some subsequent steps.

7. The following terms have been used in the present note:

(a) The "original PIC procedure" means the voluntary PIC procedure contained in the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade and the FAO International Code of Conduct on the Distribution and Use of Pesticides, in effect until the date on which the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was opened for signature;

(b) The "interim PIC procedure" means the original PIC procedure as changed to bring it into line with the procedure established by the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, with effect from the date on which the Convention was opened for signature;

(c) The "Convention PIC procedure" means the PIC procedure as described in the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, which will become mandatory for the Parties to the Convention once the Convention enters into force;

(d) The "transition period" means the time between the entry into force of the Convention and the date on which the interim PIC procedure will be terminated, during which time the interim PIC procedure and the Convention PIC procedure will operate in parallel;

(e) "Participating States" are those States and regional economic integration organizations that are not Parties to the Convention during the transition period.

## II. BACKGROUND

8. The original PIC procedure was established by the UNEP Governing Council, at its fifteenth session (decision 15/30 of 25 May 1989), and the FAO Conference, at its twenty-fifth session (resolution 6/89 of 29 November 1989). UNEP and FAO jointly implemented this original PIC procedure, which was operated until the adoption of the Rotterdam Convention by a Conference of Plenipotentiaries on 10 September 1998.

9. The Conference of Plenipotentiaries also considered the work to be performed during the interim period between the adoption of the Convention and the first meeting of the Conference of the Parties. It adopted a resolution on interim arrangements, which changed the original PIC procedure to a voluntary interim PIC procedure closely resembling the procedure set out in the Convention text, and requested the Executive Director of UNEP and the Director-General of FAO to provide secretariat services for the operation of the interim PIC procedure. The text of the resolution appears in the annex to the present note.

## III. MAKING THE TRANSITION – INTERIM PIC TO CONVENTION PIC

10. This section reviews a number of issues that will need to be considered in moving from the interim PIC procedure to the Convention PIC procedure. The issues are those identified in the note considered by the Committee at its seventh session (UNEP/FAO/PIC/INC.7/12).

### A. The Conference of the Parties, the Chemical Review Committee, the Intergovernmental Negotiating Committee and the Interim Chemical Review Committee

11. The Intergovernmental Negotiating Committee held its seventh session in November 2000 and will continue to meet until the first meeting of the Conference of the Parties. At its sixth session, in decision INC-6/2, it established the Interim Chemical Review Committee and decided that it should have functions and responsibilities consistent with the provisions of the Convention governing the Chemical Review Committee, in particular articles 5, 6 and 7 and article 18, paragraph 6.

12. The resolution on interim arrangements makes no provision for meetings of the Intergovernmental Negotiating Committee and the Interim Chemical Review Committee after the first session of the Conference of the Parties.

13. At its seventh session, the Committee agreed that the Committee itself and the Interim Chemical Review Committee would not meet any more after the first session of the Conference of the Parties, to avoid any operations being carried out parallel to the Convention PIC procedure (UNEP/FAO/PIC/INC.7/15,

para. 85). This decision was endorsed in the written comments received from the viewpoint of avoiding potential conflicts and confusion between the interim and Convention PIC procedures and the potential added expense of prolonged interim arrangements.

#### Feasible solution

14. The Committee might:

(a) Recommend that the Conference of the Parties, once it has established the Chemical Review Committee in pursuance of article 18, paragraph 6 of the Convention, endorse the decision of the Intergovernmental Negotiating Committee at its seventh session that the Interim Chemical Review Committee would not meet any more after the first meeting of the Conference of the Parties;

(b) Recommend that, following the first meeting of the Conference of the Parties, the Executive Director of UNEP and the Director-General of FAO inform the UNEP Governing Council and the FAO Conference, respectively, that the Intergovernmental Negotiating Committee has successfully completed its mandate, as set forth in the resolution on interim arrangements of the Conference of Plenipotentiaries and the corresponding decisions of the UNEP Governing Council and the FAO Conference, and that the first meeting of the Conference of Parties has been held.

#### B. The composition of PIC regions

15. The Conference of Plenipotentiaries, in its resolution on interim arrangements (para. 5), invited the Committee to develop a decision on PIC regions and to adopt it on an interim basis, pending its formal adoption at the first meeting of the Conference of the Parties.

16. The Intergovernmental Negotiating Committee, at its sixth session, "agreed to base the interim PIC regions on the FAO regions, with the assignment of Parties to the Intergovernmental Negotiating Committee which were not members of FAO to appropriate regions, respecting their natural geographical affinities and with the proviso that such adoption was on an interim basis only and that the final determination of PIC regions would be made by the Conference of the Parties". In decision INC-6/1, the Committee decided "to adopt, on an interim basis, the listing of countries contained in the annex to the present decision, to be known as the 'interim PIC regions', for the purpose of the implementation of the interim arrangements for the application of the PIC procedure, pending the formal adoption, by consensus, of a listing of countries by PIC regions by the Conference of the Parties at its first meeting."

17. At the seventh session of the Intergovernmental Negotiating Committee and in subsequent written comments, it was noted that the seven interim PIC regions had met the needs of the interim PIC procedure and that they should also meet the needs of the Convention PIC procedure. The maintenance of the existing PIC regions would both build on the progress achieved under the interim PIC procedure and facilitate the transition to the Convention PIC procedure. The seven regions also facilitate the identification of candidate chemicals by broadening the possibility of at least one verified notification of final regulatory action from each of two PIC regions, in line with article 5, paragraph 5 of the Convention.

18. There is general agreement that the Conference of the Parties should give full consideration to the experience gained with the interim PIC regions when taking the decision on the composition of the PIC regions referred to in article 5, paragraph 5. The first meeting of the Conference of the Parties will have a minimum of 50 Parties, but it is expected that the number of Parties will continue to increase for the foreseeable future, certainly during the course of the transition period. The geographical distribution of States and regional economic integration organizations that are Parties to the Convention will be a principal determinant in the definition of the PIC regions. The importance of this decision should serve as a further incentive for States and regional economic integration organizations to ratify or accede to the Convention, in order to continue to ensure a broad geographical basis for the PIC regions at the first meeting of the Conference of the Parties.

Feasible solution

19. The Committee might recommend to the Conference of the Parties that the interim PIC regions be the basis for the PIC regions under the Convention PIC procedure, pending consideration of the geographical distribution of Parties at that time.

C. The composition of the Interim Chemical Review Committee and the Chemical Review Committee

20. At its sixth session, the Intergovernmental Negotiating Committee decided, in decision INC-6/2, "to establish an interim subsidiary body, to be called the Interim Chemical Review Committee ... on the basis of the interim PIC regions" to fulfil the functions of the Chemical Review Committee to be established by the Conference of Parties (article 18, para. 6 of the Convention).

21. The Convention makes no provision for the use of PIC regions in the determination of equitable geographical distribution in relation to membership of the Chemical Review Committee.

22. At its sixth session the Intergovernmental Negotiating Committee considered the interim PIC regions an appropriate basis for the selection of members of the Interim Chemical Review Committee. There is a useful synergy in having the regional representation of the members of the Chemical Review Committee parallel the regions from which notifications of final regulatory action are submitted. The seven interim PIC regions are also compatible with the need to ensure equitable geographical distribution and balance between developed and developing countries in line with article 18, paragraph 6 of the Convention. In the period immediately following the first meeting of the Conference of the Parties the number and distribution of members of the Chemical Review Committee may need to be weighted or prorated to reflect both the number of Parties to the Convention at that time and their geographical distribution.

23. Continuing to base the composition of the Chemical Review Committee on the PIC regions would build on the progress achieved under the interim PIC procedure and facilitate the transition to the Convention PIC procedure. In the comments received, it was suggested that consideration could also be given to the proposal that, as far as feasible, half of the experts of the Interim Chemical Review Committee should be retained for the first mandate of the Committee (on a non-renewable basis), while the other half of the members would be new (with renewable mandates). This would ensure continuity between the interim PIC procedure and the Convention PIC procedure and renewal of at least half of the members every three years.

Feasible solution

24. The Committee might recommend to the Conference of the Parties that the PIC regions be the basis for identifying the membership of the Chemical Review Committee.

D. Inclusion of chemicals in annex III that were included in the interim PIC procedure before the date of the first meeting of the Conference of the Parties, but are not yet listed in annex III

25. One of the most obvious opportunities to benefit from the progress achieved with the interim PIC procedure is the transfer of the chemicals identified during this period to the Convention PIC procedure by including them in annex III. In accordance with article 8 of the Convention, the Conference of the Parties must decide at its first meeting to list these chemicals in annex III, provided that it is satisfied that all the requirements for listing in that annex have been fulfilled.

26. In its resolution on interim arrangements (para. 7), the Conference of Plenipotentiaries decided that all chemicals identified for inclusion in the PIC procedure under the original PIC procedure, but for which decision guidance documents had not yet been circulated before the date on which the Convention was opened for signature, would become subject to the interim PIC procedure as soon as the relevant decision guidance documents had been adopted by the Committee. The chemicals falling in this category are binapacryl, bromacil, ethylene dichloride, ethylene oxide, maleic hydrazide and toxaphene.

27. Binapacryl and toxaphene, and ethylene dichloride and ethylene oxide, were included in the interim PIC procedure by the Intergovernmental Negotiating Committee at its sixth and seventh sessions respectively. In the case of bromacil, the Interim Chemical Review Committee, at its first session, felt that the requirements set out in article 5 and annex II of the Convention had not been met, and did not recommend to the Intergovernmental Negotiating Committee at its seventh session that it be included in the interim PIC procedure. At its second session, the Interim Chemical Review Committee recommended to the Intergovernmental Negotiating Committee at its eighth session that maleic hydrazide not be included in the interim PIC procedure.

28. Currently, there are four chemicals - binapacryl, ethylene dichloride, ethylene oxide and toxaphene - that are included in the interim PIC procedure but not listed in annex III. These chemicals were identified on the basis of notifications of control actions submitted by States and regional economic integration organizations participating in the original PIC procedure. Those notifications, which were submitted before the Convention was adopted, do not meet the information requirements of annex I of the Convention and as a result these chemicals do not fulfil all the requirements for listing in annex III.

29. Any additional chemicals that may be added to the interim PIC procedure prior to the first meeting of the Conference of the Parties will have met the requirements of the Convention PIC procedure (paragraph 8 of the resolution on interim arrangements).

30. There are two principal options:

(a) First, the Committee might recommend that these four chemicals not be listed in annex III, as they do not comply with the information requirements of annex I. The result would be that the interim and Convention PIC procedures would cover different sets of chemicals during the transition period. The existence of two separate lists would complicate the transition from the interim PIC procedure to the Convention PIC procedure. These four chemicals would have no status under the Convention PIC procedure;

(b) Alternatively, the Committee might recommend that these four chemicals be listed in annex III. This would ensure a single list of chemicals subject to both the interim and the Convention PIC procedures during the transition period, and would build on the progress achieved during the application of the interim PIC procedure.

#### Feasible solution

31. The Committee may wish to recommend to the Conference of the Parties that all the chemicals included in the interim PIC procedure before the date of the first meeting of the Conference of the Parties, but not yet listed in annex III, be added to annex III. This recommendation would build on the progress achieved under the interim PIC procedure, facilitate a smooth transition between the interim PIC procedure and the Convention PIC procedure and avoid any discrepancies between the two procedures during the transition period.

32. In developing the text of any recommendation to the Conference of the Parties it is important that the following points be made:

(a) The solution is based on the assumption that there would be no distinction made among these chemicals regarding whether or not the States and regional economic integration organizations providing the original notifications are Parties to the Convention at the time of the first meeting of the Conference of the Parties, and is independent of the decision that the Conference may take concerning distribution and membership of PIC regions;

(b) It is clear that the application of the requirements for the inclusion of binapacryl, ethylene dichloride, ethylene oxide and toxaphene, which were subject to a special procedure under the Convention, would not set a precedent for the requirements for inclusion of future chemicals;

(c) The decision would apply equally to any additional chemicals that are subject to the interim PIC procedure at the time of the first meeting of the Conference of the Parties and for which a decision guidance document has been approved by the Intergovernmental Negotiating Committee in accordance with article 7, paragraph 2 of the Convention.

#### E. Obligations in relation to imports of chemicals listed in annex III

33. There are two distinct scenarios that need to be considered with respect to import responses and cases of failure to transmit a response. One relates to those chemicals that are listed in annex III, and the second concerns chemicals included in the interim PIC procedure but not yet listed in annex III. In determining how they might be best addressed, it may be simplest if these different scenarios are approached separately.

34. For those chemicals that are listed in annex III, the Convention is clear that each Party shall, no later than the date of entry into force of the Convention for it, transmit import responses for each chemical to the secretariat. It also provides that a Party need not resubmit import responses it has provided under the interim PIC procedure (article 10, paras. 2 and 7). However, the submitted import responses regarding future imports of chemicals subject to the interim PIC procedure, distributed by the secretariat through the semi-annual PIC Circular, will have no status under the Convention PIC procedure unless the Conference of the Parties decides otherwise.

#### Feasible solution

35. Once the Convention enters into force, there will be a period of up to one year before the first meeting of the Conference of the Parties. At present, in accordance with article 10, the secretariat distributes a compilation of all import responses and cases of failure to transmit a response, through the PIC Circular, every six months (June and December). A feasible solution would be to recommend to the Conference of the Parties that the first PIC Circular issued following the entry into force of the Convention provide a baseline or reference point regarding the status of import responses for chemicals listed in annex III, as of the date of entry into force of the Convention.

#### Chemicals subject to the interim PIC procedure but not yet listed in annex III

36. For this group of chemicals, the Convention is unclear regarding whether a Party would need to resubmit a response regarding future import for that chemical if it was listed in annex III at a date later than the entry into force of the Convention for that particular Party.

37. This situation would be expected to arise for those Parties participating at the first meeting of the Conference of the Parties, as the decision to list chemicals identified under the interim PIC procedure in annex III will be taken only at that meeting. There are two possible options to consider:

(a) Parties that have ratified or acceded to the Convention by the time of the first meeting of the Conference of the Parties are likely to have submitted import responses for all the chemicals subject to the interim PIC procedure. As there is agreement that there is no need to resubmit import responses for chemicals listed in annex III, consideration could be given to extending this agreement to the import responses for the limited number of chemicals subject to the interim PIC procedure but not listed in annex III by the first meeting of the Conference of the Parties. The first PIC Circular issued following the entry into force of the Convention could, as proposed in paragraph 35 above, provide an appropriate reference point regarding the status of import responses for this limited number of chemicals for the first meeting of the Conference of the Parties;

(b) Alternatively, States and regional economic integration organizations that are Parties at the time of the first meeting of the Conference of the Parties could be required to resubmit their import responses for those chemicals included in the interim PIC procedure but not listed in annex III. This requirement would not exist for States and regional economic integration organizations that ratify or accede to the Convention after the first meeting of the Conference of the Parties.

38. It is unclear how cases of failure to transmit a response would be considered for a chemical subject to the interim PIC procedure but not yet listed in annex III of the Convention. The failure to transmit a response for this limited subset of chemicals may be a potential issue for some Parties at the first meeting of the Conference of the Parties, and is considered in paragraphs 44-46 below.

#### Feasible solution

39. The first option, whereby the import responses submitted under the interim PIC procedure for chemicals included in the interim PIC procedure but not listed in annex III would be recognized at the first meeting of the Conference of the Parties, seems to provide the simplest solution. A feasible solution would be to recommend to the Conference of the Parties that the first PIC Circular issued following the entry into force of the Convention provide a baseline or reference point regarding the status of import responses for chemicals included in the interim PIC procedure but not listed in annex III, as of the date of entry into force of the Convention.

### F. Obligations in relation to exports of chemicals listed in annex III

40. In parallel to the situation regarding import responses, there are no provisions in the Convention for the recognition of "cases of failure to transmit a response" that occurred under the interim PIC procedure. This may have implications for certain Parties as a result of the obligations under article 11, paragraph 2, particularly for those chemicals subject to the interim PIC procedure which are listed in annex III as a result of the first meeting of the Conference of the Parties.

41. Article 11, paragraph 2 states that, subject to several exceptions,

"[e]ach Party shall ensure that a chemical listed in Annex III is not exported from its territory to any importing Party that, in exceptional circumstances, has failed to transmit a response or has transmitted an interim response that does not contain an interim decision".

42. For those chemicals that are listed in annex III, the Convention is clear that each Party shall, no later than the date of entry into force of the Convention for it, transmit import responses for each chemical to the secretariat. It also provides that a Party need not resubmit import responses it has provided under the original and interim PIC procedure (article 10, paras. 2 and 7). Therefore, interim import responses with respect to chemicals listed in annex III that do not contain an interim decision submitted under the original PIC procedure or the interim PIC procedure remain valid under the Convention PIC procedure unless Parties submit new responses with respect to those chemicals.

#### Feasible solution

43. For chemicals included in annex III, import responses that do not contain an interim decision submitted under the original PIC procedure or the interim PIC procedure remain valid under the Convention PIC procedure, unless Parties submit new responses with respect to those chemicals. These import responses would be included in the first PIC Circular issued following the entry into force of the Convention, as proposed in paragraph 35 above.

### Chemicals subject to the interim PIC procedure but not yet listed in annex III

44. The Convention does not address the situation regarding this group of chemicals. States and regional economic integration organizations that are Parties to the Convention at the time of the first meeting of the Conference of the Parties and have failed to transmit a response under the interim PIC procedure for this subset of chemicals create a potential obstacle for exporting countries in meeting their obligations. Cases of failure to transmit a response are subject to the provisions of article 11, paragraph 2, which prevent exporting Parties from exporting to the delinquent Party, for a period of one year, unless certain conditions are fulfilled.



45. The problem is one that will be unique to a limited number of Parties and this specific subset of chemicals at the time of the first meeting of the Conference of the Parties. Two options might be considered:

(a) The simplest solution would be to avoid the problem in the first place. This could be achieved if the States and regional economic integration organizations participating in the interim PIC procedure would provide import responses for all the chemicals subject to the interim PIC procedure. These import responses would be included in the first PIC Circular issued following the entry into force of the Convention, as proposed in paragraph 39;

(b) Alternatively, in cases where a Party has failed to transmit a response for a chemical included in the interim PIC procedure that is added to annex III as a result of a decision taken at the first meeting of the Conference of the Parties, that Party could be given up to nine months to provide a response in line with article 5, paragraph 1. After that period, exporting Party obligations under article 11 would only apply 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).

#### Feasible solution

46. The Committee might adopt a decision urging all States and regional economic integration organizations participating in the interim PIC procedure to provide import responses for all of the chemicals in the interim PIC procedure in order to facilitate the transition from the interim PIC to the Convention PIC procedure. These import responses would be included in the first PIC Circular issued following the entry into force of the Convention, as proposed in paragraph 39. In preparing for the first meeting of the Conference of the Parties, option (b) proposed in paragraph 45 would be considered as a fallback position should the situation described in paragraph 44 arise.

#### G. Notifications of final regulatory action and proposals for severely hazardous pesticide formulations

47. The Convention, in article 5, paragraph 2, clearly states that at the date of entry into force of the Convention, Parties need not resubmit their notifications of final regulatory action if they have been submitted under the Amended London Guidelines or the International Code of Conduct. The Convention is silent, however, regarding proposals for severely hazardous pesticide formulations that may have been submitted in accordance with article 6 under the interim PIC procedure.

48. At present, in accordance with articles 5 and 6, the secretariat, through the PIC Circular, circulates synopses of all verified notifications and summaries of all verified proposals for severely hazardous pesticide formulations submitted during the six-month period between each circular. These notifications and proposals will have no status under the Convention PIC procedure unless the Conference of the Parties decides otherwise. In order to provide a reference point for the first meeting of the Conference of the Parties, the secretariat could include in the first PIC Circular following the entry into force of the Convention a full synopsis of all the notifications submitted under the interim PIC procedure verified to contain all the information required by annex I, as of the date of entry into force for the Convention. Likewise, this circular could also include summaries of all the proposals for severely hazardous pesticide formulations verified to contain all the information required by part 1 of annex IV submitted to the secretariat as of the date of entry into force of the Convention.

49. This option would parallel the approach taken in the transition from the original PIC procedure to the interim PIC procedure, where a comprehensive summary of all the notifications submitted under the original PIC procedure were published in appendix V of PIC Circular X (December 1999).

#### Feasible solution

50. (a) The most feasible solution, based on the concept of equivalent treatment of notifications and proposals made under articles 5 and 6, would be to recommend to the Conference of the Parties that it should

decide that the resubmission of any proposals for severely hazardous pesticide formulations made under the interim PIC procedure should not be required;

(b) Additionally, as part of the first circular issued following the entry into force of the Convention, the secretariat would publish a full compilation of summaries of all the proposals for severely hazardous pesticide formulations submitted and verified as complete, and a full synopsis of all the notifications of final regulatory action submitted and verified as complete, as of the date of entry into force of the Convention. A feasible solution would be to recommend to the Conference of the Parties that the information in this circular serve as an appropriate reference point for the Conference at its first meeting.

#### H. Notifications of final regulatory action and proposals for severely hazardous pesticide formulations submitted by non-Parties that participate in the interim PIC procedure

51. States and regional economic integration organizations that participate in the interim PIC procedure may not be Parties to the Convention at the time of the first meeting of the Conference of the Parties and at the time the interim PIC procedure will cease to operate. Those States and regional economic integration organizations may have submitted notifications of final regulatory action and proposals for severely hazardous pesticide formulations under the original PIC procedure and/or the interim PIC procedure.

52. A number of such notifications and proposals may have contributed to the preparation of decision guidance documents and to decisions to include chemicals in the interim PIC procedure. A reconsideration of these chemicals on the basis of whether or not the original notifying State or regional economic integration organization is a Party to the Convention would complicate the transition to the Convention PIC procedure and not take full advantage of the progress achieved under the interim PIC procedure.

53. The status of individual chemicals and hazardous pesticide formulations and their associated notifications and proposals at various stages of consideration by the Interim Chemical Review Committee will need to be reviewed by the Chemical Review Committee at its first meeting. These notifications and proposals will need to be reviewed on a case-by-case basis in the light of the decision of the Conference of the Parties regarding the status of notifications and proposals from non-Parties during the transition period. This issue is further considered in paragraphs 67 and 68 below.

#### Feasible solution

54. The Committee might recommend to the Conference of the Parties that, where notifications and proposals from States and economic integration organizations which are not Parties to the Convention at the time of the first meeting of the Conference of the Parties have contributed to the preparation of decision guidance documents and to decisions to include chemicals in the interim PIC procedure, they would be recognized as an adequate basis for including the chemicals concerned in annex III. This would be consistent with the proposal made in paragraphs 31 and 32 above that all the chemicals which are included in the interim PIC procedure and for which decision guidance documents have been approved be included in annex III, regardless of the source of the notifications.

#### I. Procedures developed by the Intergovernmental Negotiating Committee and the Interim Chemical Review Committee

55. The Intergovernmental Negotiating Committee and the Interim Chemical Review Committee have developed and approved several operational procedures for the implementation of the interim PIC procedure. The Conference of the Parties and the Chemical Review Committee will develop their own operational procedures for the implementation of the Convention PIC procedure; in doing so, they may draw on the operational procedures developed during the interim PIC procedure.

56. One of the advantages associated with the interim PIC procedure is that it has provided an opportunity to develop operational processes and procedures that can serve as a basis for the legally binding Convention PIC procedure. The Interim Chemical Review Committee in particular has developed a number of processes

aimed at facilitating the processing of notifications and the drafting of decision guidance documents for both banned and severely restricted chemicals and proposals for severely hazardous pesticide formulations. The interim period has also provided an opportunity to develop and implement processes for the submission and verification of notifications of regulatory action and import responses as well as the preparation and distribution of the PIC Circular.

#### Feasible solution

57. The Committee might recommend to the Conference of the Parties that the procedures established for the operation of the interim PIC procedure be adopted for the operation of the Convention PIC procedure, with the understanding that they will continue to evolve as experience is gained in their implementation.

### IV. THE TRANSITION PERIOD

58. In the resolution on interim arrangements (para. 13), the Conference of Plenipotentiaries decided that the interim PIC procedure would cease to operate on a date to be specified by the Conference of the Parties at its first meeting. The interim PIC procedure will thus operate in parallel with the Convention PIC procedure from the date of entry into force of the Convention through a date to be specified by the first meeting of the Conference of the Parties. For the purposes of discussion this period has been named the transition period.

59. The Committee, at its seventh session, gave wide support to a transition period from the interim PIC procedure to the Convention PIC procedure, once the Convention came into force. The aim of the transition period would be to retain the accomplishments and experience gained in the application of the interim PIC, while providing incentives for States and regional economic integration organizations to adhere to the Convention. The transition period would allow non-Parties that participated in the interim PIC procedure, but were not Parties at the time of the first meeting of the Conference of the Parties, to continue to participate in operational processes of the Convention procedure while preparing for ratification or accession. Statements by representatives indicated that the length of the transition period might vary between one and two years after the first meeting of the Conference of the Parties. Subsequent comments further suggested that the transition period could be up to three years. One representative expressed the view that there should not be a time limit to the transition period.

#### A. Length of the transition period

60. The length of the transition period will have a direct impact on the nature of the transitional measures. While there is a desire to encourage States and regional economic integration organizations to ratify or accede to the Convention, it is also recognized that Parties and non-Parties to the Convention cannot continue to have the same rights and privileges for an unlimited time period after entry into force of the Convention.

61. The Convention was opened for signature in September 1998. By the eighth session of the Intergovernmental Negotiating Committee, States and regional economic integration organizations participating in the interim PIC procedure will already have had a full three years to ratify or accede to the Convention. If the goal of entry into force of the Rotterdam Convention in time for the World Conference on Sustainable Development in December 2002 is met, a transition period of two years from the date of entry into force for the Convention will effectively have given States and regional economic integration organizations a minimum of six years to become Parties. If the transition period were instead measured from the time of the first meeting of the Conference of the Parties, it would in practice be further extended by up to one year (to a total of seven years). It is not clear that a transition period beyond two years would result in a significantly greater number of States and regional economic integration organizations becoming Parties to the Convention, and it might actually be a disincentive. The extent to which States and regional economic integration organizations initiate the ratification or accession process only once the Convention comes into force may be a factor behind proposals for a longer transition period.

62. There will be costs during the transition period associated with the maintenance of the interim PIC procedure, primarily related to the participation of developing countries and countries with economies in transition that are not Parties to the Convention. Other costs would relate to the maintenance and operation of parallel systems for handling information from Parties and non-Parties.

Feasible solution

63. The Committee might recommend to the Conference of the Parties that the transition period be limited to two years from the date of entry into force of the Convention.

B. Nature of the transitional measures

64. The goals of the transitional measures to be adopted at the first meeting of the Conference of the Parties include maintaining the effectiveness of the interim procedure and facilitating movement from the interim PIC procedure to the Convention PIC procedure. States and regional economic integration organizations that are able to ratify or accede to the Convention in the course of the transition period should be able to comply with the requirements of the Convention PIC with minimal effort. One challenge is to ensure that at the same time there is an incentive to ratify or accede to the Convention, while continuing to assist developing countries and countries with economies in transition in controlling unwanted imports of chemicals. It needs to be decided which of the rules of the interim procedure should or should not continue to be applied to non-Parties during the transition period.

Feasible solution

65. The Committee might recommend to the Conference of the Parties the following solutions that would define the role and position of non-Parties during the transition period, with the understanding that Parties would enjoy the full benefits associated with the Convention:

(a) The secretariat would maintain two lists that clearly distinguish between Parties to the Convention and those States or regional economic integration organizations which have not yet ratified or acceded to the Convention, but which are participating under the interim PIC procedure. The latter would, for the transition period, be identified as Participating States. All Participating States would be treated equally with no distinction between those that had signed the Convention and those that had not;

(b) Participating States would attend meetings of the Conference of the Parties and the Chemical Review Committee as observers in line with the rules of procedure. They would not be able to vote, have a role in decision-making or participate in drafting groups;

(c) The list of designated national authorities would include Participating States. Participating States would benefit from information exchange activities under article 14 of the Convention, as well as receiving the PIC Circular and decision guidance documents;

(d) Participating States would receive copies of decision guidance documents for any new chemicals added to annex III during the transition period and would be requested to provide an import response. Import responses from Participating States and cases of failure on their part to provide a response would be included in the PIC Circular;

(e) Both exporting Parties and exporting Participating States would be requested to observe the import decisions of Participating States and continue to provide them with export notifications in line with article 12 of the Convention;

(f) Participating States would commit voluntary contributions to the operation of the interim PIC procedure.

Status of notifications and proposals submitted by Participating States

66. One of the potentially problematic aspects of the transition period will be the status of notifications and proposals submitted by Participating States. No provision has been made for the further consideration of these notifications and proposals in the implementation of the Convention PIC procedure. An earlier proposal (para. 54 above) was that, where notifications and proposals from Participating States had contributed to the preparation of decision guidance documents and to decisions to include chemicals in the interim PIC procedure, they should be recognized as an adequate basis for including the chemicals concerned in annex III. This was consistent with the related proposal in paragraphs 31-32 above that all the chemicals in the interim PIC procedure for which decision guidance documents have been approved be included in annex III, regardless of the source of the notifications.

67. The status of individual chemicals and hazardous pesticide formulations and their associated notifications and proposals at various stages of consideration by the Interim Chemical Review Committee, and of new notifications and proposals from Participating States during the transition period, is less clear. There are two differing views on how such notifications and proposals could be handled during the transition period:

(a) Notifications and proposals by Participating States under the interim PIC procedure are not eligible for consideration by the Chemical Review Committee under articles 5-7 of the Convention. A notification or proposal by a State or regional economic integration organization not party to the Convention cannot be part of the trigger for procedures under the Convention, except as specifically set forth in the Convention (e.g. article 5, paragraph 2, article 6, paragraph 1, and article 8). As a practical matter, notifications and proposals submitted by a Participating State could be retained on file and be reactivated when it becomes a Party;

(b) Alternatively, there should be no distinction between notifications or proposals from Parties and those from Participating States under articles 5-7. Submitted notifications and proposals verified by the secretariat to contain all the information required should be forwarded to the Chemical Review Committee for consideration in accordance with established procedures.

Feasible solution

68. A possible compromise would be for the Committee to recommend the following to the Conference of the Parties:

(a) Verified notifications and/or proposals from Participating States submitted to the secretariat as of 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, as proposed in paragraph 50 above, would remain eligible for consideration by the Chemical Review Committee during the transition period;

(b) Any new notifications and/or proposals from Participating States submitted during the interim period would not be eligible for review by the Chemical Review Committee. These notifications and proposals would remain on file with the secretariat until such time as the Participating State became a Party to the Convention, at which point they would be reactivated;

(c) In the interest of information exchange, a synopsis of all verified notifications and summaries of all verified proposals submitted by both Parties and Participating States during the transition period would be included in the appropriate issues of the PIC Circular.

## V. THE POST-TRANSITION PERIOD - DISCONTINUATION OF THE INTERIM PIC PROCEDURE

69. At the conclusion of the transition period, the interim PIC procedure will cease to exist, having been superseded by the Convention PIC procedure. Those Participating States that had not become Parties to the Rotterdam Convention would have no special status, as the Convention is silent on non-Parties.

70. In general, judging by the discussion at the seventh session of the Intergovernmental Negotiating Committee and the subsequent written comments, the role of non-Parties in the operation of the Convention PIC procedure is seen as limited. The stringent treatment of non-Parties regarding trade in chemicals subject to the Convention was seen as a strong incentive for them to become Parties. Non-Parties, while they may participate in meetings of the Conference of the Parties or the Chemical Review Committee as observers, would not be eligible to vote or have input into decision-making. They would not be eligible to submit notifications of final regulatory action or proposals for severely hazardous pesticide formulations as candidates for the Convention PIC procedure. They would not benefit from the legally binding protection from unwanted exports of chemicals subject to the Convention, nor would they enjoy the full benefits associated with export notification or information exchange.

71. As additional chemicals are included in annex III under the Convention PIC procedure, non-Parties would not be invited to provide import responses, the result being that responsibility for the control of exports of chemicals included in the Convention PIC procedure would be shifted from the exporting Party to the importing non-Parties.

72. It was noted that opportunities for information exchange would still be available to non-Parties given that the PIC Circular, decision guidance documents, reports of the Conference of the Parties and the Chemical Review Committee, workshop reports and lists of designated national authorities, etc. would be publicly available via the Rotterdam Convention Web site. Possible further sources of information were participation as observers at meetings of the Chemical Review Committee and the Conference of the Parties, and the export notifications of certain States and regional economic integration organizations. It was also suggested that the list of designated national authorities nominated by non-Parties could be maintained as a list of national contact points.

73. It was recognized that, as a matter of domestic law or policy, exporting States and regional economic integration organizations may continue to provide export notifications on domestic regulatory actions to ban or severely restrict a chemical or to comply with the import decisions of non-Parties.

74. One area where there was a range of views expressed concerned the status of the import responses made by non-Parties under the interim PIC procedure following its discontinuation. Three options were identified:

- (a) Such import responses would no longer be maintained or circulated by the secretariat;
- (b) The import responses submitted under the interim PIC procedure would be retained in the information circulated by the secretariat and updated as necessary, on the basis of new responses submitted by the non-Party;
- (c) The import responses submitted prior to the date of discontinuation would be retained only for a certain period of time after the entry into force of the Convention (e.g. five years).

### Feasible solution

75. In proposing any recommendations to the Conference of Parties, the Intergovernmental Negotiating Committee should take into consideration the feasibility of maintaining an accurate list of import responses and/or national contact points for non-Parties, as well as the potential costs associated with these activities or any other activities that might be proposed concerning interactions with non-Parties after the discontinuation of the interim PIC procedure.

## VI. POSSIBLE RECOMMENDATIONS TO MITIGATE POSSIBLE NEGATIVE EFFECTS RESULTING FROM TERMINATION OF THE INTERIM PIC PROCEDURE

### A. Recommendations to the first meeting of the Conference of the Parties regarding measures related to the move from the voluntary interim PIC procedure to the legally binding Convention PIC procedure

76. In view of the fact that a number of the issues considered in moving from the voluntary interim PIC procedure to the legally binding Convention PIC procedure are interrelated, it may be premature for the secretariat to draft specific recommendations prior to a review by the Intergovernmental Negotiating Committee of the options and proposed solutions included in this paper. The results of the deliberations by the Committee on these options and proposed solutions could be reflected in subsequent recommendations to the Conference of the Parties.

### B. Recommendations to FAO and UNEP to mitigate the effects of discontinuation of the interim PIC procedure

77. Much of the information associated with the operation of the Convention PIC procedure is publicly available, as noted above in paragraph 72. The Committee may wish to consider the issue of participation of non-Parties in meetings of the Conference of the Parties, the Chemical Review Committee and future workshops in connection with its discussions regarding draft financial rules and provisions under agenda item 5 (b).

Annex

RESOLUTION ON INTERIM ARRANGEMENTS ADOPTED BY THE CONFERENCE OF  
PLENIPOTENTIARIES ON THE CONVENTION ON THE PRIOR INFORMED  
CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND  
PESTICIDES IN INTERNATIONAL TRADE

The Conference,

Having adopted the text of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (hereinafter referred to as the "Convention"),

Considering that interim arrangements are required to continue to operate a voluntary procedure for the application of the prior informed consent (PIC) procedure in order to protect human health and the environment from certain hazardous chemicals and pesticides pending the entry into force of the Convention and to prepare for its effective operation once it enters into force,

Taking note of the existing voluntary PIC procedure established by resolution 6/89 of 29 November 1989 of the twenty-fifth session of the Conference of the Food and Agriculture Organization of the United Nations and decision 15/30 of 25 May 1989 of the fifteenth session of the Governing Council of the United Nations Environment Programme,

Recalling the decisions of the twenty-ninth session of the Conference of the Food and Agriculture Organization of the United Nations and the fifth special session of the Governing Council of the United Nations Environment Programme, agreeing to accept changes in the voluntary PIC procedure if so decided by the Conference of Plenipotentiaries on the Convention, provided that costs additional to the implementation of the present voluntary procedure be met through extrabudgetary resources,

I

1. Calls upon States and regional economic integration organizations entitled to do so to consider signing, ratifying, accepting, approving or acceding to the Convention with a view to bringing it into force as soon as possible;

II

2. Decides that the voluntary PIC procedure contained in the Amended London Guidelines for the Exchange of Information on Chemicals in International Trade and in the FAO International Code of Conduct on the Distribution and Use of Pesticides (hereinafter referred to as the "original PIC procedure") is hereby changed to bring it into line with the procedure established by the Convention with effect from the date on which the Convention is opened for signature. The original PIC procedure with these changes is hereinafter referred to as the "interim PIC procedure";

3. Invites 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;

4. Invites the Committee to establish an interim subsidiary body to discharge the functions entrusted to the subsidiary body to be established under article 18, paragraph 6, of the Convention;



5. Invites the Intergovernmental Negotiating Committee to develop, based on the FAO regions, the decision referred to in paragraph 5 of article 5, and to adopt this decision on an interim basis, pending its formal adoption at the first meeting of the Conference of the Parties;
6. Decides that all chemicals in respect of which decision guidance documents have been circulated under the original PIC procedure before the date on which the Convention is opened for signature will be subject to the interim PIC procedure;
7. Decides that all chemicals that have been identified for inclusion in the PIC procedure under the original PIC procedure but for which decision guidance documents have not yet been circulated before the date on which the Convention is opened for signature will become subject to the interim PIC procedure as soon as the relevant decision guidance documents have been adopted by the Committee;
8. Decides that the Committee shall decide, between the date on which the Convention is opened for signature and the date of its entry into force, on the inclusion of any additional chemicals under the interim PIC procedure in accordance with the provisions of articles 5, 6, 7 and 22 of the Convention;
9. Decides that nominations of designated national authorities, notifications of control actions and import responses made under the original PIC procedure shall remain in effect under the interim PIC procedure unless and until the State or regional economic integration organization concerned notifies the interim secretariat in writing that it has decided otherwise;
10. Appeals to States and regional economic integration organizations to participate in and apply in full the interim PIC procedure;
11. Calls on States and regional economic integration organizations to submit notifications of final regulatory action in accordance with the provisions of article 5 of the Convention, and calls on developing countries and countries with economies in transition that are in a position to do so to submit proposals concerning severely hazardous pesticide formulations in accordance with the provisions of article 6 of the Convention;
12. Requests the Executive Director of the United Nations Environment Programme and the Director-General of the Food and Agriculture Organization of the United Nations to provide secretariat services for the operation of the interim PIC procedure;
13. 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;

### III

14. Appeals to States and regional economic integration organizations to make voluntary contributions to the trust fund established by the United Nations Environment Programme in order to support the interim arrangements and the operation of 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, and to ensure the full and effective participation of developing countries and countries with economies in transition in the further work of the Committee;
15. Calls on States and regional economic integration organizations with more advanced programmes for regulating chemicals to provide technical assistance, including training, to other States and regional economic integration organizations in developing their infrastructure and capacity to manage chemicals throughout their life cycle, particularly in view of the urgent need of their participation in the effective operation of the Convention once it enters into force.

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