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REPORT OF THE FIFTH SESSION OF THE INC FOR AN INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR THE APPLICATION OF THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE: 9-14 MARCH 1998

The fifth session of the Intergovernmental Negotiating Committee (INC-5) for an International Legally Binding Instrument for the Application of the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was held from 9-14 March 1998 in Brussels. Delegates met in Plenary, a Legal Drafting Group and several contact groups to consider a consolidated draft text of articles for the instrument and proposals from the US and the European Community (EC). In a push to finalize the Convention text by the end of the session, delegates met during the evenings and on Saturday. Over one hundred conference room papers (CRPs) were produced during the six-day session.

Almost two years to the day after the first INC, a draft PIC Convention has now been completed. Delegates expressed relief and varying degrees of satisfaction at the completion of a difficult and compressed negotiating process. The number of negotiating sessions held throughout the week and the small but significant number of outstanding issues left for resolution at INC-5 suggested that the original goal of completing the Convention by the end of 1997 had been somewhat unrealistic. It also underlined the difficulties of the seemingly simple task of transforming an existing voluntary procedure into a legally binding agreement. Nevertheless, delegates have now fulfilled their mandate and their Ministers will gather in Rotterdam later this year for the Diplomatic Conference and signing ceremony. Overall, completion of the PIC Convention is a small but significant step towards a more comprehensive and sustainable international chemical management framework.

A BRIEF HISTORY OF THE PIC NEGOTIATIONS

Growth in internationally traded chemicals during the 1960s and 1970s led to increasing concern over pesticides and industrial chemical use, particularly in developing countries that lacked the expertise or infrastructure to ensure their safe use. This prompted the development of the International Code of Conduct for the Distribution and Use of Pesticides by the FAO and the London Guidelines for the Exchange of Information on Chemicals in International Trade by UNEP. Both the Code of Conduct and the London Guidelines include procedures aimed at making information about hazardous chemicals more readily available, thereby permitting countries to assess the risks associated with their use. In 1989, both instruments were

amended to include the Prior Informed Consent (PIC) procedure to help countries make informed decisions on the import of chemicals that have been banned or severely restricted.

Managed jointly by the FAO and UNEP, the PIC procedure is a means for formally obtaining and disseminating the decisions of importing countries on whether they wish to receive future shipments of such chemicals. The aim is to promote a shared responsibility between exporting and importing countries in protecting human health and the environment from the harmful effects of certain hazardous chemicals being traded internationally. The voluntary PIC procedure is designed to:

- help participating countries learn more about the characteristics of potentially hazardous chemicals that may be imported;
- initiate a decision-making process on the future import of these chemicals; and
- facilitate the dissemination of these decisions to other countries.

When the United Nations Conference on Environment and Development (UNCED) convened in Rio de Janeiro in June 1992, delegates recognized that the use of chemicals is essential to meet social and economic goals, while also acknowledging that a great deal remains to be done to ensure the sound management of chemicals. Chapter 19 of Agenda 21, the programme of action adopted by UNCED, contains an international strategy for action on chemical safety. Paragraph 19.38(b) calls on States to achieve by the year 2000 the full participation in and implementation of the PIC procedure, including possible mandatory applications of the voluntary procedures contained in the amended London Guidelines and the International Code of Conduct.

In November 1994, the 107th meeting of the FAO Council agreed that the FAO Secretariat should proceed with the preparation of a draft PIC Convention as part of the FAO/UNEP Programme on PIC in coop-

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eration with other international organizations (IOs) and non-governmental organizations (NGOs). In May 1995, the 18th session of the UNEP Governing Council adopted decision 18/12, which authorized the Executive Director to convene, together with the FAO, an intergovernmental negotiating committee with a mandate to prepare an international legally binding instrument for the application of the PIC procedure. A diplomatic conference for the purpose of adopting and signing such an instrument was to be convened in 1997.

INC-1: The first session of the Intergovernmental Negotiating Committee (INC-1) was held from 11-15 March 1996 in Brussels. More than 194 delegates from 80 governments, the European Commission, a number of specialized agencies, IGOs and NGOs participated. INC-1 agreed on the rules of procedure, elected bureau members and completed a preliminary review of a draft outline for a future instrument. Delegates also established a working group to clarify the groups of chemicals to be included under the instrument.

INC-2: The second session of the INC, which was held from 16-20 September 1996 in Nairobi, produced a draft text of the Convention and established a Technical Working Group and a Legal Drafting Group. Delegates from 86 governments agreed that many facets of the instrument required further detailed consideration and noted the need for at least one additional negotiating session before the Convention could be completed.

FAO COUNCIL: The FAO Council, at its 111th meeting in October 1996, discussed the scope of the mandate for the PIC negotiations. Some members expressed support for a broader framework convention on the management of chemicals, while others suggested that the relevant provisions of the instrument be formulated in a way that could accommodate possible future developments. Some preferred to limit the negotiations to the PIC procedure only and establish separate negotiations on persistent organic pollutants (POPs). Lacking consensus, the Council concluded that the present mandate of the INC would continue and noted that the 19th UNEP Governing Council would consider the issue as well.

UNEP GOVERNING COUNCIL: The 19th session of the UNEP Governing Council, held in Nairobi from 27 January - 7 February 1997, adopted decision 19/13, concerning, *inter alia*, the international instrument for the PIC procedure. The Council: confirmed the present mandate of the INC; invited the INC to continue its work, with an aim to conclude negotiations in 1997; recognized that additional elements relating to the PIC procedure are under consideration in the INC; and requested the Executive Director to convene, in 1997, a diplomatic conference for the purpose of adopting and signing an international legally binding instrument.

INC-3: The third session of the INC (INC-3) was held from 26-30 May 1997 in Geneva. Over 300 delegates from 102 countries considered the revised text of draft articles for the instrument, as well as proposals from several delegations. A Technical Working Group and Legal Drafting Group met throughout the week, as did a number of contact groups. Considerable debate centered on the scope of the proposed Convention and many articles remained under discussion.

INC-4: The fourth session of the INC (INC-4), which was held from 20-24 October 1997 in Rome, was attended by more than 250 delegates from over 100 countries. INC-4 considered the revised text of draft articles for the instrument, as well as proposals by the US and European Community in Plenary, a Technical Working Group and a Legal Drafting Group. Additional negotiating sessions every evening and a number of contact groups were also convened. Progress on some "secondary issues" left a smaller number of issues to be resolved.

REPORT OF INC-5

Chair Maria Celina de Azevedo Rodrigues (Brazil) opened INC-5 on Monday, 9 March 1998, and introduced Mr. A. Sawadogo, Assistant Director-General of the FAO. Speaking on behalf of FAO Director-General Jacques Diouf, Mr. Sawadogo noted that developing countries with limited resources and technical expertise are often

unaware of the dangers linked to pesticides. He suggested that while the voluntary PIC procedure has assisted in removing many pesticides from the market, only a broadly adopted convention could effectively provide for the protection of human health and the environment.

Speaking on behalf of UNEP Executive Director Klaus Töpfer, Jim Willis, Director of UNEP Chemicals, said that governments have sent a strong message to conclude negotiations and adopt a strong mechanism in order to implement the PIC procedure. He added that this Convention would promote shared responsibility and raise standards for global environmental protection.

Jim Currie, Director-General for Environment, Nuclear Safety and Civil Protection of the European Commission, spoke on behalf of Ritt Bjerregaard, European Commissioner for the Environment. He highlighted the European Community's adoption of Council Regulation (EEC) No. 2455/92, implementing the FAO International Code of Conduct and the UNEP London Guidelines in the EC. One of the tangible outcomes of this regulation, the European Database on Export and Import (EDEXIM), was outlined for the delegates.

ORGANIZATIONAL MATTERS

During the opening Plenary, the Chair stressed that, due to time and financial constraints, this would be the last INC before the Diplomatic Conference. She noted that UNEP and the FAO would operate the interim Secretariat and suggested that a draft resolution to this effect be adopted at the Diplomatic Conference.

While it was agreed at INC-4 that the Technical Working Group would not meet at INC-5, the Legal Drafting Group, chaired by Patrick Széll (UK), met continuously throughout the week, as did a number of contact groups. Work completed by these groups was then formally considered in Plenary. Discussions were based on the Chair's consolidated negotiating text, as contained in document UNEP/FAO/PIC/INC.5/2. Comments on the draft text were submitted by the US (UNEP/FAO/PIC/INC.5/CRP.2) and the European Community (UNEP/FAO/PIC/INC.5/CRP.3). Delegates also had before them:

- a note by the Secretariat regarding arrangements for the Secretariat of the Convention (UNEP/FAO/PIC/INC.5/INF/1);
- a note on the functioning of the PIC procedure as drafted in the Chair's consolidated negotiating text (UNEP/FAO/PIC/INC.5/INF/2); and
- a note on chemicals in the voluntary PIC procedure (UNEP/FAO/PIC/INC.5/INF/3).

The following officers continued to serve as Vice-Chairs at INC-5: Yuri Kundiev (Ukraine), Mohamed El Zarka (Egypt) and William Murray (Canada). Wang Zhijia (China) served as rapporteur.

NEGOTIATION OF THE DRAFT CONVENTION

Deliberations on the consolidated negotiating text of the Convention began on Monday, 9 March, in the Legal Drafting Group and Plenary. The Plenary frequently convened informal contact groups to discuss difficult issues and report back with revised text for further consideration. Plenary considered the draft text of the Convention as well as draft articles emerging from both the Legal Drafting Group and the contact groups.

The following is an article-by-article review of the negotiations of draft Convention at INC-5.

PREAMBLE: On Wednesday, 11 March, delegates in Plenary discussed the Preamble. The Chair stressed that the purpose of the Preamble was to reflect what had been left out of the articles. The Chair's text discussed, *inter alia*: the work undertaken by UNEP and FAO, as set out in the London Guidelines and the International Code of Conduct; Chapter 19 of Agenda 21; and the particular needs of developing countries. INDONESIA, supported by CANADA, proposed the inclusion of the title of Chapter 19 of Agenda 21. MOROCCO, on behalf of the African Group, expressed its concern that transit issues be



mentioned in the first paragraph on the harmful impact on human health and the environment from certain hazardous chemicals and pesticides in international trade.

On Friday, 13 March, the Plenary discussed a new draft Preamble text (UNEP/FAO/PIC/INC.5/CRP.48). The new text reflected some of the concerns of delegates regarding trade issues, transit movements, impact on consumers and illegal traffic of dangerous chemicals. It recalled the provisions of the Rio Declaration and included the title of Chapter 19 of Agenda 21, "Environmentally sound management of toxic chemicals, including prevention of illegal international traffic in toxic and dangerous products." In order to maintain brevity in the Preamble, delegates agreed to delete other text referring to the objectives of Chapter 19.

Three new paragraphs reflecting lengthy debates held in a contact group on trade issues were incorporated into the Preamble. The text highlighted a mutually supportive role for trade and environment policies in achieving sustainable development, and emphasized that, without intending to create a hierarchy between international agreements, the rights of Parties in other agreements would not in any way be compromised by this Convention. This text was drawn from Article 15(4), Implementation of the Convention, and Article 18, Relationship with Other Agreements, which were subsequently deleted. COLOMBIA noted that the paragraphs reflected significant compromise on the part of all Parties. During Friday's Plenary session, the EC expressed its desire to make a short statement for the record, explaining that its acceptance of the paragraphs would not set a precedent for its future positions on trade and environment issues. In response, a number of other delegations, including the US, ARGENTINA, AUSTRALIA, CANADA, SWITZERLAND, NEW ZEALAND, CHILE and MEXICO, also wanted to make statements for the record. AUSTRALIA remarked that if all countries were permitted to make statements on this issue, the entire Convention could fall apart. After brief but intensive negotiations in the corridor, delegates agreed that one statement reflecting the concerns of all interested delegations would be included in the final report of the meeting.

MALAYSIA, supported by a number of delegates, including INDIA, the GAMBIA and MOROCCO, proposed that, in addition to the provision of technical assistance and the promotion of cooperation as necessary to strengthen capacity for chemical management in developing countries, technology transfer and financial mechanisms be included. CAMEROON noted that countries with economies in transition should be mentioned as well. The GAMBIA, on behalf of the African Group, introduced a new preambular paragraph noting the specific needs of some developing countries for information about transit movements (UNEP/FAO/PIC/INC.5/CRP.34). CANADA suggested deletion of the term "developing" as all countries should be able to benefit from such information. Delegates also agreed upon a reference to the potentially harmful impact that the trade of certain hazardous chemicals and pesticides could have on the health of consumers and workers. The amended text of the Preamble was adopted in Plenary on Saturday, 14 March.

ARTICLE 1 (Objective): On Monday, 9 March, delegates in Plenary discussed Article 1, which establishes the objective of the Convention: to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect the environment and human, animal and plant life and health from potential harm and to contribute to environmentally sound chemicals use. It aims to do this by promoting and facilitating information exchange about chemical characteristics and providing for a national decision-making process on the import of such chemicals and by disseminating these decisions to Parties.

UKRAINE proposed reference to the export as well as import of chemicals. MOROCCO, supported by ETHIOPIA, expressed reservations concerning responsibility sharing and requested that language on shared but differentiated responsibility be added. Language stating "shared responsibility, on the basis of common but differentiated

responsibility" was added in brackets. The US, noting that Parties would be both importers and exporters, opposed the application of differentiated responsibility as it would be difficult to implement.

On Friday, the US underlined its preference to exclude reference to export because it would not accurately reflect the objective of the PIC procedure. The Chair stressed that such language would not be inconsistent with the objective. The approved text maintains reference only to "shared responsibilities" and includes export.

ARTICLE 2 (Definitions): A chemical is defined in Article 2(a) as a substance whether by itself or in a mixture or preparation whether manufactured or obtained from nature from the categories of pesticide (including severely hazardous pesticide formulations) or industrial chemical. The definition excludes any living organism. In Plenary on Monday, AUSTRALIA called attention to the potential for dead or inert genetically modified organisms (GMOs) to fall under the PIC Convention, and proposed amending the definition by including GMOs in the list of items not included in the definition.

On Thursday, 12 March, debate in Plenary focused on whether to include consumer chemicals as a third category in the definition in 2(a). The EC, the GAMBIA, on behalf of the African Group, EGYPT, the PHILIPPINES, POLAND, MOROCCO, SLOVENIA, BRAZIL and IRAN preferred to retain reference to consumer chemicals, stressing the need for consistency with domestic laws and concern that the PIC procedure should apply to chemicals in consumer products. The Chair noted that banned or severely restricted consumer chemicals would be dealt with in the Convention whether or not a specific category was included. The Secretariat explained the implications of retaining or deleting the word consumer in the definition, noting that a consumer category could have the impact of narrowing the scope of the Convention. The Contact Group on Definitions, established on Monday, proposed two solutions: either include "consumer" within the definition of industrial chemicals, or mention "consumer" at appropriate places in the Preamble and/or in the annexes. EGYPT, supported by INDONESIA, JAMAICA and the GAMBIA, suggested placing "including consumer" in parentheses after the definition of industrial chemicals. The PHILIPPINES, noting that it wished to send a strong message to chemical producers, agreed to the deletion of "consumer" as long as it was mentioned elsewhere. The EC, supported by MOROCCO, CANADA, INDIA, SWITZERLAND, the US and COLOMBIA, proposed reference to the protection of "the health of consumers and workers" in the Preamble and in Annex I. The text as modified by the EC was approved by the Plenary.

On Article 2(c), the definition of severely restricted chemicals, EGYPT proposed deleting a bracketed sentence referring to chemicals with reduced health and environmental risks achieved through regulatory action, on the grounds that it had no significance. The EC originally preferred retaining the text, but, in the spirit of compromise, agreed to delete it. A sentence was added to expand the definition to include a chemical that has been refused approval or been withdrawn by industry from the domestic market or the domestic approval process.

The title for the definition of hazardous pesticide formulation in Article 2(d) was modified to "severely hazardous pesticide formulation." The RUSSIAN FEDERATION, supported by UKRAINE, expressed concern that pesticides can produce health or environmental effects over long periods of time and that either this should be included in the definition or the words "within a short period" should be deleted. The Chair noted that these concerns will be expressed in the final report but not in the definition. The definition, as approved, reads: "a chemical formulated for pesticidal use that produces severe health or environmental effects observable within a short period of time after single or multiple exposures, under conditions of use."



During discussions on the definitions of "export" and "import," Article 2(f), the GAMBIA recalled the African Group's previous requests to delete text that would exclude "mere transit operations." BENIN underlined the importance of including transit countries in the Convention.

Discussions on the definition of "Party" in 2(g) revolved around differences between State and regional economic integration organization (REIO) Parties. IRAN asked for clarification on the division of responsibility between the EC and its members. The EC referred to an explanation of the implementation of PIC in the EC as contained in document UNEP/FAO/PIC/INC.5/CRP.4/Rev.1. In Article 2(h), a REIO is defined as an organization constituted by sovereign States to which its member States have transferred competence in respect of matters governed by this Convention.

Article 2(i) defines the Chemical Review Committee (CRC) as the subsidiary body that will perform the functions assigned to that committee by the Convention, as set out in paragraph 6(b) of Article 19. Definitions for banned chemical in 2(b), and export and import in 2(f) were also reviewed by the Legal Drafting Group and the entire article was approved by the Plenary on 14 March.

ARTICLE 3 (Scope of the Convention): Article 3 details the chemicals to which the Convention does and does not apply, such as narcotic drugs, radioactive materials and wastes. On Monday, during the discussion of items listed under 3(2) to which the Convention does not apply, EGYPT suggested that precursors to chemical weapons be subject to the Convention. ARGENTINA, supported by the US and SWITZERLAND, proposed removing the reference to precursors. MALAYSIA, supported by IRAN, the RUSSIAN FEDERATION and NEW ZEALAND, preferred retaining the reference. On Thursday, the issue of chemical weapons was revisited, and IRAN proposed making reference to conventions on chemical weapons. NIGERIA opposed this suggestion. INDONESIA proposed, and the Plenary accepted, deletion of "and their precursors." The report of the meeting will note that chemical weapons are covered by other conventions.

NEW ZEALAND and the US recalled that INC-2 had deleted reference to pesticide residues and chemical contaminants from Article 3(2), and stressed that these should be re-introduced. With respect to Article 3(2)(f), chemicals used as food additives, AUSTRALIA, supported by the US and BRAZIL, proposed that there be explicit mention of the exclusion of pesticide residues on food. The EC expressed support for reference to pesticide residues but not chemical contaminants.

Regarding chemicals used for research or personal use, Articles 3(2)(h) and 3(2)(i) respectively, the GAMBIA asked who determines the quantity of a "reasonable" amount. By way of clarification, CANADA proposed that this quantity should be decided in accordance with the domestic law of the importing country. MOROCCO suggested replacing "reasonable" with "very limited" quantities. The Contact Group on Definitions proposed excluding food from the scope of the Convention. The approved text of Article 3 includes banned or severely restricted chemicals and severely hazardous pesticide formulations in the scope of the Convention. The Convention does not apply to narcotic drugs, radioactive materials, wastes, chemical weapons, pharmaceuticals, chemicals used as food additives, food, and chemicals for research and individual use.

ARTICLE 4 (Designated National Authorities): On Monday, the Plenary considered draft text on the establishment by each Party of designated national authorities (DNAs) as national points of contact to administer the functions required by the Convention. The Plenary adopted the text.

ARTICLE 5 (Banned or Severely Restricted Chemicals): On Monday, the Plenary considered draft text on Article 5 regarding the process for Parties to notify the Secretariat after adopting a final regulatory action for banned or severely restricted chemicals. With regard to the inclusion of information required by Annex I in any notification (Article 5(1)), IRAN requested deleting the reference to "where avail-

able," as this could provide a loophole for circumventing implementation. The Chair explained that the language was aimed at developing countries that might lack particular information required in Annex I when taking regulatory action, and that under such circumstances, the Secretariat will still accept the notification.

During discussion of Article 5(5), the number of notifications and regions necessary to trigger consideration of a chemical in the PIC procedure, the EC suggested one notification while ARGENTINA suggested two. Apart from Article 5(5), about which debate continued, Article 5 was adopted by the Plenary on Monday.

On Thursday, delegates in Plenary further discussed Article 5(5), and general support for two notifications from two FAO regions was expressed, although a lengthy debate ensued as to whether notifications from more than one region were necessary. A number of delegations, including the PHILIPPINES, PANAMA, INDONESIA and ARGENTINA, agreed that one or more notifications warranted a triggering of the PIC procedure, regardless of the number of regions. Other delegations, including the US, EC, CANADA and INDIA, proposed that more than one region be required, as this would reflect broader concern and ensure that chemicals put on the PIC list had support in a global context. The Chair noted that too many notifications could paralyze the process and too few notifications could drown the CRC and the Secretariat with work. The Plenary agreed that a new list of "PIC regions," loosely based on the seven FAO regions, should be drawn up in an annex to the Convention.

On Friday, the Plenary agreed that countries not members of the FAO would be added to the pre-existing FAO regions based on geographical distribution. The US requested that language be included explaining that the INC would develop the list of PIC regions to be used on an interim basis until the first Conference of the Parties (COP-1). Delegates in Plenary agreed on Saturday that at least one notification from each of two PIC regions would trigger the consideration of chemicals in the PIC procedure. The notifications will then be forwarded to the CRC. Delegates also decided that the composition of the PIC regions shall be defined in a decision to be adopted by consensus at COP-1.

ARTICLE 6 (Severely Hazardous Pesticide Formulations): This article provides a "fast track" for developing countries and countries with economies in transition to include hazardous pesticides in Annex III (chemicals subject to the PIC procedure). On Monday, the Chair suggested deleting brackets around language focusing the provisions of this article on developing countries and countries with economies in transition. IRAN, supported by the REPUBLIC OF KOREA and NEPAL, said it did not understand the need to differentiate between these countries and developed countries, and proposed deleting the text. The REPUBLIC OF KOREA further indicated that there was no clear or consistent concept for classification of developing countries and countries with economies in transition. The Chair explained that developed countries often have more capacity to respond to a hazardous pesticide incident and noted that opening this provision to every Party would place a large burden on the Secretariat. ZIMBABWE, supported by the US, CANADA, AUSTRALIA, INDONESIA, MEXICO and MALAYSIA, underlined the importance of retaining the text because of the differences between developed and developing countries. The text was approved in Plenary on Saturday with the reference to the developing countries and countries with economies in transition.

ARTICLE 7 (Listing of Chemicals in Annex III): This Article calls on the CRC to prepare a draft decision guidance document (DGD) based on information contained in Annex I or IV for each chemical it has decided to recommend for inclusion in Annex III, and to forward this information to the COP, which will then determine whether to include the chemical in Annex III. It also requires the Secretariat to communicate information regarding inclusion of a chemical in Annex III to all Parties. In Plenary on Monday, the EC proposed text requesting that additional information on the uses of the



chemical other than that for which the regulatory action applies be included in the DGD. This proposal was rejected. On Thursday, the EC, supported by AUSTRALIA, proposed adding: "DGD should be based at least on the information contained in Annex I and include information on uses of the chemical in a category other than to which the regulatory measure applies," to the first paragraph of 7(1). The GAMBIA endorsed the EC proposal, with the addition of "among other things" at the end of the phrase. On Saturday, the Plenary approved the article with minor modifications.

ARTICLE 8 (Chemicals in the Voluntary Procedure): This provision ensures that chemicals included in the PIC procedure during the interim period, from the opening for signature of the Convention to its entry into force, will be incorporated into Annex III of the Convention at COP-1. The article was approved by delegates in Plenary on Saturday with minor changes.

ARTICLE 9 (Removal of Chemicals from Annex III): On Monday, delegates discussed this article that outlines: submission of new information regarding Annex III chemicals; review of a chemical proposed for removal from Annex III; and notification by the Secretariat that a chemical has been removed. CANADA and the PHILIPPINES made proposals to make the process consistent with Articles 5 and 6, so as to mirror the voluntary procedure. The final text was adopted on Saturday with minor modifications.

ARTICLE 10 (Obligations of Importing Parties): On Monday, the Plenary addressed this article, which requires Parties to implement legislative or administrative measures to ensure timely decisions on Article III chemical imports, and the submission of decisions on future imports of Annex III chemicals to the Secretariat. The EC, supported by ARGENTINA, proposed deletion of Article 10(5), which states that import responses shall apply to the category specified for the chemical listed in Annex III. JAPAN opposed the EC proposal and it was left for future discussion. On Friday, the Plenary agreed to retain the original text in Article 10(5).

The Chair, supported by EGYPT, proposed deletion of Article 10(6) ensuring that decisions regarding imports take into account information in the DGDs in the context of national conditions, on the grounds that it was unnecessary. The Plenary approved the deletion.

The US proposed a new Article 10(12), which states that importing Parties notify the Secretariat when any change to their regulations takes place so as to ensure transparency. On Friday, the language of the US proposal to add a new Article 10(12) was moved to Article 10(2).

On Saturday, the EC requested specifying a nine-month time period in the text of 10(3), which addresses when the Secretariat should request a response from an importing Party that has failed to submit a response. The final approved text reflected these discussions.

ARTICLE 11 (Obligations of Exporting Parties): The provisions of this article cover: the exporting Party's domestic obligations; its obligations towards importing Parties; and courses of action in the event that the importing Party fails to respond to notification. On Monday, the US, supported by AUSTRALIA, proposed that the period in Article 11(1) for an exporting Party to take legislative and administrative measures to ensure exporters under its jurisdiction comply with decisions taken be changed from 120 to 180 days.

Article 11(2) outlines the conditions under which an exporter may export a chemical if no response is received from the importing Party. These conditions include: if a chemical is registered in the importing Party; if a chemical has been previously imported; or if explicit consent is sought and received. CANADA, supported by the EC and COLOMBIA, noted that reference should be made to obtaining consent from the designated national authority and not the competent national authority. INDONESIA and the RUSSIAN FEDERATION said that reference to a competent authority could be useful in cases where the body taking decisions was not the DNA. The Plenary agreed to change the text to refer to the DNA. CANADA, supported by the US, proposed that the Secretariat be informed if a response is made to a request by an exporter. The text of Article 11 was approved on

Saturday with minor modifications, including specifying six months for the start of exporting Party obligations after the Secretariat first informs Parties of a failure to respond to export notification.

ARTICLE 12 (Export Notification): On Wednesday, delegates discussed Article 12, which requires exporting Parties to notify the DNA of an importing Party when exporting a domestically banned or severely restricted chemical. On Thursday, delegates agreed to several paragraphs, including: 12(2), which states that export notification shall be given before the first export and subsequently before the first export in each calendar year; 12(3), which requires an exporting Party to provide an updated export notification after regulatory action resulting in a major change concerning the ban or severe restriction of chemical; and 12(4), which requires the importing Party to acknowledge receipt of export notification and provide a course of action for exporting countries that do not receive acknowledgement. Article 12(6) provides that export obligations cease when a chemical is listed in Annex III or the importing Party has responded to the Secretariat in accordance with Article 10 and the Secretariat has distributed the response to Parties in accordance with Article 11. References to the provision of the most recent export notification during subsequent exports to the importing Party and the obligation of REIOs to provide notifications were deleted.

On Saturday, the Plenary considered a final draft text embodying these modifications. The US, supported by COLOMBIA, said the provision allowing the DNA of an importing party to waive export notification in 12(2) was unclear, and suggested that the Secretariat notify all Parties of such a waiver. The EC objected to the US modification because these chemicals were not Annex III chemicals, but rather chemicals banned unilaterally, and so this information would be of little interest to all Parties. The text was adopted without the proposed US modification.

ARTICLE 13 (Information to Accompany Exported Chemicals): On Monday, the Plenary discussed Article 13(1), which encourages the World Customs Organization (WCO) to assign specific Harmonized System customs codes to chemicals listed in Annex III and enumerates the documentation required to bear evidence of a code. COLOMBIA requested the deletion of the sentence mandating that Parties require the WCO code on a shipping document and/or label. NIGERIA, supported by EGYPT, the RUSSIAN FEDERATION and INDONESIA, favored retaining this requirement. The US, supported by SWITZERLAND, said that such information was useful in a shipping document, but not on a label, and suggested deleting the reference to a label. The Plenary adopted this proposal.

Article 13(4) provides that the information on a label and safety data sheet should, as far as practicable, be provided in one or more of the official languages of the importing Party. EGYPT objected to the language "as far as practicable." The Chair noted that the language provided an incentive for the provision of such information, but there may be circumstances where translation may not be practicable. Delegates adopted the text without amendments.

On Tuesday, the Plenary considered Article 13(2), which proposes that each Party "should" or "shall" require that chemicals either "listed in Annex III and those banned or severely restricted in their territory" or those "considered hazardous in accordance with its legislation" be subject to no less stringent classification, packaging and labeling requirements than if they were to be used domestically. The US stated that the concepts in this article were moving further away from the current scope of the PIC procedure. JAPAN, the GAMBIA and the EC expressed support that this requirement be compulsory. CANADA, POLAND and AUSTRALIA supported limiting this requirement to those chemicals listed in Annex III and those banned or severely restricted in their territory. The US said that while it preferred non-compulsory language, it could approve "shall" if the requirements were limited to chemicals in Annex III and those banned or severely restricted in their territory. The EC suggested using "shall" fulfill the requirements for those chemicals listed in Annex III and those banned



or severely restricted in their territory, while Parties "should" meet those requirements for those chemicals considered hazardous according to national legislation. The US indicated that it was not completely opposed to such language, but suggested that this was an attempt to expand the current scope of the PIC Convention. The Chair suggested the forward-looking but non-binding language "should encourage." Regarding the proposal for "no less stringent" requirements, the US wanted the exported chemicals to be "subject to labeling requirements that ensure adequate availability of information pertaining to risks and/or hazards to human health or the environment, taking into account relevant international standards."

On Friday, the Plenary examined text prepared by a contact group (UNEP/FAO/PIC/INC.5/CRP.50). Article 13(2) and (2*bis*) included the EC's preference for the compulsory language "shall," but limited applicability to the US's preference for "chemicals listed in Annex III and those banned or severely restricted in their territory." It also included the text proposed by the US on labeling requirements. Both Article 13(2) and 13(2*bis*) contained bracketed text that expressed a preference that the exported chemicals be packaged to protect human health and the environment. Noting that the PIC Convention is an instrument for information exchange, JAPAN, supported by CANADA, the US, COLOMBIA, the GAMBIA, the EC and JAMAICA, requested that this principle be maintained by deleting the bracketed text on packaging in Article 13(2). He proposed that this provision could be referred to in the Preamble, where the contact group had agreed to insert language referring to packaging and labeling consistent with the London Guidelines and the FAO Code of Conduct.

In Article 13(2*bis*), JAPAN, supported by SOUTH AFRICA, NIGERIA and MEXICO, requested that "should" be replaced with "may." The US, supported by AUSTRALIA, agreed with the Japanese proposal, but with the addition of several amendments, including: the deletion of the last sentence on packaging to protect human health and the environment, deleting "considered hazardous in accordance with legislation in their territory," and limiting the scope to chemicals "subject to environmental or health labeling requirements in its territory." The US said it could accept the amended text with the understanding that it does not affect the scope of the instrument in Article 3. The text, as amended, was accepted.

Article 13(3) requires that a safety data sheet following an internationally recognized format be sent to the importer for those chemicals referred to in 13(2). On Friday, the Plenary agreed that safety data sheets will only be required for those chemicals that are used for occupational purposes. ARGENTINA asked that it be noted for the record that the paragraph established an excessive standard for the Convention. The amended text was then adopted by the Plenary.

ARTICLE 14 (Information exchange): On Tuesday, the Plenary discussed Article 14, which highlights types of information to be exchanged and information not to be regarded as confidential. SWITZERLAND and other delegates, including AUSTRALIA and the EC, noted their preference for a strong provision to protect confidential information.

On Article 14(2), regarding proprietary rights, AUSTRALIA, supported by EGYPT, proposed deleting the bracketed text protecting existing proprietary rights, as some countries do not recognize proprietary rights with respect to information.

Article 14(3) lists information not to be regarded as confidential for the purposes of this Convention. On Article 14(3)(c), CANADA noted that production and expiration dates of chemicals were not always available and suggested providing the dates "where applicable and available." EGYPT, supported by MOROCCO and IRAN, noted that an absence of this information would reflect a lack of transparency. EGYPT, in particular, found it hard to accept that a manufacturer does not have these dates, and noted the importance of these dates for developing countries when importing chemicals. CANADA explained that in its own domestic laws, manufacturers are not required to provide these dates to the government.

On Thursday, the Plenary discussed new text on transit movements introduced by the GAMBIA, on behalf of the African Group (UNEP/FAO/PIC/INC.5/CRP.34). The EC and PANAMA also supported this new text, which proposed that any developing country needing information on transit movements through its territory convey this to the Secretariat. INDIA, with support from ISRAEL, noted that any Party, not only developing countries, should have access to this information. PANAMA, with support from CANADA, suggested that the new text be added as a fourth paragraph to Article 14, as it deals with information exchange. The US requested specification of what exactly will be in transit and the Chair suggested "chemicals covered by this Convention." The new text on transit movements was approved.

On Friday, the Plenary examined revised text for Article 14 (UNEP/FAO/PIC/INC.5/CRP.46), after a contact group had dealt with the confidentiality issue at length. The EU proposed, and the Plenary approved, additional text, 14(1)(c), to insure that information regarding why one or more uses of the chemical is substantially restricted be provided to the Secretariat and made available to the Parties, as appropriate.

On 14(2), compromise was reached on the protection of confidential information, taking into account the broad range of freedom of information legislation in different countries. The new text proposed that Parties shall protect any confidential information mutually agreed upon between them.

On 14(3)(c), revised text submitted by the contact group deleted the production and expiration dates from the list of information not to be regarded as confidential. EGYPT expressed its strong opposition to this deletion, again reiterating its belief that this information should not be regarded as confidential. INDIA also opposed the deletion, noting that the dumping of expired chemicals has been a problem in developing countries. As a result, the accepted text states that the expiration date is not to be regarded as confidential and a new paragraph 14(4) states that the production date is "normally not considered to be confidential."

Article 14(5) was then added to include the African Group's proposal on transit movements. The article was adopted by the Plenary on Friday.

ARTICLE 15 (Implementation of the Convention): On Tuesday, the Plenary discussed Article 15, which stresses that Parties shall, *inter alia*: take necessary measures to strengthen their national infrastructures; ensure that the public has appropriate access to information on chemical handling and accident management; and agree to cooperate, where appropriate, through international organizations, in the implementation of the Convention.

On Article 15(1)(b), the encouragement of initiatives by industry, the RUSSIAN FEDERATION, supported by EGYPT, expressed concern that industry take positive initiatives. The Chair suggested that such initiatives could be "to promote chemical safety."

On Friday, the bracketed text on 15(4), insuring that measures taken in this Convention do not create unnecessary trade obstacles, was deleted and incorporated into the Preamble. Article 15(5), ensuring that movements of chemicals between member States of an REIO not be subject to this Convention, was deleted. Article 15, reflecting these changes, was approved.

ARTICLE 16 (Technical Assistance): On Tuesday, the Plenary discussed Article 16, which ensures cooperation in the promotion of technical assistance to developing countries and countries with economies in transition. ETHIOPIA, MOROCCO, IRAN and MALAYSIA stressed the importance of strengthening the infrastructure of developing countries to enable implementation of the Convention, and suggested specifying the technical and financial needs of developing countries. The Chair pointed out that all needs are implicit in the text. Article 16 was then approved.



ARTICLE 17 (Compliance): This article addresses the development of a procedure and mechanism for determination and treatment of non-compliance. On Tuesday, CANADA recalled the two possibilities discussed at INC-4: either refer to a clear commitment to develop a procedure or leave it to the COP to decide whether to have such a procedure. Preferring a clear commitment, CANADA, supported by ISRAEL, SWITZERLAND and IRAN, proposed deleting the words "consider the need to" in order to make a clear commitment to develop such procedures. The text was approved with this modification.

ARTICLE 18 (Relationship with other agreements): Article 18 was deleted after intensive discussions on "trade and environment" issues in a contact group. Language regarding the relationship between the PIC Convention and other international agreements is now contained in the Preamble.

ARTICLE 19 (Conference of the Parties): This article establishes the COP, its first meeting, the establishment of rules of procedure and financial rules, implementation of the Convention and the admission and participation of observers. Delegates discussed this article in Plenary on Monday. On Article 19(6), participation of observers, the Chair proposed that observers be allowed unless "at least one third of the Parties present object." CHINA said that no NGO of any Party should participate without that Party's consent. IRAN said it had problems with the text and proposed its deletion. The Chair said that a decision to exclude observers would be inappropriate for the INC and recommended leaving this decision to COP. GERMANY, supported by SWITZERLAND, noted that allowing observers attracts new Parties, and highlighted the benefits of observers in the Montreal Protocol process. Delegates in Plenary then adopted the Chair's suggestion to use the one-third rule.

The US drew attention to similarities between the US and EC proposals for Article 19(5)(b), which details the number, geographical representation and expertise for the composition of the subsidiary body for the implementation of Articles 5, 6, 7 and 9, to be established by the COP. On Thursday, the Chair, reporting on the work of the Legal Drafting Group, noted that the body would be referred to as the Chemical Review Committee (CRC). The Plenary then considered the US proposal (UNEP/FAO/PIC/INC.5/CRP.19), which suggested that the body: consist of 21 members; be geographically balanced; and be comprised of experts having direct and substantial experience regarding the regulation of chemicals. ZIMBABWE stated that the CRC should include all Parties and be a committee of Parties. Several delegations, including the EC and MOROCCO, suggested that the body comprise more than 21 members so as to reflect a better geographic balance. INDIA, supported by IRAN, ARGENTINA and ISRAEL, suggested that discussion on this issue would be more fruitful at a later date. Several delegations, including the GAMBIA, the EC, NEW ZEALAND and CANADA, suggested that a reference be included to ensure a multidisciplinary character for the CRC.

On Friday, discussions about the CRC revolved around voting procedures in the event of failure to achieve consensus. The Chair proposed and the Plenary accepted the rule of a two-thirds majority vote of Parties present. On Article 19(6), regarding observers, CHINA proposed language stating that "any national body or NGO of a contracting Party shall not be admitted if that contracting Party objects." COLOMBIA noted that the UN system has a mechanism for registering NGOs and that, as a democracy, it would be very difficult for it to keep NGOs from participating. The EC, supported by CANADA, objected to the Chinese proposal on the grounds that the international nature of many NGOs would make it difficult to implement. CAMEROON noted that the Rio Declaration, which is referred to in the Preamble of the Convention, requests that decision making involve NGOs. CHINA withdrew its proposal and requested that its concern be duly noted in the report of the meeting.

The final text adopted in Plenary on Saturday included a new Article 19(4) requiring the COP to adopt rules of procedure and financial rules at its first meeting. It also left the COP to determine who

would participate in the CRC and the rules of procedure for the participation of NGOs and industry. The US, supported by the EC, said it would like a strong statement that the work of the CRC should be open to observers.

ARTICLE 20 (Secretariat): On Tuesday, the Plenary discussed the establishment of the Secretariat and its functions, which shall be performed jointly by the Executive Director of UNEP and the Director-General of FAO. The Plenary adopted the text, which states, *inter alia*: that the Secretariat facilitate assistance to the Parties; that it coordinate with secretariats of other relevant international bodies; and that it service the COP and subsidiary bodies, as required.

ARTICLE 21 (Settlement of Disputes): On Tuesday, the Plenary began discussion of the settlement of disputes, which had not been addressed since INC-2. The Plenary agreed to establish an open-ended contact group at the request of CANADA, which had submitted alternative text. On Thursday, the Plenary returned to this article.

Article 21(2) provides that, with respect to any dispute, a Party that is not a REIO "may" recognize arbitration in accordance with procedures adopted by the COP, or submission to the International Court of Justice (ICJ), or both, as a means of dispute settlement, which becomes compulsory once accepted by both Parties. Article 21(3) provides that a Party that is a REIO "may" recognize arbitration, but not submission to the ICJ, as a means of dispute settlement, which becomes compulsory once accepted by both Parties. It was noted that while the first five paragraphs of Article 21 mirror the dispute settlement procedures of other recent multilateral environmental agreements (MEAs), the sixth paragraph, inspired by the Canadian submission, attempts to go further.

The original Canadian submission provided that Parties may agree to submit disputes to a conciliation commission and, if the dispute is not resolved, to request that the dispute be referred to either binding arbitration or the ICJ. However, the text submitted by the contact group provided for the inverse: resort to a conciliation commission only after Parties to a dispute do not accept either arbitration or jurisdiction of the ICJ. A conciliation commission shall render a report with recommendations, thus making its decisions non-binding. Additional procedures relating to a conciliation commission shall be included in an annex to be adopted by the COP as soon as practicable.

IRAN, supported by PANAMA, MOROCCO and EGYPT, noted that although a conciliation commission is the final arbiter, its non-binding "soft law" recommendations were a weak attempt to settle disputes. IRAN also objected to REIOs, which cannot resort to the ICJ, representing the interests of its member States. He further noted that for both States and REIOs, resort to arbitration and the ICJ was a process that was not compulsory. MOROCCO, supported by EGYPT, suggested that if a conciliation commission cannot make binding decisions then its recommendations should be referred to the COP for consideration.

CANADA said that the compromise text was the best that could be achieved after five negotiating sessions and, in the face of pressing time constraints, more time would be needed to develop what was admittedly a new step in MEAs. The compromise text constituted a package with three components. First, the following statement is recorded in the report of the meeting: "A number of representatives expressed concern regarding the failure to include in the Convention a dispute-settlement procedure that was mandatory and resulted in a legally binding and final outcome. Those delegations expressed a strong interest in continuing discussions on those issues." Second, the following recommendation to the Diplomatic Conference will be in the report of the meeting: "The INC recommends that the Diplomatic Conference consider the need to establish a working group for the purpose of developing the annex containing the procedures for the conciliation commission referred to in Article 21, paragraph 6, for the purpose of achieving effective dispute resolution." Third, a modification to Article 21(6) that the procedures relating to the conciliation commission be adopted by the COP, "no later than COP-2." IRAN also



requested the inclusion of an additional statement in the report of the meeting: "One delegation expressed the view that nothing in this Convention, in particular Article 21, should be considered a precedent for the future." The text was adopted on Saturday.

ARTICLE 22 (Amendments to the Convention): On Tuesday, the Plenary discussed amendments to the Convention, which shall be adopted at a meeting of the COP. Article 22 states that Parties shall attempt to reach agreement on a proposed amendment by consensus, but if such efforts fail the amendment shall be adopted by a three-fourths majority of the COP. IRAN asked for clearer language regarding the type of "meeting". The Chair explained that the wording reflected accepted procedure and was intended to afford the COP discretion in determining whether a meeting is to be held as a regular session or an extraordinary session convened for a special purpose. GERMANY further explained that there is no difference between the competence of the Parties at a regular or extraordinary session and that the decisions of each are accorded equal weight. The Plenary adopted Article 22 without amendment.

ARTICLE 23 (Adoption and amendment of annexes): Article 23 explains the procedures for adopting and amending annexes. Except for amendments to Annex III (Chemicals subject to the Prior Informed Consent Procedure), the proposal and adoption of annexes and amendments would be subject to the same procedures put forth in Article 22 (Amendments to the Convention).

On Tuesday, the Plenary discussed Article 23(5)(a), procedures taking by a Party on the adoption of additional annexes and lifted the brackets on the text. The US noted that notifying the depository if it is unable to accept an additional annex is standard procedure in other conventions for entering annexes into force.

Article 23(5)(b) outlines the voting procedure for amendments to Annex III. The text called upon the COP to take its decisions by consensus and included bracketed text allowing for a three-fourths majority vote if all attempts at consensus fail. The EC, supported by the US, proposed deleting the bracketed text for a majority vote. The UKRAINE noted that Annex III should only be voted on by consensus since it is based on scientific data. INDIA, supported by the REPUBLIC OF KOREA, opposed decisions by consensus and requested adoption by a three-fourths majority, noting that a consensus vote would hurt developing countries. MOROCCO, supported by JAMAICA, suggested consensus with an option for majority rule, if consensus fails. Text was approved to insure that the COP shall make decisions by consensus.

On Friday, the Plenary revisited Article 23, continuing to focus on 23(5)(b), with a slightly amended text (UNEP/FAO/PIC/INC.5/CRP.28/REV.1). Again, debate revolved around the consensus and majority rule issue, and IRAN and CHINA voiced their concern that procedures for amending annexes be the same as procedures for amending text. ARGENTINA and INDIA, among others, felt that consensus was an unfair mechanism, but could accept it as a compromise. IRAN, in particular, noted its discontent, stressing that if one country dissents in the decision to add a chemical to Annex III, then that chemical would not be added. He felt that taking decisions based on consensus for Annex III would place greater importance on it than the rest of the Convention. The article, as approved on Friday, provides different standards for amendments to Annex III from all other amendments, including those to the Convention and all other annexes.

ARTICLE 24 (Right to Vote): This article details the voting rights of Parties and REIOs. JAMAICA requested clarification on the voting rights of REIOs in situations where a Party that is a member of a REIO wishes to vote differently from the other Parties of that region. Mr. Moore, FAO Legal Counsel, explained that under the arrangement of "mixed competence," the bundle of rights belonging to Parties that are members of a REIO always stay the same, so when at least one member of a REIO wishes to exercise its vote, the REIO can not exercise its vote. In short, it is either the REIO or the member States that exercise the bundle of rights, and there is no way the two can be mixed.

IRAN asked if Parties need to be present to have their vote included in a regional group vote. Mr. Moore responded that Parties need not be present to be included in a REIO vote. The text was accepted by the Plenary.

ARTICLE 25 (Signature): Article 25 sets the location and dates for States and REIOs to sign the Convention. JAMAICA asked if this was the appropriate place to determine the period of time for the Convention to be open for signature. The Chair noted that there was no true time limit. Mr. Moore explained that after the period of time for signature ends, the Convention remains open for accession. The GAMBIA asked for clarification on the relationship between an REIO signature and its member States' signatures. Mr. Moore clarified that if all member States of an REIO ratify the Convention and the REIO itself ratifies, the number of ratifications counted are only equal to the number of States, not to the number of States plus one for the REIO. The structure of the article was accepted with acknowledgement that dates for opening the Convention for signature would be filled in later.

On Friday, delegates in Plenary agreed that the Diplomatic Conference will be held in Rotterdam with the date to be determined between the Secretariat and the Government of the Netherlands. The Article was approved in Plenary on Saturday.

ARTICLE 26 (Ratification, Acceptance, Approval or Accession): On Tuesday, the Plenary discussed Article 26, which states that the Convention is open for accession by States and REIOs once it is closed for signature. Any REIO that becomes a Party to the Convention without any of its member States being Parties shall be bound by its obligations under the Convention, and if any of an REIO's member States are also Parties, the REIO and the member State(s) shall not be entitled to exercise rights under the Convention concurrently. After agreeing that the other provisions in the article were standard, Article 26 was adopted.

ARTICLE 27 (Entry Into Force): On Tuesday, the Plenary adopted this article, which states that the Convention will enter into force 90 days after the receipt of 50 instruments of ratification, acceptance, approval or accession.

ARTICLE 28 (Reservations): On Tuesday, the Plenary discussed this article, which states that no reservations may be made to the Convention. Every delegation except the US and JAPAN agreed to this text. The US said that reservations should be determined on a convention-by-convention basis, and since PIC would be a technical treaty, reservations should be permitted. SENEGAL and MOROCCO noted that reservations run counter to the basic principle of consensus in the Convention. MOROCCO also noted that, in recent years, the use of reservations in international conventions has waned because it hinders proper implementation. While the US and JAPAN reserved their position until they could examine the Convention text in its entirety, the Plenary adopted Article 28 on Friday.

ARTICLE 29 (Withdrawal): This article, containing standard language regarding withdrawal from the Convention, was approved on Tuesday.

ARTICLE 30 (Depositary): On Tuesday, delegates adopted this article, which provides that the UN Secretary-General shall be the Depositary of the Convention.

ARTICLE 31 (Authentic Texts): On Tuesday, delegates adopted this article which provides that the originals of the Convention in the six official UN languages are equally authentic, and shall be deposited with the UN Secretary-General, without amendment.

ANNEX I (Information required for notifications made pursuant to Article 5): On Tuesday, delegates discussed Annex I, which outlines the information required in notifications, including: chemical properties, identifications and uses, and information about final regulatory actions. For the information required regarding final regulatory actions in paragraph two, the US and AUSTRALIA expressed concern about the use of "risk/hazard" evaluations. AUSTRALIA preferred the term "risk evaluation" or "risk and expo-



sure evaluation." CHILE, MOROCCO and the RUSSIAN FEDERATION expressed concern about the proposed changes. CANADA noted that the purpose of this annex was to provide information and not to make judgement about its quality. AUSTRALIA proposed reference to "risk and/or hazard evaluations." This proposal was accepted by a number of delegations, including INDIA, POLAND, INDONESIA and the EC. On Friday, the Plenary revisited the bracketed text in 2(a)(iv), and agreed to the term "risk or hazard evaluation" and the removal of brackets around the subparagraph.

On information about final regulatory actions and the quantities of chemical produced and traded in 2(b)(iii), the US proposed reference to "high, medium or low relative quantities" because more precise data would not normally be given to a body like a Secretariat. A number of delegations, including INDIA and MOROCCO, supported the original wording referring to an "estimation of quantities." AUSTRALIA proposed that quantities could be listed as "significant or not." The US indicated that they could accept that proposal.

On Friday, the Plenary also agreed to amendments proposed by the EC in 2(v) and 2(vi), reasons for the final regulatory action and risks presented by the chemical relevant to human health and the environment. It was agreed that in both subparagraphs human health should include "the health of consumers and workers." On Saturday, the Plenary adopted the text, subject to minor amendments.

ANNEX II (Criteria for the inclusion of banned or severely restricted chemicals in Annex III): On Tuesday, the Plenary discussed Annex II, criteria for the inclusion of banned or severely restricted chemicals in Annex III (Chemicals subject to the PIC procedure). Criteria specify, *inter alia*, that the final regulatory action for inclusion in Annex III has been taken to protect human health or the environment, and as a consequence of an evaluation based on a review of scientific data.

On Annex II(b), the type of evaluation to be taken, either "risk" or "risk/hazard" was the subject of much debate. AUSTRALIA, and other delegations, including the UKRAINE, JAPAN and CANADA, proposed deleting hazard and only specifying risk evaluation, noting that hazard and exposure would be implied. RUSSIA, supported by MOROCCO and EGYPT, preferred including "risk and/or hazard evaluation." JAMAICA suggested deleting "or" for fear of excluding risk, but supported keeping hazard. The final compromise, based on a proposal submitted by a contact group (UNEP/FAO/PIC/INC.5/CRP.37/Rev.1), included only "risk evaluation," with a qualification to be included in a statement indicating that a risk evaluation includes evidence of hazard.

ANNEX III (Chemicals Subject to the PIC Procedure): On Wednesday, delegates adopted the list of 27 chemicals in Annex III, with the following amendments:

- a three-column chart delineating the chemical identity, CAS number(s), and category on which inclusion in the annex is based;
- the listing of three severely hazardous pesticide formulations, subjecting chemicals that "exceed" a specified concentration (600 g/l (SL) formulation for both Monocrotophos and Methamidophos, and 1000 g/l (SL) formulation of Phosphamidon) to the PIC procedure; and
- the creation of one category for pesticides and another for severely hazardous pesticide formulations in order to differentiate between the two types of chemicals.

SWITZERLAND requested that a note be added to the report that a complete list of chemicals and CAS numbers will be maintained by the Secretariat.

ANNEX IV (Information and Criteria for Inclusion of Severely Hazardous Pesticide Formulations in Annex III): On Wednesday, the Plenary, after minor amendments, adopted Annex IV, which is divided into three parts. Part 1, documentation required from a proposing Party, provides that proposals pursuant to Article 6(1) shall include, *inter alia*:

- the name of the hazardous pesticide formulation and active ingre-

dient(s);

- the relative amount of active ingredient(s) in the formulation and the type of formulation;
- trade names and names of producers;
- common and recognized patterns of use;
- a description of incidents related to the problem; and
- any regulatory, administrative or other response measure to be taken.

Part 2 provides that the Secretariat, pursuant to Article 6(3), shall collect relevant information relating to the formulation such as, *inter alia*:

- the physico-chemical, toxicological and ecotoxicological properties of the formulation;
- the existence of handling or applicator restrictions in other States;
- information on incidents related to the formulation in other States;
- information submitted by other Parties, IGOs, NGOs and other sources;
- risk and/or hazard evaluations;
- indications of the extent of use of the pesticide formulation;
- other formulations of the pesticide in question, and incidents relating to these formulations; and
- alternative pest-control practices.

Part 3, criteria for listing of hazardous pesticide formulations in Annex III, provides that the CRC, in reviewing proposals forwarded by the Secretariat pursuant to Article 6(5), shall take into account:

- the reliability of the evidence indicating that the use of the formulation resulted in the reported incidents;
- the relevance of such incidents to other States with similar climates, conditions and patterns of use;
- the existence of handling or applicator restrictions involving technology or techniques that may not reasonably or widely be applied in States lacking the infrastructure;
- the significance of reported effects in relation to the quantity used; and
- the fact that intentional misuse is not an adequate reason for including a formulation in Annex III.

ANNEX V (Information Requirements for Export Notification Made Pursuant to Article 12):

Annex V specifies information required in export notifications, including, *inter alia*: name and address of exporting and importing DNAs; expected date of export; the name of the chemical; and a summary of Annex I information. It also requires exporting Parties to provide further information specified in Annex I as requested by the importing Party. On Wednesday, a revised Annex V submitted by the Legal Drafting Group (UNEP/FAO/PIC/INC.5/CRP.9) was considered in Plenary. JAPAN and the US noted reservations over the deletion of text referring to treating such information as confidential. Regarding the provision of information specified in Annex I, CANADA proposed that only a summary of this information be required for export notifications because more detailed information would be available from the Secretariat or the exporter directly. The GAMBIA noted that it could accept the Canadian proposal if explicit reference to obtaining the information from the Secretariat was added.

The EC suggested, but the Plenary rejected, a proposal that a receipt notice for the export notification be included in Annex V in order to know that the notification reached the importing Party. On Saturday, the Annex was adopted with minor changes including the deletion of Annex V(1)(e), which required the inclusion of precautionary measures to reduce exposure to and emission of the chemical, as it is adequately covered in Annex I and in the terms of Annex V(1)(c).

CLOSING PLENARY

On Saturday evening, 14 March, the Chair convened the final Plenary of the Intergovernmental Negotiating Committee and introduced the draft resolution on interim arrangements and the Diplomatic



Conference. (UNEP/FAO/PIC/INC.5/CRP.20). This resolution outlines: the creation of the "interim PIC procedure" by changing the voluntary procedure to bring it into line with the Convention; the need to establish an interim subsidiary body; and the call to States and REIOs to sign and ratify the Convention so as to bring it into force as soon as possible. She further proposed, and the Plenary approved, that the Convention be known as "The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade," since the Diplomatic Convention will be in Rotterdam. The Chair then invited comments on the draft final report, as contained in document UNEP/FAO/PIC/INC.5/L.1.

The EC, supported by PANAMA, proposed that a statement be included in the report noting that several delegations observed that the current drafting of Article 3 had no implications for the scope or effect of the provisions laid down in Articles 13(3) and 14(1).

ARGENTINA asked that some wording be put in the report expressing its concern about the lack of reference to liability and compensation and that these issues should be revisited.

MOROCCO noted that it would have preferred a mandatory dispute settlement procedure and suggested that Article 21 should not be seen as setting a precedent for any future agreements on environmental matters.

The GAMBIA, on behalf of the African Group, thanked the Chair, organizers, sponsors and the Secretariat, and remarked that a number of issues of importance to them had not been translated into legal language, and that this should be discussed at the Diplomatic Conference. Several other delegations, including the EC, IRAN, ARGENTINA and the PHILIPPINES also thanked the Chair for her hard work during the INC.

The US noted that the process leading to the Convention had been a "long road" and suggested that a credible job had been done of presenting to the Diplomatic Conference an agreement that governments should sign.

SWITZERLAND reminded the Plenary of the importance of the PIC Convention to their country and offered to host the first COP in Geneva. He also recalled that they offered to host the chemicals division of the Permanent Secretariat, with the pesticides division to be located in Rome.

The Chair thanked all those who had been involved in the negotiating process for the Convention. Delegates then adopted the Draft Report of INC-5. The text of the draft Convention will be appended to the report for consideration and signing at the Diplomatic Conference to be held in September 1998, in Rotterdam, The Netherlands. The meeting was adjourned at 8:45 pm.

A BRIEF ANALYSIS OF INC-5

Almost two years to the day after the first INC, a draft PIC Convention was completed in Brussels. Delegates expressed relief and varying degrees of satisfaction at the completion of a difficult and compressed negotiating process. The length of the negotiating sessions and the small but significant number of outstanding issues left for resolution at INC-5 suggested that the original goal of completing the Convention by the end of 1997 had been somewhat unrealistic. It also underlined the difficulties of the seemingly simple task of transforming an existing voluntary procedure into a legally binding agreement. Nevertheless, delegates have now fulfilled their mandate and their Ministers will gather in Rotterdam later this year for the Diplomatic Conference and signing ceremony. Looking back over the process of negotiating the PIC Convention, as well as looking forward to the challenges of the future, a number of issues warrant further discussion.

TO BRUSSELS AND BACK AGAIN: More than a few delegates remarked on the suitability of completing the PIC negotiations in Brussels, the same city where they began two years ago. Less auspicious, however, was the fact that some fundamental controversies that had not been untangled since INC-1 returned to Brussels for resolu-

tion. On the underlying issue of whether the Convention should be an expanded framework for chemical management or simply a legally binding version of the existing voluntary procedure, the language of the agreement would indicate that this Convention does not significantly exceed the scope of the existing voluntary procedure. However, according to one developed country delegate, while expressing general satisfaction with the text, the Convention was "still not as narrow as we would have liked." Attempts to create a wider international chemical management framework, however, will not end with the PIC Convention, and some members of the international community are sure to keep this idea under discussion.

There was also the question of increasing developing country capacity to fulfill the legislative and administrative requirements of the PIC procedure. While many references were made to the fact that this Convention was to benefit developing countries, the main protagonists were OECD countries. Moreover, developing country delegations often pointed out that there was little or no provision for technology transfer and additional resources that would allow them to truly benefit from the better information that the PIC procedure was supposed to give them. According to at least one developing country delegate, the current text "did not really meet their needs" but was only "the best they could get."

The question of the relationship between the Convention and the WTO was dealt with somewhat conclusively at INC-5, although the contact group charged with finalizing the issue spent long hours creating what was termed a "delicately balanced" text in which language relating to the relationship between this Convention and other existing international agreements was moved from the body of the Convention to the Preamble. In fact, the compromise almost unraveled at the end of the week when one delegation began to make a formal statement that acceptance of this language would not set any precedent for them regarding other trade and environment discussions. This provoked many other delegations to register similar statements. However, intensive discussions in the corridors resolved one of the tensest moments of INC-5 and several delegations will now state in the meeting report that the Preamble will not "prejudge their respective positions in other international forums and negotiations addressing issues related to environment and trade." NGOs expressed satisfaction with location of this language in the Preamble, perceiving this as less "threatening" than if it were contained in the body of the Convention. On the whole, however, most delegates seemed to believe that nothing in the Convention could be contrived as being inconsistent with the WTO. The need to include such language was based on the fear that the Convention might be used as an excuse to take WTO-inconsistent measures or that the perception of a hierarchy between different agreements might be created.

RATIFICATION, ACCEPTANCE AND APPROVAL?: The next step for the PIC Convention is signature and ratification. There were no indications during the INC process that the Convention will have any trouble receiving the requisite number of signatures and ratifications in order to enter into force. Nevertheless, several important issues will likely remain under active consideration in the period between the signing of the Convention and the first Conference of the Parties. First, regarding arrangements for the financing of the Convention, members of the African Group were especially concerned that explicit direction regarding financing had been deferred to the first COP. While proposals for the establishment of a voluntary fund for the interim period were suggested in Brussels, the actual financial arrangements remain subject to available resources and more secure sources of funding will have to be found.

Second, the issue of dispute resolution provoked substantial debate at INC-5. A number of delegations questioned the adequacy of a legally binding agreement that fails to provide recourse to a body that can render binding decisions for the settlement of disputes. Since the proposed conciliation commission will only render recommendations that are non-binding, and any Party may decline the submission of



disputes to arbitration or the ICJ, it is feared that Parties may attempt to circumvent their obligations under the Convention. However, other delegations noted that the strength of a conciliation commission is not about whether it can offer binding or non-binding decisions. Experience has shown that such bodies have been extremely effective in resolving disputes in other areas of international law, such as in trade and arms control, and was introduced into these negotiations primarily as an attempt to expand options for dispute settlement in a multilateral environmental agreements (MEA). While several delegations appreciated this attempt to pursue new ideas; they pointed out that the tradition of MEAs has been less about assigning fault and more about strengthening compliance. Until MEAs adopt a more "hard law" approach, Parties may have less of an incentive to fulfill their commitments under these agreements.

Third, countries will need to address the status of PIC chemicals in the voluntary procedure not currently in Annex III. Regardless of the length of time before the Convention enters into force, the interim PIC procedure will remain an important bridge between the voluntary and legally binding procedures and discussions will continue to ensure that the transition is as smooth as possible. Also, the terms of reference and functioning of the new subsidiary body for scientific and technical advice, to be known as the Chemical Review Committee, will need to be refined and tested. Such bodies have become integral to the workings of other agreements, such as the Convention on Biological Diversity and the Framework Convention on Climate Change, and may well play a similar role with respect to the PIC Convention.

THE FUTURE OF INTERNATIONAL CHEMICALS

MANAGEMENT: Completion of the PIC Convention is only the first of a number of efforts by the international community to address chemical management issues. With the ink barely dry on the Convention, countries will meet in Montreal in late June to begin negotiations on a legally binding instrument to reduce the risks to human health and the environment from a list of twelve persistent organic pollutants (POPs). These negotiations are likely to be more difficult because, unlike PIC, they will be discussing the possibility of eliminating the production of a number of particularly dangerous chemicals.

More immediately, however, a number of observers have pointed to issues regarding the implementation of the PIC Convention as being crucial to its success. In addition to outstanding questions regarding financial arrangements, Parties to the Convention will face other problems similar to those in other MEAs. For example, treatment of non-compliance has recently become a central issue in MEAs. While a clear dispute-settlement procedure may go some way to helping Parties deal with conflict, the model of the Montreal Protocol to employ a "softly, softly" approach in dealing with Parties deemed in non-compliance may also be an option for the PIC Convention. Also, developing countries, and the African Group in particular, expressed concern about the subject of illegal traffic in hazardous chemicals. The degree to which this activity takes place, and how the Conference of the Parties decides to deal with it, are important but unresolved questions. Moreover, attempts by developing countries to include provisions for liability and compensation were fended off during the INC process but will likely resurface at the first COP and perhaps as early as the Diplomatic Conference.

A Convention for Prior Informed Consent regarding hazardous chemicals in international trade is a small but significant step towards a more comprehensive and sustainable international chemical management framework. Now, Parties must now concentrate on avoiding the potholes and pitfalls of ratification and implementation issues so as to ensure that this is an effective Convention.

THINGS TO LOOK FOR

DIPLOMATIC CONFERENCE FOR ADOPTION OF THE PIC CONVENTION: The Diplomatic Conference for the Adoption of an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade is scheduled for September in Rotterdam, The Netherlands. For more information contact: UNEP Chemicals (IRPTC), tel: +41 (22) 979-9111; fax: +41 (22) 797-3460; e-mail: jwillis@unep.ch; internet: <http://irptc.unep.ch/pic/>. Or contact: FAO, tel: +39 (6) 5705 3441; fax: +39 (6) 5705 6347; email: niek.vandergraaff@fao.org; internet: <http://www.fao.org/ag/agp/agpp/pesticide/pic/pichome.htm>.

PERSISTENT ORGANIC POLLUTANTS: The First Session of the Persistent Organic Pollutants (POPs) Intergovernmental Negotiating Committee (INC-1) is scheduled for 29 June-3 July 1998 in Montreal, Canada. The Second Session is tentatively scheduled for 7-12 February 1999 in Geneva. For more information contact: UNEP Chemicals (IRPTC); tel: +41 (22) 979-9190; fax: +41 (22) 797-3460; e-mail: dogden@unep.ch; internet: <http://irptc.unep.ch/pops/>.

INTERGOVERNMENTAL FORUM ON CHEMICAL SAFETY: The Third Meeting of the Intersessional Group (ISG-3) will be held from 1-4 December 1998 in Yokohama, Japan. Brazil will forward its decision to host FORUM III, scheduled for late 2000, to the IFCS as soon as possible. The Plenary also agreed tentatively to hold ISG-4 in 2002. For information on these meetings, contact the IFCS Secretariat, World Health Organization, CH-1211 Geneva 27, Switzerland; tel: +41 (22) 791-3588; fax: +41 (22) 791-4848; e-mail: ifcs@who.ch; internet: <http://www.who.ch/whosis/ifcs/ifcshome.htm>.

WTO COMMITTEE ON TRADE AND ENVIRONMENT: From 17-18 March 1998, the WTO Committee on Trade and Environment (CTE) will convene a second NGO Symposium in Geneva: Strengthening Complementarities between Trade, Environment and Sustainable Development. Participants and speakers have been invited from the private sector, research and academic institutes, and environment and development NGOs. The Symposium will address three broad themes: identifying institutional links in the trade-environment-sustainable development nexus; deepening understanding of the economic links between trade liberalization and the environment; and examining the issue of legal compatibility between international trade and environmental policies. The CTE itself will meet immediately following the Symposium on 19-20 March 1998. For further information contact Sabrina Shaw at the WTO Secretariat, Environment Division, tel: +41 (22) 739-5383; fax: +41 (22) 739-5620; e-mail: sabrina.shaw@wto.org; internet: <http://www.wto.org>.

COMMISSION ON SUSTAINABLE DEVELOPMENT: The Commission on Sustainable Development (CSD) will hold its sixth session (CSD-6) in New York from 20 April-1 May 1998. For more information contact the Division for Sustainable Development, United Nations Plaza, Room DC2-2270, New York, NY 10017 USA; tel: +1 (212) 963 3170; fax: +1 (212) 963 4260; internet: <http://www.un.org/esa/sustdev/>; e-mail: dpcsd@un.org.

IEP '98: Issues in Environmental Pollution (IEP'98), the first in a new series of international symposia, will take place from 23-26 August 1998 in Denver, Colorado, USA. The symposium will focus on the state and use of science and predictive models. The main scientific issues in environmental pollution—persistent organic chemicals; metals and radioactivity; ozone and acidic deposition; particulates and global climate change—will be linked with the use of science and predictive models. For more information, contact Lyn Quirke at the Conference Secretariat; tel: +44 (0) 1235-868380; fax: +44 (0) 1235-868420; e-mail: lynquirke@compuserve.com. Also try <http://www.elsevier.nl/locate/iep98>.