



## PIC INC-8 HIGHLIGHTS THURSDAY, 11 OCTOBER 2001

On the fourth day of INC-8, delegates met briefly in Plenary to hear reports from the Working Groups and the Legal Drafting Group, then reconvened in the Working Groups to discuss discontinuation of the interim prior informed consent (PIC) procedure and conflict of interest in the Interim Chemical Review Committee (ICRC). The Legal Drafting Group also met to discuss financial rules and non-compliance.

### PLENARY

Patrick Szell (UK), Legal Drafting Group Chair, presented the results of the group's discussion on rules of procedure. He said the Group suggested the following: on frequency of meetings, that the second and third COPs be held annually, and every two years thereafter; regarding observers, to accept the original rule with a note on the importance of documentation for the COP being circulated well in advance; on the term of office, that the President and the Bureau be elected at the closure of the COP and serve until the closure of the following COP; on determining a quorum for a decision on a matter within the competence of a regional economic integration organization (REIO), that the REIO is entitled to cast its votes in accordance with Article 23 (voting); and that the rule on a secret ballot remain unchanged.

He noted that the rule on a two-thirds majority vote remained under review and should be revised at the next INC. Szell also said that progress on examination of conciliation and arbitration, and financial rules and procedures will be presented to Plenary on Friday morning.

Gerardo Viña-Vizcaino (Colombia), Chair of the Working Group on Conflict of Interest, presented the main recommendations of the Group, including: incorporating the main elements of the code of conduct of the Montreal Protocol into the decision on conflict of interest; and assessing conflict of interest based on the criteria set out in the declaration of interest in a consistent manner and on a case-by-case basis.

The Group also recommended that: the declaration be filled in by the expert and submitted by the designating government to the interim Secretariat; the role of the INC Bureau be increased; the Secretariat discuss an expert's suitability or conflict of interest

with both the expert and the designating government; and the Bureau can temporarily suspend the participation of the expert in all or some of the activities of the ICRC, although the final decision is to be taken by the INC. He said that remaining issues of confidentiality and disclosure of the declarations would be resolved when the Group reconvenes.

INC Chair Maria Celina de Azevedo Rodrigues noted that the Working Group on Discontinuation of the Interim PIC Procedure would meet briefly to discuss its draft report.

### WORKING GROUP ON DISCONTINUATION OF THE INTERIM PIC PROCEDURE

The Working Group on Discontinuation reconvened after morning Plenary to discuss its draft report, specifically with respect to recommendations offered during Wednesday's session. Discussion focused on minor alterations to the report's wording.

Delegates did not reach consensus regarding the composition of the PIC regions, leaving two options: one stating that the new PIC regions adopted at COP-1 should be based on the geographical distribution of the Parties at that time; and the second, suggested by AUSTRALIA, stating that the PIC regions adopted at COP-1 should be based on the regions used during the interim PIC procedure, pending consideration of the geographical distribution of Parties at that time.

On inclusion of chemicals in Annex III that were included in the interim PIC procedure before COP-1, but are not yet listed in Annex III, the US suggested, and delegates accepted, text specifying that chemicals added to the interim PIC procedure "prior to the entry into force of the Convention" will have met the requirements of the Convention.

Regarding obligations in relation to exports of chemicals listed in Annex III, specifically chemicals subject to the interim PIC procedure, but not yet listed in Annex III, delegates agreed to consider options stating that Parties could be given up to nine months from the first COP to provide a response, or that the date of the first COP could be taken as formal notice of non-response. They also agreed to delete an option specifying that the date of formal notice of non-response through the *PIC Circulars* during the interim period could be the basis for obligations in relation to exports of chemicals listed in Annex III (Article 11).

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Regarding options for notifications of final regulatory actions and proposals for severely hazardous pesticide formulations, the US suggested, and delegates accepted, additional wording in the chapeau specifying that on the matter of administrative arrangements “regarding proposals by Parties, there are two options for severely hazardous pesticide formulations.”

On notifications for final regulatory actions and proposals for severely hazardous pesticide formulations submitted by non-Parties that participate in the interim PIC procedure, it was agreed that this should refer to chemicals included in the interim PIC procedure and that have subsequently been added to Annex III by a COP decision, regardless of the source of the notifications.

Regarding the status of notifications and proposals submitted by Participating States during the transition period, delegates preferred that the draft report contain the solutions presented in UNEP/FAO/PIC/INC.8/16, specifically that: 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 entry into force would remain eligible for consideration by the Chemical Review Committee (CRC) during the transition period; any new notifications and/or proposals from Participating States would not be eligible for review by the CRC; and a synopsis of all verified notifications and/or summaries of all verified proposals submitted by both Parties and Participating States would be included in the appropriate issues of the *PIC Circular*. Delegates endorsed the third solution but no consensus was reached on the first and second.

#### **WORKING GROUP ON CONFLICT OF INTEREST IN THE ICRC**

Delegates discussed main conclusions regarding the revised decision on procedures relating to conflicts of interest. The Chair noted that the issues of confidentiality and restrictions to the release of information contained in the declarations of interest remained unresolved. Delegates discussed cases where further clarification might be requested from an expert and debated the manner in which the expert and the designating country would be notified. The Secretariat explained that it could refer the matter to the INC Bureau, which could then request the government to not designate the expert.

EGYPT distinguished between requesting further clarification as to the suitability of an expert and requesting a government not to designate the expert. The EC said the INC Bureau cannot request anything from the government, but that it can examine the information and make a recommendation to the INC. CANADA suggested language stating that depending on the circumstances, the Secretariat could refer the matter to the INC Bureau for resolution with the nominating government. The Chair stressed that the Secretariat would play an administrative rather than a decision-making role, noting that the Bureau could take a decision and that notifications could be given by the Secretariat. The Secretariat suggested not referring to itself at this point, reiterating that the Bureau would make a recommendation for settling the matter with the government.

The EC reiterated that the INC would make the final decision, and CANADA clarified that the Secretariat would only act as a bridge between the Bureau and the nominating government.

AUSTRALIA pointed out that more detail was included in the draft decision, and the Chair asked the Secretariat to incorporate ideas from the draft decision into the proposed procedure.

In the afternoon, the Group discussed the draft decision on the procedure for preventing and dealing with conflicts of interest relating to the activities of the ICRC (UNEP/FAO/PIC/INC.8/10). AUSTRALIA, with the NETHERLANDS, suggested not limiting disclosure of interests to the chemical or pesticide industries. The US and AUSTRIA said that information on interests relating to those industries could be useful. EGYPT called for a uniform approach to communication between the Secretariat and the experts. Delegates agreed that the Secretariat would discuss suitability of experts “with the designating government and the prospective expert, through the government, as appropriate.” On disclosure of information, CANADA suggested, and delegates agreed, that information from the declaration be provided, “to the extent necessary to the INC, its Bureau and its subsidiary bodies.” BELGIUM asked what would trigger discussion at the INC Bureau of the conflict. CANADA suggested not being specific on this issue. Delegates also approved AUSTRALIA’s proposal to review the decision in five years from its adoption, or at the first COP, whichever comes first.

Delegates then discussed the content of the declaration of interests form. CANADA, supported by AUSTRALIA, suggested language reflecting that disclosed information shall reside with the interim Secretariat and be made available to the INC, the Bureau and subsidiary bodies as deemed necessary. Delegates then discussed whether experts would have to fill in a declaration every year and notify the interim Secretariat of any changes as they occur. Some felt this would result in too much administrative work for the Secretariat, and suggested that all appointed experts would be required to immediately inform the Secretariat of any changes, including if an issue arises during the meeting or work itself. Regarding application of the procedure to existing ICRC members, Niek van der Graaff, Executive Secretary of the Convention, said the Working Group could make a recommendation to the INC as to whether or not the procedure should apply to existing ICRC members. AUSTRALIA supported applying the process to current ICRC members, and, in response to China’s request for a specific timetable, suggested that members provide a declaration prior to the next ICRC meeting. CANADA, supported by EGYPT, recommended that the procedure go into effect immediately after the conclusion of INC-8.

#### **IN THE CORRIDORS**

Day four of INC-8 started and ended on a positive note, with an encouraging report from the Legal Drafting Group stating that it had finished their initial assignment on the draft rules of procedure and were ready to begin work on financial rules and compliance. Some delegates were surprised that the Working Groups were so expeditious in carrying out their tasks and finishing before their deadlines, given the usual UN protocol to fill every minute allotted.

#### **THINGS TO LOOK FOR TODAY**

**PLENARY:** Delegates are expected to reconvene at 10:00 am in the Green Room at FAO Headquarters to hear reports from the legal drafting and working groups.