On the third day of INC-8, delegates met briefly in Plenary to discuss non-compliance and convened in working groups on discontinuation of the interim prior informed consent (PIC) procedure and on conflict of interest in the Interim Chemical Review Committee (ICRC). The legal drafting group also convened to discuss financial rules.

**PLENARY**

Masa Nagai, interim Secretariat, presented documents on non-compliance (UNEFP/FAO/PIC/INC.8/14, INC.8/15 and INC.8/INF/2). Describing a possible non-compliance model as requested by INC-7, he outlined its two components: an institutional mechanism and a model of procedure. INC Chair Maria Celina de Azevedo Rodrigues then opened the floor for comments, but requested that negotiating positions be considered in full detail by the legal drafting group.

Delegates offered their qualified support for the proposed non-compliance mechanism and procedure model, and generally agreed that the mechanism should be guided by the principles of transparency and representation and should not discourage future accessions. Delegates expressed a range of positions, with most agreeing that the mechanism should encourage and facilitate compliance to the maximum extent possible. The EU said that compliance should include a strong enabling component and a range of “soft and stringent” measures in cases of non-compliance. CHINA said the mechanism should be based on simplicity, transparency, timeliness, and predictability. AUSTRALIA expressed broad agreement with CHINA, and, supported by NEW ZEALAND, emphasized that the compliance mechanism should be facilitative and not penalty-based. On reporting, the EU said that while the Secretariat note was a good starting point for discussion, further examination is necessary. CANADA said that voluntary accessions to the Convention should be facilitative and not penalty-based. On obligations relating to the import of Annex III chemicals, Murray noted that the Convention does not indicate what will happen to import responses after entry into force. He proposed that the import responses recorded in the first PIC Circular published after entry into force be a benchmark for the status of import responses, with distinction being made between Parties and non-Parties. Delegates supported using the same procedure for import responses for chemicals subject to the interim PIC procedure but not yet listed in Annex III, and for the export of chemicals listed in Annex III.

For chemicals subject to the interim PIC procedure but not yet listed in Annex III, delegates discussed two solutions: having States and regional economic integration organizations provide import responses; or, in cases where an import response has not been transmitted, giving States and regional economic integration organizations additional time to submit an import response. Delegates debated whether the timeframe would begin from the time of the entry into force or the date when the response was recorded as not transmitted. Delegates agreed to compromise wording integrating both solutions.

On carrying forward lists of proposals of severely hazardous pesticide formulations, Murray recommended the lists be carried forward into the transition period so as not to unduly burden Parties with resubmission. Delegates agreed that this option, in addition to one reflecting the US interest requiring Parties to request the carrying forward of their previous proposals, be accepted for consideration.

Regarding chemicals included in the interim PIC procedure, but not yet listed in Annex III, delegates agreed that these chemicals should be added to Annex III, regardless of whether the notifications had been submitted by Parties or Participating States.
On procedures developed by the INC and ICRC, delegates agreed to recommend that these procedures be applied to the operation of the Convention. Regarding the length of the transition period during which both the Convention and the interim PIC procedure would be in effect, delegates agreed to a two-year timeframe. Several developing countries stressed the importance of capacity building in expediting ratification. Delegates agreed to the option, with a provision allowing technical assistance for the purpose of capacity building with a view to ratification.

Regarding the proposed procedure, the Secretariat clarified that the main issue was whether the system would operate within the ICRC or through the Secretariat and the INC. The US said the Secretariat’s proposal was based more on the FAO and WHO procedure, and, with CANADA, preferred a procedure similar to that of the Montreal Protocol, whereby the technical group would take decisions without the involvement of the Secretariat. He also said there was no need for confidentiality mechanisms. FRANCE, the NETHERLANDS, AUSTRIA and BELGIUM supported a procedure closer to that used by the FAO and WHO, involving the INC and providing checks and balances. AUSTRALIA agreed an external check was important but stressed that members of the ICRC should not be excluded from the process, and, with EGYPT, suggested combining elements of both models.

Chair Viña-Vizcaino underscored the importance of confidentiality, independence, and avoiding conflict of interest, and requested language encouraging countries to offer well-considered nominations. EGYPT asked whether a nominating government should review the declaration of interest. Niek van der Graaff, Executive Secretary of the Convention, said since ICRC experts are designated by governments, the declaration should be endorsed by the nominating country, and delegates agreed. CANADA, EGYPT, FRANCE and ZAMBIA supported the declaration proposed by the Secretariat. AUSTRALIA suggested incorporating into the declaration components from the code of conduct of the Technology and Economic Assessment Panel of the Montreal Protocol, and delegates agreed.

CANADA said a conflict of interest should not exclude an expert from participating in the ICRC, noting that an expert could have a conflict on one issue, and could therefore be excluded from discussing that particular issue. He suggested an ad hoc committee analyze conflicts of interest on a case-by-case basis. The US said using a procedure similar to that under the Montreal Protocol would eliminate the need for a subsidiary body. AUSTRALIA emphasized that expert appointments are for three years and that new conflicts of interest could arise during the expert’s tenure, and asked how this could be addressed. EGYPT suggested a mechanism for monitoring such information. The US, supported by AUSTRALIA, noted that within the code of conduct, experts would agree to annually disclose activities, and said this would eliminate the need for oversight. If a conflict of interest exists, BELGIUM stressed that the designating government should be able to reconsider its expert before reverting the issue to the COP. Van der Graaff said governments should not be able to ask for the removal of experts. AUSTRIA, MEXICO, AUSTRALIA and others agreed the issue should be addressed on a case-by-case basis to ensure transparency is maintained and that experts disclosing their conflicts of interest may voluntarily recuse. A small group continued meeting to, inter alia, finalize details of the declaration.

THINGS TO LOOK FOR TODAY

PLENARY: Delegates are expected to reconvene briefly in Plenary from 10:00 am in the Green Room at FAO Headquarters to assess progress made in the Drafting and Working Groups.

WORKING GROUPS: Working Groups on discontinuation of the interim PIC procedure and on conflict of interest in the ICRC are expected to convene after Plenary is adjourned.