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REPORT OF THE THIRD 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: 26-30 MAY 1997

The third session of the Intergovernmental Negotiating Committee (INC-3) 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 26-30 May 1997 in Geneva. Delegates considered the revised text of draft articles for the instrument as well as proposals from the US, Canada and the 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.

Considerable debate centered on the scope of the proposed Convention; the brackets scattered liberally throughout the text denote a fundamental disagreement on the purpose of the entire PIC negotiations. Notwithstanding questions of scope, delegates face a substantial task in finalizing a treaty by the end of the year. While a net loss or gain of brackets is difficult to gauge, the brackets remaining represent a considerable hurdle with only one INC remaining and the chance for some "fine tuning" before the diplomatic conference in December.

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 safe use. This led to 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 freely available, thereby permitting countries to assess the risks associated with chemical 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.

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.

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.

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

IN THIS ISSUE

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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 cooperation with other international organizations (IGOs) 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.

The first session of the INC (INC-1) was held from 11-15 March 1996 in Brussels. More than 194 delegates from 80 governments, the European Commission and 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.

The second session of the INC (INC-2), which was held from 16-20 September 1996 in Nairobi, was attended by 220 delegates from 86 governments. INC-2 produced a draft text of the Convention and established a Technical Working Group and a Legal Drafting Group. Delegates agreed that many facets of the instrument needed further detailed consideration and noted the need for at least one additional negotiating session before the final session.

The FAO Council, in its 111th meeting held 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.

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.

REPORT OF INC-3

Chair Maria Celina de Azevedo Rodrigues (Brazil) opened INC-3 on 26 May 1997, and introduced Phillippe Roch, head of the Swiss Office fédéral de l'Environnement des Forêts et du Paysage. Mr. Roch noted that one of the goals of sustainable development is to ensure that free trade and environmental protection are mutually supportive. These negotiations should create a framework for control that respects fundamental trade principles, which could represent a concrete contribution toward the integration of trade and environment.

UNEP Executive Director Elizabeth Dowdeswell said the magnitude of potential dangers cannot await scientific certainty and highlighted the importance of developing a "safety net" for chemicals that covers all countries, not just a few. She said the PIC procedure requires innovative approaches to environmental protection.

FAO Assistant Director-General Dr. A. Sawadogo, speaking on behalf of FAO Director-General Jacques Diouf, noted FAO's particular interest in the PIC negotiations since many chemicals under consideration are pesticides. He commended delegates for their work at INC-1 and INC-2, but cautioned that much remains to be done before the instrument would be ready for adoption. He highlighted procedures for export notification, settlement of disputes and the functioning and location of the future Secretariat as important issues.

Delegates were also informed of decisions taken by the 111th FAO Governing Council and the 19th UNEP Governing Council concerning the progress of and mandate for the PIC negotiations.

ORGANIZATIONAL MATTERS

During the opening Plenary, the Chair recalled that INC-2 had established two sessional groups: a Technical Working Group, chaired by Rainer Arndt (Germany) and a Legal Drafting Group, chaired by Patrick Széll (UK). Following Plenary discussion on each group of Articles, the Technical Working Group had met to consider the views expressed and address policy issues, and reported back to Plenary. The revised text was then transmitted to the Legal Drafting Group for translation into acceptable legal language. Delegates agreed to continue this procedure.

Discussions were based on the revised text of the draft Articles, which were contained in an annex to the report of INC-2 (UNEP/FAO/PIC/INC.2/7). Comments on the draft Articles were submitted by the European Community (UNEP/FAO/PIC/INC.3/CRP.1), the US (UNEP/FAO/PIC/INC.3/CRP.2) and Canada (UNEP/FAO/PIC/INC.3/CRP.3). Delegates also had before them:

- a note by the Secretariat concerning the Convention's scope and exemptions (UNEP/FAO/PIC/INC.3/INF/1);
- a note on the relationship of the instrument to other international agreements (UNEP/FAO/PIC/INC.3/INF/2); and
- a background paper on provisions concerning a Secretariat (UNEP/FAO/PIC/INC.3/INF/3).

The following officers served as Vice-Chairs at INC-3: Yuri Kundiev (Ukraine); Mohamed Bentaja (Morocco); and William Murray (Canada). Wang Zhijia (China) served as rapporteur.

NEGOTIATION OF THE DRAFT CONVENTION

Deliberations on the draft Articles began on 26 May in the Technical Working Group, the Legal Drafting Group and Plenary. The Technical Working Group frequently convened informal contact groups to discuss difficult issues and report back with revised text for further consideration. Plenary was convened periodically throughout the week to consider the draft Articles emerging from both the Technical Working Group and the Legal Drafting Group.

ARTICLE 1 (Objective): The revised text of draft Article 1, which was not discussed at INC-3, states that the objective of this Convention is 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. The Convention will also contribute to the environmentally sound use of chemicals by promoting and facilitating information exchange and by providing for national decision-making processes on the future import of these chemicals and the dissemination of these decisions to Parties. Article 1 will remain with the Technical Working Group for further consideration.

ARTICLE 2 (Definitions): The Legal Drafting Group discussed parts of draft Article 2, which contains definitions for, *inter alia*: chemicals, banned chemicals, severely restricted chemicals, hazardous pesticide formulations, international trade and prior informed consent. The Legal Drafting Group submitted a revised

definition of "regional economic integration organization" (UNEP/FAO/PIC/INC.3/CRP.22), which was noted by the Plenary.

ARTICLE 3 (Scope of the Convention): On 26 May, delegates considered Article 3 in Plenary. Article 3(1) notes that the Convention would apply to: banned or severely restricted chemicals and [acutely] hazardous pesticide formulations. On 3(1)(b), [acutely] hazardous pesticide formulations, the EC suggested deleting "acutely" and adding "chemicals with severe environmental or health effects in developing countries and countries with economies in transition". Several countries, including the RUSSIAN FEDERATION, BARBADOS, COSTA RICA, UKRAINE, ARGENTINA, INDONESIA, CUBA and BENIN, agreed with the deletion of "acutely", arguing that to delimit the scope of the agreement in this way would weaken it. Others, including MALAYSIA and the REPUBLIC OF KOREA, suggested that retaining such wording would ignore the real dangers of non-acute chemicals that are toxic after accumulation. PERU and the UKRAINE also noted that a WHO definition of "acutely hazardous pesticides" already exists. The US, supported by JORDAN, AUSTRALIA and COLOMBIA, argued that "acutely" is used by the London Guidelines and should be retained. They argued that expanding the scope of the agreement too much would jeopardize the chance of concluding negotiations in the near future. The Chemical Manufacturers Association (CMA) opposed the EC proposal, and noted the difficulty of defining a severe health or environmental effect.

Article 3(2) lists the topics the instrument will not cover, such as narcotic drugs, pharmaceuticals, [chemicals used as food additives], chemical wastes and [chemical weapons and their precursors]. AUSTRALIA suggested retaining all the sub-points under Article 3(2), and proposed adding genetically modified organisms, chemical contaminants and pesticide residues. On chemical wastes, the EC noted that further consideration should be given to connection with the Basel Convention. The GAMBIA suggested that outdated and rejected chemicals should be included because of their continued use in African countries.

Some delegations suggested changes to [chemical weapons and their precursors]. The EC, supported by MALAYSIA and BRAZIL, proposed deleting "precursors", whereas COSTA RICA said that "precursors" should be defined because many such compounds are used in industry for purposes other than chemical weapons. PERU, NIGERIA, CUBA and COLOMBIA suggested deleting the brackets.

The EC noted that further consideration was needed on chemicals used as food additives. PERU suggested that the brackets be deleted. Others also supported retaining this exception, including the REPUBLIC OF KOREA, BRAZIL, CUBA and COLOMBIA. The US pointed out that FAO's Codex Alimentarius is already developing a comprehensive system for the exchange of information between importers and exporters on food additives.

Article 3(2) also contains proposals to exclude chemicals for research and for personal use in reasonable quantities. The EC proposed a 100kg limit for research and 10kg for personal use. The RUSSIAN FEDERATION, UKRAINE, COSTA RICA, ALGERIA and CUBA questioned the concept of a "reasonable" quantity for chemicals for personal use. The REPUBLIC OF KOREA expressed concern over the complexity involved in specifying exact quantities allowable for different chemicals. Other delegations, including NIGERIA, BARBADOS and INDIA, suggested that quantification would be necessary. The EC said the idea was to include a specific target, not necessarily the specific numbers he had proposed. JAMAICA and JORDAN argued that each country, through domestic regulation, should decide such specific exemptions. The GAMBIA noted the difficulties for developing country researchers, and supported including an exception, such as chemicals imported for research. BRAZIL supported deleting this exception. These comments will be reflected in a revised draft article for consideration by the Plenary at INC-4.

ARTICLE 4 (General obligations): This article was not discussed at INC-3 and will remain with the Technical Working Group for further consideration. The draft Article contains, *inter alia*, three bracketed references that obligate Parties to:

- exchange information on chemicals in international trade with the objective of protecting human health and the environment;
- provide information to other Parties on all control actions taken to ban or severely restrict chemicals; and
- provide information to other Parties on decisions regarding future imports of PIC chemicals.

ARTICLE 5 (Designated National Authorities): Article 5 details the establishment by each Party of designated national authorities (DNAs) as national points of contact to administer the functions required by the Convention. On 27 March, the Technical Working Group discussed draft Article 5, as well as Article 5 *bis*, "Informing Parties of Regulatory Measures". The latter text, the Chair noted, was similar to that of Article 6 and, following the written comments of a number of Parties, including the US, the EC and CANADA, he suggested its deletion. There was general consensus on this issue. The remaining text was not changed and noted in final Plenary.

ARTICLE 6 (Banned or Severely Restricted Chemicals): Article 6 deals with the process of notification of a control action taken to ban or severely restrict a chemical. On 27 March, the Technical Working Group considered 6(1), which requires Parties to notify the Secretariat in writing when they have adopted regulatory measures. CANADA, the US, COLOMBIA and the GLOBAL CROP PROTECTION FEDERATION (GCPF) supported the inclusion of a bracketed reference to "final" before "regulatory measures", to indicate that the Secretariat should not be notified about interim measures.

On 6(2), which addresses time limits, CANADA bracketed the proposed 90-day time limit for a Party to notify its control action, and said all references to specific time limits throughout the text should be bracketed as well. He noted that specific deadlines should not be decided until the text as a whole becomes more coherent. Delegates accepted this suggestion.

Article 6(3) directs Parties to notify the Secretariat of any existing control actions taken at the time of entry into force of the Convention. The EC proposed two measures to guide the transition from the current voluntary guidelines to the binding process: Parties that have already notified chemicals under the London Guidelines need not do so again under the Convention; and chemicals already included under the current voluntary scheme should be automatically considered to be included under the Convention.

The US proposed text similar to that of the EC and suggested creating a new section covering transitional issues. Delegates agreed to discuss a similar US proposal (Article 8 *bis*) together with Article 6(3). A contact group was formed to outline the differences between the two proposals.

Article 6(4) directs the Secretariat to review notifications of control measures and determine whether they comply with the terms of the Convention. The EC objected to "as soon as possible", and suggested setting a specific time frame on the Secretariat's actions. He also proposed having the Secretariat request additional information from a Party in case of non-compliance. CANADA said the Secretariat should be responsible for tracking the status of non-compliance with notifications, noting that under the current voluntary system many countries did not respond to Secretariat requests. He suggested that the Secretariat be directed to return any incomplete or "non-complying" notification to the country involved.

ARGENTINA said delegations were over-emphasizing procedural issues and suggested describing the duties of the Secretariat in an Article that also covers transitional issues. It was agreed that the contact group on Article 6(3) would address this problem.

Article 6(6) stipulates the "trigger mechanism" for having a chemical included in the PIC procedure. The major issues of contention were: how many notifications would be needed to trigger the procedure; what standards of scientific rigor those notifications might need to meet; and whether a subsidiary body was needed to act as a "filter" on the trigger mechanism.

CANADA, supported by NEW ZEALAND, proposed that notifications from five countries, comprising three or more FAO regions, should be required to trigger the PIC procedure. He argued that the requirement for wide regional consensus would ensure that any chemical listed constituted a legitimate global problem, and required action at the international level. AUSTRALIA, the US and COLOMBIA noted the administrative burden involved in dealing with each case. CAMEROON supported the regional approach.

The EC argued for a one-country trigger mechanism, noting that history has shown that control actions by one country were sufficient to spur other countries to action on the chemical in question. A number of countries supported the EC position, including BARBADOS, ARGENTINA, BRAZIL, NORWAY, the REPUBLIC OF KOREA, PANAMA, PHILIPPINES, JORDAN and COSTA RICA. PESTICIDES TRUST, supported by JAMAICA, said a number of regions lack the technical capacity to perform rigorous assessments, making the regional requirement effectively very restrictive.

SWITZERLAND said the EC proposal might be too easy and the CANADIAN proposal too difficult and proposed that more than one country notification could trigger the PIC procedure. MOROCCO, the GAMBIA, CHINA, CHILE, INDIA, SRI LANKA and NIGERIA supported this proposal. JAMAICA suggested that after a certain number of notifications there should be provision of financial and technical assistance to developing countries interested in performing their own assessments.

SWITZERLAND supported bracketed text calling for a subsidiary body of scientific experts to review the case against any chemical once the PIC procedure had been set in motion. A number of delegations agreed on the need for such a body, which the EC proposed to call the Subsidiary Body for Scientific and Technical Advice (SBSTA) of the Conference of the Parties (COP). The GCPF noted that there had been no discussion of how such a body would function, and suggested defining the membership as "government experts acting in their own capacity, and including appropriate NGOs as observers".

CAMEROON and BARBADOS noted the need for some quality control mechanism for risk assessments supporting notifications. BARBADOS proposed that this might be the task of the subsidiary body.

An informal contact group was convened to revise the draft article. On 29 May, the Technical Working Group considered the contact group's revised draft. (UNEP/FAO/PIC/INC.3/CRP.33). The Technical Working Group agreed to the text as proposed, which contains bracketed references to the number of verified notifications and the number of notifying regions necessary to trigger the PIC procedure. The revised draft will be forwarded to the Legal Drafting Group for further consideration.

ARTICLE 7 (Acutely Hazardous Pesticide Formulations)**:** Article 7 provides a process for including hazardous pesticide formulations in the PIC procedure. On 28 May, the Technical Working Group considered draft Article 7(1), which notes that any Party experiencing problems with a hazardous pesticide formulation under conditions of use in its territory may propose to the Secretariat, through its DNA, the chemical's inclusion in the prior informed consent procedure.

The EC, supported by NORWAY and COSTA RICA, said countries have gained experience through the voluntary PIC procedure and proposed extending the coverage beyond pesticides to chemicals causing severe health or environmental problems. The EC said the proposal does not exceed the INC's mandate and noted that while the London Guidelines focus on pesticides, the current voluntary scheme applies to other chemicals.

The US, CANADA, SWITZERLAND, AUSTRALIA and JAPAN said that expanding to non-pesticides exceeded the focus of the current voluntary scheme and conflicted with the mandate of the INC. The US also noted that while the mandate is open to interpretation, the timing of the negotiations assumes delegates were working to make current practice legally binding. A major change in a category at this point would create a major problem. AUSTRALIA recalled that this provision originated at a time when many developing countries did not have registration schemes and could not nominate chemicals. NAMIBIA said enlarging the group of chemicals under consideration could cause problems for developing countries that can scarcely handle existing PIC obligations.

Article 7(1) also includes bracketed text regarding assistance from IGOs and NGOs in developing the proposals. BRAZIL said the text assumed the assistance would be mandatory and proposed adding "as required". The US and CANADA said IGOs and NGOs would not be Parties to the instrument and should not be referenced. NIGERIA sought to include the reference to assistance. AUSTRALIA noted that not all pesticide problems require a multilateral action and said the disciplines under Article 6 should apply.

On 29 May, delegates considered Article 7 in Plenary. JAPAN, SWITZERLAND, INDIA, the US, COLOMBIA, SOUTH AFRICA, AUSTRALIA, CANADA and NEW ZEALAND expressed concern about widening the scope of the Convention beyond that of the current voluntary procedure. It was noted that such a situation could jeopardize the goal of completing an agreement before the end of the year. The EC indicated a different reading of the mandate and argued that the purpose of this INC was not to simply "photocopy the London Guidelines" and send them to the Legal Drafting Group.

Some delegations, including CHINA, INDONESIA and COLOMBIA, proposed retaining "acutely" in Article 7. UKRAINE noted that as it was necessary to differentiate between very harmful and less harmful pesticides, the term "extremely hazardous" could be used. NIGERIA, supported by GABON, noted that the African Group wanted "acutely" to be defined before removing the brackets and that 7(1) should be re-framed to address the problem of inadequate infrastructure. MEXICO, representing the Latin American and Caribbean countries, requested a definition of "acutely" in writing and said a consensus definition was needed.

TANZANIA stated that industrial and consumer chemicals should be monitored by PIC but not included in Article 7. She suggested there could be another way of including other chemicals in the PIC procedure. PESTICIDES TRUST noted that the positions of developing countries, especially those from Africa, should be heard. NGO experience suggests that more information and support was required for hazardous chemicals and that impacts on the environment as well as human health should be considered.

The Chair took note of the two conceptions of the PIC Convention's scope said that this issue would be considered further at INC-4. The US suggested establishing an intersessional working group of the governments particularly interested in the subject. JAPAN, CHINA, COLOMBIA and the RUSSIAN FEDERATION supported this proposal. Jim Willis, UNEP, noted the limited resources available for remaining meetings. In the final Plenary, delegates noted that Article 7 would remain with the Technical Working Group for further consideration.

ARTICLE 8 (Decision Guidance Documents and Approval of Chemicals): Article 8 details the decision-making process leading to the inclusion or exclusion of a chemical in the PIC procedure. On 27 May, the Technical Working Group addressed the article, and focused mainly on whether the decisions taken by the subsidiary body and the COP for including a chemical in the PIC procedure would be based on consensus. ARGENTINA was strongly opposed to the use of consensus, which could be a *de facto* veto mechanism. A number of others agreed, including ZIMBABWE, PANAMA, MEXICO, INDONESIA and PESTICIDES TRUST.

CANADA, supported by AUSTRALIA, argued for the decisions of the subsidiary body and the COP to be made by consensus, with no "opt out" clause for particular chemicals. The US argued that all Parties would need to follow the same PIC list, and that consensus decisions were the only way to achieve that end. The EC stressed the need for balance, noting that "filter mechanisms" should not be used to block progress. He argued that at the subsidiary body level consensus would be difficult since that body was to provide scientific and technical advice. For the COP, he stressed the need for a mechanism that would avoid Parties having to ratify the Convention anew after each chemical addition.

The Chair asked if there was a need for text outlining the elements of the Decision Guidance Document (DGD), or on the removal of chemical from the PIC procedure. SWITZERLAND, CANADA and GCPF agreed with the need for a PIC deletion Article, pointing out that such a procedure had already been used in the current voluntary PIC. The EC indicated that it had proposed such text in Article 7 of its circulated paper.

On 29 May, the Technical Working Group considered the draft text of Articles 8(1) through 8(3), as revised by the informal contact group (UNEP/FAO/PIC/INC.3/CRP.34). On 8(1), the unresolved issue was whether the subsidiary body would determine by consensus, or by majority vote, whether or not to recommend chemicals for inclusion in the PIC procedure. Since most Parties were opposed to consensus decisions, discussions focused on how to structure a voting mechanism. The draft text specified a majority vote, in accordance with rules of procedure to be established by the COP. The US noted that "majority" could mean anything from simple majority to a specified percentage. The Chair proposed sending the text to the Legal Drafting Group to find language that would exclude decision making by consensus.

The same issue arose in Article 8(2), with respect to decisions made by the COP on including chemicals in the PIC procedure. Views on this issue remained polarized and the text remained bracketed. The revised draft text was noted in final Plenary and will be considered by the Legal Drafting Group at INC-4.

At the Chair's suggestion, a contact group was convened to consider the status, under the legally binding regime, of the chemicals already included in the voluntary procedure. The group also considered a process for the removal of chemicals from the PIC procedure. The contact group's draft texts on these topics were presented to the Technical Working Group on 29 May as Article 8 *bis (*UNPE/FAO/PIC/INC.3/CRP.28/Rev.3) and Article 8 *ter* (UNEP/FAO/PIC/INC.3/CRP.35), respectively.

The Technical Working Group agreed that Article 8 *bis* should be considered during discussion on Article 6(3) since both dealt with transitional issues. Article 8 *ter* was passed on to Plenary as presented, after noting that the voting procedure for removal and inclusion would correspond to that eventually negotiated under Articles 8(1) and 8(2).

ARTICLE 9 (Obligations of Importing Parties)**:** On 26 May, delegates discussed Article 9 in Plenary. Article 9 includes, *inter alia*, draft obligations that require importing Parties to implement legislative and/or administrative measures, and to transmit decisions on future importation to the Secretariat. It further outlines the information required for an import response, the rules governing the failure to transmit a response, the requirement not to create disguised barriers to trade, and the role of the Secretariat in informing Parties about importing country responses. The EC noted that this article was extremely long, and suggested dividing it into two conceptually different sections.

On 9(1), implementation of legislative and/or administrative measures, the US proposed making the obligations binding and favored inserting a new paragraph requiring that each country's decision on importing listed chemicals take into account the information outlined in the DGD. He further proposed to amend 9(5), failure of an importing Party to transmit a response, such that the importer shall not import a chemical unless certain conditions are met, such as explicit permission for import being granted. The current text places the responsibility not to trade, in such a case, on the exporter.

The EC suggested that 9(7), which aims to prevent arbitrary or unjustified discrimination between Parties in the application of restrictions, be replaced by a paragraph stipulating that a country exercising such restrictions shall apply the same conditions to imports from all countries, as well as to domestic production. The US proposed simplifying the text embodying the principle of national treatment. He also said the text should not specify when countries could take specific actions because the issue is covered by the WTO. COSTA RICA characterized the text as "lifted" from WTO rules and noted that since the Convention intends to respect those rules, the paragraph was unnecessary.

On 28 May, the Technical Working Group discussed Article 9, as re-drafted by the informal contact group that met on 27 May (UNEP/FAO/PIC/INC.3/CRP.18). On Article 9(1), the EC and CANADA disagreed on the scope of obligation. The EC maintained that it should be a broad obligation, while CANADA and others argued that it should apply only to decisions taken under the Convention with respect to imports. There was no resolution of this issue.

ZIMBABWE and JAMAICA asked for insertion of language qualifying the obligation to implement legislative and/or administrative measures, noting that some countries do not have the capacity to undertake such measures. The US opposed such language, arguing that it would allow Parties to avoid meeting the most basic obligations of the Convention. The inserted text remained bracketed.

On 9(2), there was general consensus that a specific time frame be set for a Party to respond to DGDs, and that the bracketed six-month time frame might be too low, although PANAMA argued that this was certainly enough time for an interim decision as envisioned in 9(3)(b). The EC pointed out that final decisions for the Community would involve substantial regional coordination. It was agreed that nine months would replace the six-month time frame

Article 9(3) outlines the elements of the country responses to a DGD, and is divided into elements of a final decision, and elements of an interim response. Discussion began on bracketed text in the chapeau that specified that country responses should be related to the use category for the chemical in question. BRAZIL opposed this language, which had been inserted by the EC, and opposed similar language related to use categories also in 9(3)(a)(ii) and 9(3)(a)(iii). There was no resolution, and brackets remained in the chapeau and in 9(3)(a)(iii), while the EC agreed to delete the bracketed text in 9(3)(a)(ii). Lack of closure on this issue also meant that brackets remained around the text of 9(3)*bis*, which states that a response shall [be related] or [apply] to the use category.

On 9(3)(b)(iii), which allows an importer to ask, in an interim response, for Secretariat assistance in evaluating the chemical, CANADA cautioned that such requests might impose a substantial burden on the Secretariat. He pointed out that this had implications for the design, scope and size of the future Secretariat.

The US proposed 9(3) *ter*, which would oblige Parties taking decisions on chemicals to "take into account" the information outlined in the DGDs. Its intent was to ensure that any decisions taken actually be based on the DGD information. CANADA and AUSTRALIA supported the text. JAMAICA, supported by JORDAN and VENEZUELA, pointed out that such an obligation would be unenforceable. ZIMBABWE agreed, and argued that some countries, with limited capacity for technical evaluation, might nonetheless legitimately choose to restrict a chemical based on the precautionary principle. AUSTRIA proposed replacing "take into account" with "take note of", a suggestion on which there was consensus.

The US thought that Article 9(5), failure of an importing Party to transmit a response, should be amended since it should not be up to the exporter to keep track of the decisions of a country in such a case, and that the legal responsibility in the Convention should be on the importer not to import. He noted that this would provide some incentive for countries to respond to DGDs. The CMA supported the proposal, noting the difficulties in obtaining current information on importing country laws in absence of decisions on DGDs.

JORDAN and ARGENTINA opposed shifting the burden of legal responsibility to the importer. The EC also expressed a slight preference for the existing text, but asked for simplifying language.

CHINA opposed the text in 5(b), where if there had been no clear response to a DGD, "other governmental action" constituted a condition for allowing its import. He noted that his governmental structure is large and complex, and that local level governments or agencies may improperly import chemicals unbeknownst to the central government. This should not constitute a sufficient condition under the Convention to allow import of the chemical. NIGERIA agreed, and asked that "by other governmental action" be replaced with "by the DNA".

CANADA noted that "DNA" had a specific definition in the Convention, and proposed "highest competent national authority for chemicals and pesticides", a proposal not acceptable to CHINA. CANADA, supported by INDONESIA, argued that the chapeau relevant to 5(b) already implied that the DNA had not responded to the Secretariat. The Chair asked CANADA and others to try to develop new wording for the paragraph.

The Technical Working Group resumed deliberations on Article 9 on 29 May. Article 9(7), which sought to ensure non-discrimination and national treatment in the application of control measures, had two optional texts, the first proposed by CANADA and the second by the EC. The EC argued that CANADA's text was too general, and therefore duplicated the general obligations outlined in Article 4(5). The US argued that the EC text was too close to GATT text, and that this might create unintended problems. The US agreed to work with this text, but asked that it be bracketed, to allow for national consultation on possible underlying GATT issues.

Article 9(9) would allow countries not to accept the rights and responsibilities of importers under the Convention. The US, which has opted for this status under the current voluntary system, had proposed the text, but was comfortable withdrawing it in the face of any opposition, and did so. There was consensus that Article 9(10) would be covered elsewhere in guidelines on the transition from the voluntary system, and it was deleted.

It was agreed that Article 9(5) *bis* should remain in Article 9. GCPF noted that if the intent of this paragraph was to emulate the language in the London Guidelines, it should apply more broadly than simply to the case of non-notification as addressed in paragraph 5. The US supported such a broadening of applicability, and the transfer of 9(5) to Article 10 effectively accomplished it.

A contact group was convened to revise the draft text. On 30 May, the revised draft text was considered again by the Technical Working Group (UNEP/FAO/PIC/INC.3/CRP.18/Rev.1). Many of the same issues debated previously resurfaced: CHINA noted its difficulties with the revised 9(5)(b), and there was no agreement over whether or not to specify the DNA as the government body responsible for notification. There was also debate over whether preventing trade in the case of non-response to a DGD should be the responsibility of the importer or the exporter. The final result was to specify that the exporter would be responsible, and to move Article 9(5) to Article 10, since it was now an exporter obligation. The US asked that a footnote explain its reservations to this solution.

ARTICLE 10 (Obligations of Exporting Parties): On 26 May, Article 10 was discussed in Plenary. Article 10 outlines obligations including: implementation of legislative and/or administrative measures, conformity with the terms of an importing Party's response, ensuring compliance by exporters, and assistance for importing Parties.

On 30 May, the Technical Working Group discussed a draft of Article 10, as revised by the informal contact group on the obligations of exporting Parties, as contained in UNEP/FAO/PIC/INC.3/CRP.19. In 10(b), NIGERIA suggested that the exporting Parties should be obliged to abide by the terms of an importing Party's response after the date of the Secretariat's receipt of the response, rather than after the date of dispatch. The US, supported by CANADA, noted that date of dispatch was preferable because the exporting Party would not know the date of receipt. NIGERIA proposed bracketing "date of dispatch".

On 10(d), the requirement for exporting Parties to advise and assist Designated National Authorities in importing Parties, GHANA and JAMAICA, supported by the GAMBIA, noted that this was intended to help those Parties who lack the capacity even to respond to a DGD and to assist them in doing so. CANADA noted that this paragraph should refer to the import of chemicals and not the sound management of chemicals. Article 10 will remain with the Technical Working Group for further consideration.

ARTICLE 11 (Export Notification): On 28 May, the Technical Working Group considered draft Article 11 and an informal explanatory note from the Chair outlining the export notification procedures in the draft Article. Article 11(1) would require exporting Parties to notify the designated national authority of an importing country when it exports a chemical that is domestically banned or severely limited. The draft Article contained bracketed options that would require notice for only the first shipment or all shipments, and would apply to only banned chemicals or all PIC chemicals.

AUSTRALIA, supported by NEW ZEALAND, questioned the value of export notification and asked developing countries if the existing schemes, such as those used by the US and the EC, were useful. JAPAN, the US and CANADA supported notification for first exports of banned and restricted chemicals, not PIC chemicals in general. BRAZIL supported a detailed first notification with reduced detail for subsequent notifications. The EC, supported by the REPUBLIC OF KOREA, said that notification helps the importer track dangerous substances, control imports and build contacts. He proposed an annual notification process that notes the quantity of the chemicals shipped. Following discussion, delegates agreed that this system would not apply to chemicals once they become subject to the PIC procedure and agreed to consider an annex based on Annex 5 of the London Guidelines.

On 29 May, the Technical Working Group considered a revised draft of Article 11 as contained in UNEP/FAO/PIC/INC.3/CRP.29. On 11(1), AUSTRALIA expressed skepticism about the usefulness of mandatory export notification schemes and noted that it was common for international treaties to contain both voluntary and mandatory language. COLOMBIA suggested that this article should be deleted altogether, as those who are interested in having such a notification can do so under Article 6(1).

The EC noted that if Article 11 is included in the Convention, then export notification should be mandatory. Many other delegations, including CAMEROON, BRAZIL, GHANA, NIGERIA, CHILE, ARGENTINA, URUGUAY, IRAN and MOROCCO, noted the importance of this article to developing countries and suggested that export notification be mandatory. NIGERIA further noted that the African Group would not be able to consider signing the Convention if this article is excluded. The REPUBLIC OF KOREA noted that the quality of the information provided was also important. PANAMA noted that an exporting country that has banned or severely restricted a chemical should not have the moral right to sell it to others.

COLOMBIA proposed that provision of this information could be mandatory but that it would be the duty of the importing country to ask for it. TOGO, supported by MOROCCO, disagreed and noted the possibility that transit countries could then receive chemicals they did not request and for which they did not have adequate information. CAMEROON asked Australia about the nature of his concerns. AUSTRALIA responded that they were trying to gauge the usefulness of this article for developing countries and that they would consider the comments made in the Plenary as well as the Colombian proposal. CANADA suggested that export notification be mandatory unless the importer has notified that they do not want it.

On 11(2), information required in the export notification, CANADA noted that an annex would not be required, as there were information requirements in Article 12, such as the safety data sheet. The EC suggested developing an annex for information required in an export notification.

On 30 May, the Technical Working Group considered a revised draft of Article 11 (UNEP/FAO/PIC/INC.3/CRP.29/Rev.1). On 11(1 *bis*), export notification for an importing Party that had not communicated its response to the Secretariat, CANADA noted that perhaps this paragraph could cover situations where the obligations in 11(1) had ceased. PESTICIDES TRUST asked if it was the intention that only those chemicals that were banned or severely restricted would require an export notification and that those included in the PIC procedure would not. The Chair proposed deletion of the text and the addition of a footnote indicating that the Technical Working Group considered it useful to explore further a paragraph that covers the situation of export notification once a chemical becomes a PIC chemical. On 11(2), PANAMA noted that the suggestion to place this information in an annex would limit what options the COP could consider. The EC suggested transferring this issue to the COP. This article will remain with the Technical Working Group for further consideration.

ARTICLE 12 (Classification, Packaging and Labelling): On 26 May, the Technical Working Group considered Article 12(1), which states that each Party exporting a chemical subject to PIC shall ensure that it is clearly labelled as such. The US stated that a "PIC" label exceeded the mandate for the INC and, supported by AUSTRALIA, called for deletion of the proposal. The EC proposed text calling for a safety data sheet to accompany the first delivery of a hazardous chemical, with any new information being immediately forwarded to the importer. He also proposed that the Secretariat cooperate with the World Customs Organization (WCO) to assign specific Harmonized System Custom Codes to PIC chemicals. Once available, Parties would ensure that the label of any PIC chemical contained the customs code.

GCPF recalled that the PIC system was intended to provide information to Parties so they could control imports of unwanted chemicals, while a label was intended to provide instructions to the product's user. A "PIC" label would not provide useful additional information.

NIGERIA and SENEGAL supported a "PIC label" and noted that importers often do not have adequate information on chemicals. TOGO, SOUTH AFRICA and NIGERIA noted problems with verifying the authenticity of labels and called for a focus on illegal trafficking. JAMAICA and MOROCCO said the EC proposal did not go far enough and called for measures beyond the usual practice of customs codes. VENEZUELA noted that development of customs codes would require substantial time. SWITZERLAND supported using a customs code to facilitate "tracking", but said a "PIC" label does not provide much help to the importing country. CANADA cautioned that customs codes are not a panacea. The US said that while some of the proposed systems appear better in the abstract, they could pose practical difficulties for many Parties when implemented.

Article 12(2) states that Parties shall ensure that chemicals exported from their territories are subject to no less stringent requirements than comparable products destined for domestic use. The US expressed concern that the proposed language codifies varying forms of regulation and labelling, and could require exporters to conform to both importing and exporting country standards, which could often conflict. Supported by CANADA, he proposed text directing Parties to ensure that the classification, packaging and labelling conform to internationally harmonized procedures and practices. He said international efforts are already underway to develop harmonized procedures and practices.

JAMAICA, supported by BARBADOS, said that importers are at the mercy of exporters if they do not have standards. However, if the instrument holds exporters at least to their own standards, some abuses could be prevented. The EC, supported by NORWAY, noted that a harmonized system should be sought, but suggested using the national standards of exporting countries in the interim. GABON and JAPAN asked how this rule affects products manufactured only for export and not intended for use within the exporting country.

On 27 May, a contact group considered Article 12 and produced a revised draft (UNEP/FAO/PIC/INC.3/CRP.16). The revised draft notes that the Secretariat shall cooperate with the WCO to assign a Harmonized System Custom Code to PIC chemicals, and contains bracketed text obliging exporting Parties to ensure that PIC chemicals are labeled as such. The draft also notes that Parties either [should] or [shall] ensure that exported PIC chemicals are subject to no less stringent requirements that those used domestically, and that this obligation shall be subject to any specific requirements of the importing Party. Parties also [should] or [shall] use safety data sheets and provide "labels in the importing countries" language.

On 28 May, the Technical Working Group considered a further revision of Article 12 (UNEP/FAO/PIC/INC.3/CRP.16/Rev.1). On the use of customs codes on the label of chemical imports, the CMA noted that harmonized customs codes typically appear on customs documents, not on labels. The US also questioned the proposal's usefulness. The EC and CAMEROON, of behalf of the African Group, supported the proposal. The US bracketed provisions requiring the use of domestic standards for labelling as a minimum for exports. The amended text (UNEP/FAO/PIC/INC.3/CRP.16/Rev.2) was noted in the final Plenary.

ARTICLE 13 (Information Exchange): On 26 May, the Technical Working Group considered Article 13, which calls on Parties receiving notifications regarding exports to take into account the need to protect proprietary information. The draft article notes the types of information that shall not be regarded as confidential, such as the name of the substance and its main impurities, information necessary for precautionary measures, and summary results of toxicological and ecotoxicological tests. The US noted that the current text was not about information exchange, but about confidentiality of information. She pointed out that under the current draft text, governments exchanged information that was essentially public, and questioned the need to specify which elements of that would be confidential. She proposed a new article addressing the exchange of information of use to regulators,

available on request, and proposed renaming the existing Article 13 "Confidentiality". There was broad consensus on this proposal.

Regarding 13(2)(d) on information on impurities in listed chemicals, the US proposed replacing the word "impurities" with the word "inerts" and adding text to limit the reference to substances of toxicological significance. The US, supported by CANADA, argued that the previous language could effectively disclose some manufacturers' processes. A number of countries, including JAMAICA, MOROCCO and URUGUAY, objected to the word "inerts", arguing that it changed the meaning of the paragraph.

On 13(3), which would require Parties to establish appropriate internal procedures for receiving information, AUSTRALIA called for the deletion of bracketed language that would specify the body through which a country should handle the information received. MOROCCO, supported by URUGUAY, proposed a new paragraph specifying that exporting countries should provide information on the safe disposal of any listed chemicals they export.

CANADA noted that discussions on other elements of the Convention could provide delegates with a better picture of the types of information to be exchanged, which should help determine the ideal modes for exchange. The EC noted that Article 4 already contains a general obligation to exchange information on listed chemicals, and asked whether that general obligation might be sufficient without going into the detail proposed in Article 13.

On 28 May, the Technical Working Group considered the revised draft Article 13 (UNEP/FAO/PIC/INC.3/CRP.17), produced by an informal contact group. The EC proposed that the chapeau indicate the measures that the Parties "shall", rather than "should" take. The US opposed this wording. NIGERIA and ZIMBABWE said the disagreement on the nature of the obligations affected the entire process and urged delegations to settle the issue. The EC also sought to include "ecotoxological" information among the types of information to be exchanged. CANADA and the US noted that an existing reference to toxicological information covered the EC proposal.

Article 13(1)(b) states that Parties shall facilitate the provision of publicly available information on domestic regulatory actions that may be of interest to other Parties. PESTICIDES TRUST asked that this provision specifically mention public access to such information. ZIMBABWE questioned whether such a provision should be included in a legally binding agreement.

On 13(3)(b), which notes the types of information that shall not be regarded as confidential, JAMAICA, IRAN, NIGERIA, INDONESIA and the EC proposed deleting the brackets around the name of substances of toxicological significance, the names of impurities of toxicological significance in a particular substance, and the name and address of the importer. CANADA disagreed because of conflicts with its national pesticides legislation. The revised article (UNEP/FAO/PIC/INC.3/CRP.17/Rev.2) was sent to the Legal Drafting Group. In the closing Plenary, delegates noted the result of the Legal Drafting Group's work.

ARTICLE 14 (Control of Trade with Non-Parties): On 26 May, in the Technical Working Group, AUSTRALIA noted that this text was inserted at a time when the draft text contained proposals for phase-outs and trade bans. Given that these proposals no longer remain in the text, he proposed deleting the article. There was broad consensus on this proposal, with the exception of ARGENTINA who asked that the text remain bracketed pending national consultations. In final Plenary, delegates noted UNEP/FAO/PIC/INC.3/CRP.40, which states that one delegation had a reservation to deleting this article.

ARTICLE 15 (Implementation of the Convention): Article 15 contains draft obligations regarding strengthening of national infrastructures, adoption of national legislation, establishment of national registers and databases, voluntary agreements and initiatives by industry, access to information, good management of pesticides and chemicals, cooperation with other international organizations, and additional requirements. On 27 May, the Technical Working Group considered Article 15. AUSTRALIA noted that many of these issues were beyond the scope of the PIC process. He suggested that the title of the article did not accurately reflect the content and should instead refer to issues of capacity building.

Regarding 15(1), strengthening of national infrastructures, adoption of national legislation, establishment of national registers and databases, voluntary agreements and initiatives by industry, the EC noted the main point was to give priority to the adoption of national legislation (15(1)(a)), which should be mandatory, whereas the rest of the paragraph (15(1)(b) and (c)) could simply be viewed as "other measures". AUSTRALIA supported the EC proposal with respect to points (b) and (c), but also proposed that the obligation should be put on the importing Party to strengthen national infrastructure. The US agreed with these proposals but noted that there should not be duplication with Articles 9 and 10. The US, supported by AUSTRALIA, proposed making direct reference to the implementation of the Convention and proposed deleting reference to the prevention of exports that contravene PIC. NORWAY preferred keeping the paragraph as is. COSTA RICA was apprehensive about the imprecision of the proposed amendments, but generally agreed with the US proposal. The Chair noted that these points could be footnoted for the Legal Drafting Group. The brackets were then removed from 15(1)(b) and (c).

Regarding access to information in 15(2), some delegations, including the US, CANADA and the EC, suggested deleting references to stockpiles, chemical handling, accident management and emission inventories, as these matters were outside the scope of the PIC procedure. However, COSTA RICA, BARBADOS and the PESTICIDES TRUST suggested that such items should be retained and only the reference to emission inventories was deleted. ARGENTINA questioned the suitability of not informing the public on issues of accident management. The US stressed the importance of all of these issues, but noted that they were trying to focus the scope of this agreement on a PIC procedure. CANADA, the UK and AUSTRALIA agreed. COLOMBIA noted the importance of access to all information except that which might be considered confidential.

On 15(3), good management practices for pesticides and chemicals, the EC, supported by CAMEROON, proposed alternative text referring to the FAO Code of Conduct and the UNEP Code of Ethics for the International Trade in Chemicals. COSTA RICA noted a cultural difference between Europe, where States try to implement codes of conduct, and Latin America, where they are considered voluntary. CANADA, supported by AUSTRALIA and the US, said this may not be the appropriate place in the Convention to refer to these codes of conduct. CAMEROON noted that the EC proposal clearly fits in this Article and not in the preamble. MEXICO and COLOMBIA proposed eliminating this paragraph entirely.

The EC expressed surprise that some developing countries did not support amending the reference to the Code of Conduct so as not to imply an obligation. The Chair proposed bracketing the EC text. The EC reiterated their original proposal and asked the US and Canada to clarify their objections. The US noted that they did not think that such obligations should not go into an Article that is intended to help Parties with implementation.

Article 15(5), proposed additional requirements, specifies that Parties may impose requirements over and above those laid out in the Convention. The US proposed that this article should replace Article 4(6) and noted that it was based on language of the Basel Convention. ARGENTINA, SRI LANKA and COSTA RICA supported the US proposal. The EC noted the proposal would need legal clarification. Some delegations, including COLOMBIA and INDIA, suggested deleting this paragraph. The PESTICIDES

TRUST preferred wording that did not make reference to being "in accordance with the rules of international law" as in the original 4(6), and the US responded that this was language already accepted in the Basel Convention. The Chair proposed bracketing both Articles 4(6) and 15(5) and indicating in a footnote the discussion that had taken place.

In the evening session of 27 May, the Chair presented the Technical Working Group with a revised draft of Article 15 and asked for comments. As no comments were forthcoming, the draft was passed to the Legal Drafting Group, which revised Article 15 (UNEP/FAO/PIC/INC.3/CRP.20/Rev.1). The article was noted in Final Plenary.

ARTICLE 16 (Technical Assistance): On 27 May, the Technical Working Group agreed to forward this article, unchanged, to Plenary for further consideration. Under the draft article, the Parties shall, taking into account the needs of developing countries and countries with economies in transition, cooperate in promoting technical assistance for the development of the infrastructure and necessary capacity to manage chemicals for the implementation of the Convention.

OTHER ARTICLES

LEGAL DRAFTING GROUP CONSIDERATION: The Legal Drafting Group considered a number of articles, which were noted in final Plenary. **ARTICLE 17** (Compliance) and **ARTICLE 18** (Liability and Compensation) will require further guidance from the Plenary. **ARTICLE 19 *bis*** (Relationship with Other Agreements), which is bracketed in its entirety, states that the provisions of this Convention shall not affect the rights and obligations of any Party deriving from any [existing] international agreement, [except where the exercise of those rights or performance of those obligations would cause serious damage or threat to human health or the environment]. **ARTICLE 20** (Conference of the Parties) establishes a Conference of the Parties and states that it shall meet no later than [six months] or [one year] after the Convention's entry into force.

ARTICLE 20 *bis* (Secretariat) establishes a Secretariat and notes that its functions shall be performed jointly by UNEP and the FAO, subject to arrangements approved by the COP. The text states that the COP may decide to entrust these functions to other international organizations [should it find that either the UNEP or FAO has become unable to perform these functions satisfactorily]. **ARTICLE 21** (Settlement of disputes) will be discussed further in Plenary. The text currently contains an option that would, *inter alia*, allow Parties to decide whether they recognize, as a means of dispute settlement, the International Court of Justice or arbitration procedures that will be developed under the Convention. Canada has proposed alternative text obligating each Party to consent to binding arbitration when requested to do so by a claimant Party.

ARTICLE 21 *bis* (Amendments to the Convention) states, *in*ter *alia*, that the Parties shall make every effort to reach agreement on any proposed amendment to the Convention by consensus. If all efforts at consensus have been exhausted and no agreement reached, the amendment shall be adopted by a [two-thirds] or [three-fourths] majority.

The Legal Drafting Group also produced draft text on:

- **ARTICLE 22** (Adoption and Amendment of Annexes);
- **ARTICLE 23** (Protocols);
- **ARTICLE 24** (Right to Vote);
- **ARTICLE 25** (Signature);
- **ARTICLE 26** (Ratification, Acceptance, Approval or Accession).
- **ARTICLE 27** (Entry into force)
- **ARTICLE 28** (Reservations)
- **ARTICLE 29** (Withdrawal)
- **ARTICLE 30** (Interim arrangements)
- **ARTICLE 31** (Depositary)
- **ARTICLE 32** (Authentic Texts)

ANNEX X (Information to Accompany a Notification of Final Regulatory Action): On 27 May, in the Technical Working Group sessions, the Chair called for a general discussion on principles in Annex X, which sets out criteria that would have to be met by notifications of control measures for them to be considered valid by the Secretariat. The draft text divided these into information considered mandatory (Part B) and information to be supplied to the extent possible (Part C).

Most discussion related to Part C (b), which asks for documentation detailing any risk assessment carried out in support of the control action, and specifies that such documentation should meet the criteria outlined in Annex Y. The US proposed going further, stipulating that any documentation not meeting the criteria outlined in Annex Y, while it *should* trigger circulation of the notification to Parties by the Secretariat, as outlined in Article 6(5), should *not* count toward triggering the PIC procedure. In effect, this would create two categories of notifications: those based on rigorous risk assessment, which would potentially trigger the PIC mechanism, and those based on less thorough risk assessments, or on the assessments of others, which would not. He argued that the existing requirements in Part B were "too slim", and did not address the need for scientific rigor.

The EC and others asked why this requirement was being proposed in a section of non-mandatory information requirements, if it was to have a mandatory character. The US responded that, while the drafting was not elegant, it served to create two classes of notifications, so that even poorly-based control actions only fulfilling the requirements of Part B might still be recognized and subject to dissemination by the Secretariat. The EC objected to this formulation, and proposed instead that any notification meeting the requirements of Annex X (or any *group* of notifications sufficient to trigger the PIC procedure) be referred to the subsidiary body, which would act as a filter for poor scientific practice. The REPUBLIC OF KOREA also objected to the US proposal, complaining that the requirements might be difficult for many countries to fulfill. ARGENTINA and others criticized the US proposal as convoluted, and asked that it be rationalized and simplified.

The Chair called for a contact group to address the issues under discussion. On 29 May, the Technical Working Group considered the draft revision of Annex X. The proposed revisions did not distinguish between mandatory and non-mandatory information to be provided to the Secretariat, as this had been the source of confusion in the previous draft; all information requested was now considered mandatory. The list of criteria in the Annex was meant to serve as a basis on which the Secretariat might review notifications, but would have to be supplemented by a more detailed checklist to be developed later. BRAZIL asked that the text in paragraph 2(i) referring to use categories be bracketed.

There was no agreement on the bracketed text in paragraph 2(ii), which asks for an indication of whether control action was taken on the basis of a "risk/hazard evaluation". This language was the EC's, and the US, CANADA and AUSTRALIA favored "risk assessment", arguing that they did not understand the EC language. The EC argued that "risk assessment" had a very specific meaning in terms of methodology, and that more flexibility was needed.

CANADA asked about the meaning of text bracketed in 2(iii), which asked for information on the "physico-chemical, toxicological and ecotoxicological" properties of alternative chemicals. He argued that such information had been covered in 2(ii) in the reference to risk/hazard assessment. The EC agreed to remove the text, but BRAZIL, supported by the GAMBIA, asked that it be retained in brackets.

ANNEX Y (Criteria for the Inclusion of Banned or Severely Restricted Chemicals in the Prior Informed Consent

Procedure): Annex Y outlines the criteria that would be considered in deciding whether or not to include a chemical in the PIC procedure. In the Technical Working Group sessions of 27 May, the EC proposed deleting the word "may" in the opening sentence, with the effect that *all* the subsequent criteria would have to be considered. He further proposed rolling the first three criteria together in what would amount to a definition of "severely restricted", comprising three elements: the control measure in question led to a significant decrease in the number of uses of a chemical, or in the volume used, or resulted in significant reduction of risk to human health or the environment. ARGENTINA, PANAMA and PESTICIDES TRUST supported this proposal.

SWITZERLAND pointed out that the definition of "severely restricted" had already been established under Article 2(c), and said the EC's alternative was too vague. CANADA objected to the word "significant", which, in his view, could be interpreted as presenting a low threshold, and the meaning of which would vary from country to country, depending on risk aversion.

The US proposed a completely reworked version of the Annex in its circulated paper. It embodied three main components: the control measure must be based on proper risk assessment; there must be a meaningful reduction of risk as a result; and the considerations leading to the control action must be "sufficiently applicable in a global context". In support of the second element, he argued that a country could conceivably take measures against a chemical that was not used within its borders, resulting in no reduction of risk. With regard to the third element, he noted that the US did not want to be in the politically difficult position of judging the conduct of another country's risk assessment as improper, and might avoid such action by deeming that the assessment itself was not faulty, but that the risk of the chemical in question for other countries was nonetheless minimal. AUSTRALIA and CANADA supported the US draft, particularly the wording on "global applicability".

PESTICIDES TRUST noted that paragraph 5 required that the use for the chemical in question should be significant, and asked what this meant for new chemicals not yet in use. This was acknowledged as problematic.

CAMEROON stressed the need to define "good laboratory practice". ARGENTINA strongly endorsed the need for good risk assessment, but stressed the need to leave the door open so that different methods might be used, pointing out that even within the scientific community there is no consensus on best practice. The Chair agreed. JAMAICA proposed a new paragraph that would allow for the criteria in the Annex to be fulfilled by several countries in concert, noting that any one developing country might find all the criteria difficult to meet.

On 29 May, the Technical Working Group considered the draft text of Annex Y as proposed by the informal contact group (UNEP/FAO/PIC/INC.3/CRP.36). Changes to Annex X meant that Annex Y no longer constituted the criteria by which the Secretariat would distinguish notifications meant to trigger the PIC procedure from those simply meant to initiate Secretariat notices of control action. The previous formulation had created some confusion. The criteria of Annex Y would now be used only to guide decisions on the inclusion of chemicals in the PIC procedure, and it was left ambiguous how or whether control action notifications would be segregated into the two types.

The text faced the same problem discussed previously in the context of Annex X with respect to risk assessment with the EU favoring the term "risk/hazard assessment". The US argued that hazard assessment was too limited an analysis, pointing out that significant hazard might be accompanied by low exposure. NIGERIA argued that it would be difficult for many developing countries to perform the research and analysis required by this language, and proposed a clause addressing this problem. The Chair sympathized, noting that while developing countries might be able to rely on risk assessments performed by others, they would need to perform their own exposure assessments. He also noted that notifications triggering the procedure would need to be based on sound science, since this would provide essential information to those considering banning or restricting the chemical in question. He proposed language narrowing the scope of research required, focusing on only those risks relevant to the PIC procedure.

The EC and the US preferred the draft bracketed text. ARGENTINA asked that the Chair's proposal be put into a footnote. It was agreed not to try to resolve the bracketed text in 2(i) and (ii), which were based on the EC's proposed definition of "severely restricted", and to also leave the brackets on 2(iii), which contained the US proposed criterion on global applicability.

Paragraph 2(iv) asked Parties to consider whether there were indications of continuing trade at the global level of the chemical under examination. PESTICIDES TRUST noted that many chemicals were heavily traded only on a regional level, but were nonetheless important. The US proposed substituting "international level" for "global level". There was consensus on this proposal.

Paragraph 2(v) specified that intentional misuse was not an adequate reason to include a chemical in the PIC procedure, with the word "intentional" in brackets at the request of AUSTRALIA. ARGENTINA asked what this paragraph referred to. CANADA said that intentional misuse meant poisoning or suicide, which may constitute a negative effect on human health, but which should not trigger the PIC procedure. But, he argued, if the bracketed "intentional" is removed, the meaning of the paragraph is significantly changed. PESTICIDES TRUST agreed, arguing that if "intentional" was removed, the paragraph should be deleted. ARGENTINA, BRAZIL and INDONESIA suggested bracketing the entire paragraph.

FINANCIAL RESOURCES AND MECHANISMS

On 28 May, Jim Willis (UNEP) presented to the Plenary a note from the Secretariat, UNEP/FAO/PIC/INC.2/4, on **ARTICLE 19** (financial resources and mechanisms). This note outlined a summary of, and options for, mechanisms for providing financial resources to the legally binding PIC Convention. It noted, *inter alia*, the types of mechanisms employed by the Montreal Protocol, the Basel Convention, the Convention on Biodiversity and the Convention to Combat Desertification and suggested options for: providing for administrative costs, provisions governing financial resources and mechanisms for technical and financial cooperation, and institutional arrangements for the financial mechanism and operational procedures for financial resources.

Several delegations, including MOROCCO, JORDAN, ALGERIA, SENEGAL, INDONESIA and CHINA, emphasized the importance of financial resources and technical assistance for developing countries. JORDAN, INDONESIA, SENEGAL and THAILAND noted the experience of other international environmental conventions and proposed looking at similar procedures such as the Multilateral Fund of the Montreal Protocol.

MALAYSIA, CONSUMERS INTERNATIONAL and ALGERIA proposed that industry should also be involved in providing resources. The US noted that what was missing from this document was reference to the financial operations of the voluntary PIC procedure and suggested that those resources already devoted to the voluntary procedure should continue to be available for the binding Convention. New costs should be met via voluntary rather than assessed contributions. Both the US and CANADA stressed that it was important to use cost effective measures. CANADA, supported by the REPUBLIC OF KOREA, further noted UNEP's general funding situation, suggesting that the FAO continue to have a strong role in order to avoid a Convention that was based solely on voluntary contributions.

JAPAN suggested that financial mechanisms should based on voluntary contributions and the use of existing relevant

mechanisms. SWITZERLAND noted that there were a number of ongoing activities related to the provision of technological assistance, such as the UNEP/UNITAR training programmes and others run by the Inter-Organization Programme for the Sound Management of Chemicals (IOMC). The RUSSIAN FEDERATION expressed concern that the document referred only to developing countries, noting budget problems in his own country. BULGARIA also noted that they would have difficulties regarding potential contributions. COLOMBIA noted the importance of a transparent and efficient mechanism that might take the form of a rotating fund.

The Chair then summarized the views that had been presented and noted that there would have to be at least one paragraph referring to financial mechanisms in the Convention, although there did not need to be a detailed budget. She then asked SWITZERLAND to coordinate a small contact group that would consider the different options that were in the document and present a new text on these issues.

The contact group submitted a paper (UNEP/FAO/PIC/INC.3/CRP.38) on 29 May. Regarding administrative costs, the paper noted that the nature of financing mechanisms for administrative purposes would reflect the nature of the administrative structure chosen for the new PIC instrument and presented options for further consideration. Regarding mechanisms for financial and technical assistance, the paper noted the needs that would be likely to arise in capacity building include: identification of chemicals to be included in the PIC procedure; procedures for notification; consideration of the question of liability; and monitoring and combating illegal trade.

The African Group also submitted a position paper on financial resources and mechanisms (UNEP/FAO/PIC/INC.3/CRP.31) on 29 May. The paper states that the effectiveness of a PIC Convention will depend largely on the mobilization and provision of adequate financial resources to assist Parties to carry out activities and measures for the implementation of the Convention. The implementation of the Convention without additional financial resources would place additional burdens on the economies of developing countries. Both papers were noted in final Plenary and will serve as the basis for future discussions on the issue.

CLOSING PLENARY

On the afternoon of 30 May, the final Plenary heard reports from the Chairs of the various sub-groups. The Chair of the Technical Working Group reported that some of the drafts had been forwarded to the Legal Drafting Group but noted that substantial work remains, especially on Articles 7 (Acutely Hazardous Pesticide Formulations) and 11 (Export Notification). The Chair of the Legal Drafting Group reported on the articles it had considered and noted that Article 18 (Liability and Compensation) was a very complex policy issue that would require considerable time to develop. He outlined several options: reference to liability and compensation could be omitted; a liability and compensation regime could be developed immediately; or the Convention could provide that this issue be looked at in the future by the COP.

The Chair of the informal contact group on financial measures noted that they had concentrated on the two mechanisms that would be needed: mechanisms for administrative costs and mechanisms for financial and technical assistance. A key discussion had been whether contributions should be voluntary or mandatory, but there had been no resolution on the matter. This report was circulated as UNEP/FAO/PIC/INC.3/CRP.38.

The Chair then introduced Article 20 *bis* on the Secretariat, as contained in UNEP/FAO/PIC/INC.3/CRP.21. SWITZERLAND noted satisfaction at the cooperation between the UNEP and FAO with regard to interim arrangements and said the Secretariat should be jointly managed by UNEP and FAO. He further noted Switzerland's interest in hosting the future Secretariat. CANADA asked that more information be provided from the current Secretariat in order to determine the financial needs and arrangements the future permanent Secretariat might have. The Chair responded that she would ask the Secretariat to prepare a paper on this issue, which will contain an evaluation of costs.

BELGIUM made a statement that noted that it was 20 years ago that the UNEP Governing Council adopted its first decision on informed consent for hazardous chemicals in international trade. He suggested that this illustrates the painstakingly slow development of international environmental law and makes it essential that the Convention currently being elaborated reflect and add value to the principles of the Governing Council decision.

The PHILIPPINES, on behalf of the Asia-Pacific importing Parties, noted that their objective was to ensure that the future Convention was effectively and expeditiously implemented and that they would make concrete proposals at INC-4.

The EC referred to the debate on Article 7, [acutely] hazardous pesticide formulations. He noted that EC proposals corresponded to the letter and the spirit of the mandate given by the Governing Council. He noted that the delegates must now concentrate on remaining work and said the EC would reconsider its proposals for Article 7 on the understanding that others would do the same. He reaffirmed EC support for UNEP Governing Council decision 19/13A, on completing the Convention this year. The GAMBIA, on behalf of the African Group, noted that developing countries were a vulnerable group and appealed to delegates to seriously consider the Group's position papers.

Delegates then adopted the Draft Report of INC-3 (UNEP/FAO/PIC/INC.3/L.1, and Add.1 and Add.2). The revised draft Articles, as amended at this meeting, will be consolidated into a draft text and annexed to the Report for consideration at INC-4. The Chair underscored that delegates were not accepting or adopting articles, but taking note of their current status. She said that she would identify articles that could be taken up in Plenary immediately and those that needed consideration in the working groups. The meeting was adjourned at 6:30 pm on Friday, 30 May.

A BRIEF ANALYSIS OF INC-3

Transforming an existing voluntary procedure into a legally binding agreement sounds like a simple task. It isn't. Precedents for such a task are scarce in international environmental negotiations, and the mandate given to this INC by the UNEP Governing Council, therefore, looms large in the current negotiations. Considerable debate centered on the scope of the proposed Convention; the brackets scattered liberally throughout the text denote a fundamental disagreement on the purpose of the entire PIC negotiations. Some observers noted that the EC was seeking to build a broader framework for chemical management, and thus tried, where possible, to extend the scope of the Convention beyond the existing voluntary scheme. Several delegates said a proper framework agreement could not be created simply by broadening the scope of PIC. The EC, however, noted the INC was not convened to simply "photocopy the London Guidelines" and send them to the Legal Drafting Group. Failing to address a broader picture would effectively turn a blind eye to the experience gained through the voluntary scheme, and miss an opportunity to combat a growing global threat. Expected support for this position did not emerge from developing countries, with many of them noting that the administrative and technical obligations in a convention of narrower scope would be challenging enough. Unless there is resolution of this fundamental rift, further progress will be difficult. Many expressed the hope that the intersessional negotiations would provide a forum for reconciling the positions.

The traditional North-South divide familiar in other international environmental negotiations did not emerge on most issues, except for financial provisions. Many countries — North

and South — are both exporters and importers of hazardous chemicals and pesticides and the divisive issues of differentiated responsibilities have not ruled the day for what will be, in essence, an information-sharing agreement. Nevertheless, as negotiations progress and potential obligations become clearer, developing countries could likely send a message similar to that sent recently in other fora; namely, that discussions of obligations without coinciding discussions on financial and technical assistance were pointless. Several obligations presently exist under other international environmental agreements and more may be on the way. Some developing country delegates appeared concerned that this Convention could potentially increase the strain on their already limited regulatory abilities.

Other groups were also concerned about the relationship of a PIC instrument to existing international agreements. Several environmental NGOs carefully monitored the Legal Drafting Group's deliberations on Article 19 *bis*, the so-called "GATT-saving clause". The clause specifies that nothing in the Convention would alter the rights and responsibilities of the Parties under other agreements to which they are Parties. Under this wording, any conflict between the Convention and WTO rules would be settled in favor of the latter. The current draft article contains bracketed language noting "except where the exercise of those rights or performance of those obligations would cause serious damage or threat to human health or the environment" — language drawn from the CBD. NGOs were worried that a weak precedent in these negotiations might bode badly for the future POPs negotiations, and some delegations wondered whether the language of a weak clause in PIC might frustrate the WTO's development of a constructive approach to addressing legal conflicts with multilateral environmental agreements.

Notwithstanding questions of scope, delegates face a substantial task in finalizing a treaty by December. While a net loss or gain of brackets is difficult to gauge, the brackets remaining represent a considerable hurdle with only one INC remaining and the chance for some fine tuning before the diplomatic conference. In the opinion of at least one delegate, the progress at INC-3 was welcome but the process remained "one INC behind". Much effort to reach agreement on some of the outstanding issues during the intersessional period will be needed if INC-4 is to be successful.

Several delegates noted that progress in all three INCs had been slowed by the "inexperience effect", estimating that a third of the negotiators in INC-3 had not attended the previous two Conferences and time intended for meaningful negotiations was spent revisiting old debates. Others complained that some delegates dwelt on points irrelevant to the issues at hand. Some observers were hopeful, however, that as the negotiations neared completion, familiar faces would increasingly return to the negotiations.

Time constraints, along with several other issues, provide a challenge to completing an agreement by the end of the year. For example, while financial resources and mechanisms are a key component of any international agreement, delegates in this process only began serious discussions on this issue at this meeting. Moreover, the choice of administrative structure will have implications not only for the financing of daily administrative costs but more importantly for the resources needed to assist developing countries and countries with economies in transition to implement their legally binding obligations under PIC. As was noted by the Chair of the informal contact group on this issue during the final Plenary, however, there is no agreement yet as to whether contributions should be mandatory or voluntary, whether existing mechanisms should be used, or whether a new mechanism (such as a trust fund) should be created.

Second, developing countries remain concerned about their ability to meet the obligations of a legally binding procedure. In their opinion, they need the legitimacy and authority that a legally binding agreement would give them in to secure sufficient domestic resources in order to successfully implement the Convention. At the same time, however, their lack of capacity means that the obligations of such an agreement should not be overly burdensome. This will require a careful balance of commitments undertaken by both exporting and importing Parties as well as by the provision of appropriate information and resources for capacity building.

Lastly, some participants raised the question of the relationship between the voluntary procedure and the Convention, once the Convention enters into force. Delegates deleted a reference to non-Parties but there was no clarification as to how those who remain in the voluntary procedure should be treated as compared to those who become Parties.

With only six months left to go before the PIC Convention is due to be adopted, the negotiators have a formidable task ahead of them. While perhaps lacking some of the fundamental North-South political divisions that haunt other international environmental regimes, the negotiations for a legally binding PIC procedure nevertheless reveal that the road to sound chemicals management, as well as sustainable development, is neither straight nor narrow. The PIC negotiations are only the first step down this road. With a request to begin negotiations on an international legally binding instrument on POPs in early 1998, delegates in this INC are under considerable pressure to fulfil their current mandate by the end of 1997 so the next stage of the process can begin.

THINGS TO LOOK FOR

PRIOR INFORMED CONSENT: The fourth session of the INC for the preparation of an international legally-binding instrument for the application of a prior informed consent procedure for certain hazardous chemicals in international trade (INC-4) will be held in Brussels from 20-24 October 1997. A diplomatic conference with a short preparatory INC session is envisaged for December 1997 in Rotterdam, the Netherlands. The UNEP Governing Council, at its last meeting, adopted a decision calling for completion of negotiations on a legally-binding agreement by the end of 1997. For more information contact: UNEP Chemicals (IRPTC); tel: +41 (22) 979 9111; fax: +41 (22) 797 3460; e-mail: IRTPC@unep.ch.

SPECIAL SESSION OF THE UN GENERAL ASSEMBLY: The Special Session of the UN General Assembly is scheduled for 23-27 June 1997. The session, which will be preceded by a week of informal consultations, will conduct an overall review and appraisal of progress in implementing the UNCED agreements since the 1992 Earth Summit. For more information, contact: Andrey Vasilyev, UN Division for Sustainable Development, tel: +1-212-963-5949, fax: +1-212-963-4260, e-mail: vasilyev@un.org. Also visit the Home Page for the Special Session at http://www.un.org/DPCSD/earthsummit/.

INTERGOVERNMENTAL FORUM ON CHEMICAL SAFETY: JAPAN offered to host ISG-3 in Tokyo in late 1998. 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. MEXICO will host a working group meeting in 1997 for developing countries to discuss the sound management of chemicals. 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.

WTO COMMITTEE ON TRADE AND ENVIRONMENT: The CTE will meet from 22-24 September and from 5-7 November 1997 in Geneva. For information, contact the CTE, Centre William Rappard, 154, rue de Lausanne, CH-1211 Geneva, Switzerland; tel: +41 (22) 739-5111; fax: +41 (22) 739-5458; e-mail: webmaster@wto.org. Also try http://www.wto.org.