



PIC INC-8 HIGHLIGHTS WEDNESDAY, 10 OCTOBER 2001

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 (UNEP/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.

Delegations 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 reporting would encourage compliance. AUSTRALIA expressed interest in further examining reporting, but stressed that it should not impose burdens on Parties. IRAN said a mechanism should also include a punitive dimension. BENIN proposed that the compliance mechanism should include both "carrot and stick" provisions.

Patrick Szell (UK), Legal Drafting Group Chair, then updated Plenary on progress made, noting that the rules of procedure had been finalized and arbitration and conciliation would hopefully be finalized by Thursday evening.

WORKING GROUP ON DISCONTINUATION OF THE INTERIM PIC PROCEDURE

Working Group Co-Chair André Clive Mayne (Australia) explained that the group is to propose options or endorse feasible solutions regarding discontinuation issues (UNEP/FAO/PIC/INC.8/16).

Delegates agreed that the INC and ICRC would not meet after COP-1. Regarding inclusion of chemicals notified during the interim PIC procedure prior to COP-1, but not yet listed in Annex III, Bill Murray, interim Secretariat, presented two solutions: that these chemicals not be added to Annex III since they remain Annex I non-compliant; or that these chemicals be listed in Annex III. Delegates supported the second option, with additional language recognizing that the chemicals do not meet the information requirements in Annex I, but will be included in Annex III without prejudice to future action.

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.

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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 time-frame. 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.

On transitional measures, the option to maintain two lists was accepted: one listing Parties that have ratified; and the other listing those that have not ratified but who are participating. Giving participants observer status was accepted, leaving open their voting status for future consideration by the COP. Delegates agreed that: the designated national authorities (DNAs) of Participating States should receive the same information as Party DNAs; Participating State import responses should be respected; and voluntary transitional contributions should encourage ratification.

On the status of notifications of final regulatory actions and proposals for severely hazardous pesticide formulations submitted by Participating States, Murray presented the solution stating that verified notifications or proposals submitted as of the date of entry into force of the Convention should remain eligible for consideration by the Chemical Review Committee (CRC), but any notifications and proposals submitted afterwards would be kept on file until that State became a Party. The EU and Australia supported the entire solution. The US objected to eligibility of Participating States' notifications and proposals because they may trigger obligations for Parties.

Regarding discontinuation of the interim PIC procedure in the post-transition period, Murray reiterated that the role of non-Parties would be limited and that stringent regulations would be a good incentive for ratification. Discussing options regarding import responses from non-Parties, many expressed concern about the costs of maintaining updated lists of responses. Delegates agreed to consider options for limited retention of import responses and for not maintaining them at all.

On composition of PIC regions, Murray explained that while designation of the current interim PIC regions was based on the presumption of global participation, there will be approximately 50 countries at the time of COP-1. The US, NEW ZEALAND and AUSTRALIA supported maintaining the same regions, while the EC and the NETHERLANDS proposed revising the regions, but no agreement was reached. Delegates supported maintaining the same options for the item on composition of the ICRC and CRC.

Delegates agreed not to discuss recommendations regarding mitigation of possible negative effects resulting from termination of the interim PIC procedure.

WORKING GROUP ON CONFLICT OF INTEREST IN THE ICRC

Working group Chair Gerardo Viña-Vizcaino (Colombia) presented the document on conflict of interest (UNEP/FAO/PIC/INC.8/10) and reminded the group of its aim to elaborate on the Secretariat's proposal on the declaration of the conflict of interest by ICRC experts, and to help resolve the issue during INC-8. ICRC Chair Reiner Arndt (Germany) distinguished between ICRC observers and members.

On participation of industry experts, AUSTRIA, FRANCE and MEXICO said that for the ICRC to be independent, ICRC members should not be affiliated with industry, although industry observers should be allowed. AUSTRALIA, CANADA, EGYPT and the US reiterated that the Convention gives governments the right to nominate industry experts, and independence of the ICRC should be protected via the procedure on conflict of interest. FRANCE requested that discussion of this issue be presented to Plenary. CANADA, FRANCE and the US stressed that ICRC members should be made aware of each other's affiliations and any conflicts of interest.

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.

IN THE CORRIDORS

Delegates began hashing out details as the INC broke into working groups. Some participants were pleased with the progress, one noting the working group on the discontinuation of the interim procedure was "ploughing through its work" despite tough issues such as those related to designating new PIC regions and treatment of non-Parties. Others commented that the "real" work was being done behind the scenes, however, as countries offering to host the Secretariat continued their campaigns.

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.