

PIC

Steady Progress at Latest Session

The sixth session of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for the Application of the Prior Informed Consent Procedure (PIC) for Certain Hazardous Chemicals and Pesticides in International Trade was held at the headquarters of the UN Food and Agriculture Organisation (FAO) in Rome from 12–16 July 1999.

The session was opened by *Maria Celina de Azevedo Rodrigues* (Brazil), Chair of the Committee.

David Harcharik, Deputy Director-General of FAO, and *James Willis*, Director, UNEP Chemicals, on behalf of *Klaus Töpfer*, UNEP's Executive Director, made opening statements.

In his statement, *David Harcharik* said that the convening of the sixth session at FAO headquarters was a further example of the fruitful cooperation between FAO and UNEP on the PIC procedure. Over the next 25 years, agricultural production, particularly in the developing countries, would have to exceed population growth in order to provide sufficient food for all. Achieving that goal without recourse to pesticides was no easy task. Although many promising non-chemical mechanisms to protect plants from pests had recently been identified, their introduction and widespread application could pose problems. In developing countries, pesticide regulations were lacking or not enforced and most farmers were unable to handle highly toxic pesticides in a safe manner. By restricting access to such chemicals, the PIC procedure would contribute to the sustainability of agriculture in developing countries.

After identifying the main tasks before the Committee at the current session, he recalled that the governing bodies of FAO and UNEP had authorised the participation of those organisations in the secretariat during the interim period, as well as in the future secretariat of the Convention. A report on the outcome of the Conference of Plenipotentiaries, the secretariat arrangements and the current session would be presented to the FAO Conference in November 1999.

Developing countries needed assistance in implementing the Convention and managing pesticides and chemicals. Donors should thus give careful consideration to their needs. The countries themselves must also take steps to strengthen their regulatory infrastructures and control mechanisms, and farmers must be assisted in taking decisions on pest management.

In his statement, *James Willis* noted that the resolution on interim arrangements brought the voluntary PIC procedure into line with the procedure in the Convention and provided for a "fast start" to the Convention. He outlined the task facing the Committee at its current session, including the need to set in motion the voluntary implementation of the new PIC procedure; to provide guidance to the interim secretariat during the interim

period; to explore means of providing the necessary financial resources for the operation of the Convention and the secretariat during that interim period; to launch the preparatory process for the first meeting of the Conference of the Parties; and to consider the important issues raised during the Conference of Plenipotentiaries in Rotterdam.

The speaker noted his gratification at the level of participants at the current session – the largest to date – and expressed the hope that it would build on past successes and maintain the excellent spirit of cooperation that had distinguished the negotiations for the Convention.

The main topics for the Committee's consideration were a) Activities of the secretariat and review of the situation as regards extrabudgetary funds; b) Implementation of the interim prior informed consent procedure; c) Preparations for the Conference of the Parties; and d) Issues arising out of the Conference of Plenipotentiaries.

The Committee decided to continue its work in plenary and to establish contact groups on an as-needed basis.

I. Activities of the Secretariat and Review of the Situation Regarding Extrabudgetary Funds

The Committee had before it the note on activities of the secretariat in the interim period and review of the situation as regards the trust fund. It noted that funds had almost run out and resources had to be urgently identified to ensure continuation of the implementation procedure in a regular and predictable manner, including convening future meetings of the Committee and of the interim chemical review committee.

Among other issues raised in the discussion, it was noted that much information currently existed on toxic and hazardous substances and pesticides and should be made easily available, including in electronic format. In addition, some representatives said that their Governments would be willing to host PIC implementation workshops.

The Committee agreed that the budget estimates and activities, as proposed in the document, were a reasonable basis on which to continue discussions under other agenda items. It further agreed that the first priority would be to establish an interim chemical review committee and to follow up with other steps to implement procedures as identified by the Rotterdam Convention and that the second priority would be the holding of implementation and ratification workshops to be undertaken subject to available resources.

Noting its concern over the financial situation, the Committee agreed that convening the seventh session of the INC within the time-frame September–November 2000 would allow for the mobilisation of further

resources, ease current cash-flow problems and leave ample time for the work of the interim chemical review committee and preparations for that session.

It was agreed that the secretariat would prepare a revised budget, in a simplified format, to be attached to the report of the current session.

II. Implementation of the Interim Prior Informed Consent Procedure

a) *Definition and provisional adoption of the PIC regions*

In Decision INC-6/1, the Committee agreed to base the Interim PIC regions on the FAO regions, with the assignment of parties to the Intergovernmental Negotiating Committee which were not members of FAO to appropriate regions, respecting their natural geographical affinities and with the proviso that such adoption was on an interim basis only and that the final determination of PIC regions would be made by the Conference of the Parties.

b) *Establishment of an interim chemical review committee*

In considering the item, the Committee had before it the secretariat's note on the subject. Its deliberations on the item focused, *inter alia*, on the issues of the size of the interim chemical review committee; the basis for representation on the committee and the need to ensure an equitable geographical balance; its working languages; the terms of office and the periodicity of meetings; the participation of observers and the need for a transparent process; and the need for comprehensive reports on its work.

The Committee also considered a proposal by Australia on a model for the interim chemical review committee, which had been circulated to participants.

A contact group was established, under the chairmanship of *Reiner Arndt* (Germany), to draft a decision on the interim chemical review committee.

Reporting on the work of the contact group, the chair of the group said that it had agreed that the functions of the interim chemical review committee should be as set out in paragraph 4 of the annotated outline for a decision establishing such a committee, contained in the annex to the secretariat's note on the issue (UNEP/FAO/PIC/INC.6/4), excluding subparagraph 4 (d) on the removal of chemicals, which was outside the committee's mandate as provided for in the resolution of the Conference of Plenipotentiaries on interim arrangements.

The group had noted that the qualifications of the members of the interim chemical review committee were identified in paragraph 6 (a) of article 18, as well as in Annex II of the Convention.

It was also agreed (Decision INC-6/2) that consideration should be given to the issue of rotation of membership within regions in the Chemical Review Committee under the Convention.

Concerning the issue of the working languages of the interim chemical review committee, several representatives stated that they would have preferred it to work in

three languages, while others expressed a preference for it to work in all six United Nations official languages; but, given the financial constraints, they were able to accept the use of English only for the current period, provided that all decision guidance documents were distributed in all six languages in a timely manner. It was stressed that the Conference of Parties should revisit the issue of languages at its first meeting.

With regard to the participation of non-governmental organisation observers, it was recommended that the balance between industry, public interest groups and trade unions, as established during the meetings of the FAO/UNEP Joint Group of Experts under the original voluntary PIC procedure, should be maintained. In addition, it was stressed that, when considering observer participation, attention should be paid to maintaining a balanced participation in meetings of the interim chemical review committee. If balance were not maintained, the interim chemical review committee would refer the issue of observer participation to the Intergovernmental Negotiating Committee.

On the issue of the appointment of members, it was agreed that the interim PIC regional groups would identify countries for the interim chemical review committee from those countries that were participating in the interim PIC procedure. Their Governments would then formally designate the 29 experts and submit their names and qualifications to the parties to the INC, through the secretariat, by 15 September 1999.

c) *Adoption of decision guidance documents for already identified chemicals*

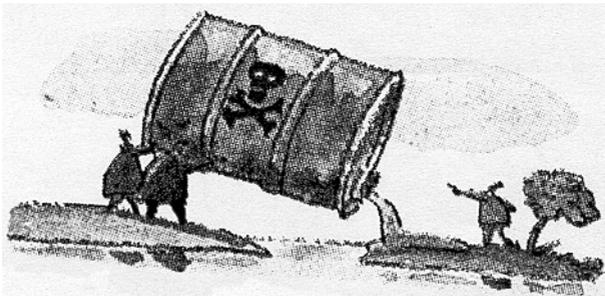
The Committee had before it the secretariat's note on the adoption of decision guidance documents for already identified chemicals (UNEP/FAO/PIC/INC.6/6) and its six addenda, containing draft decision guidance documents on, respectively, binapacryl, bromacil, ethylene dichloride, ethylene oxide, maleic hydrazide and toxaphene.

The Committee approved the decision guidance documents on binapacryl and toxaphene and agreed to their inclusion in the interim PIC procedure (Decision INC-6/3). One representative noted that there were, however, some factual errors in the listing of names of manufacturers and that the decision guidance documents would require updating in that regard before being distributed. It was noted that both those chemicals were no longer produced or traded internationally and therefore did not satisfy the criteria in Annex II. It was recognised that those decision guidance documents were being adopted to conclude outstanding matters under the original voluntary procedure and did not in any way constitute a precedent for future notifications and adoptions of decision guidance documents under the interim procedure or the Convention when it entered into force.

The Committee decided to refer the decision guidance documents on ethylene oxide and ethylene dichloride to the interim chemical review committee. It was noted that those documents for the two substances did not clearly

distinguish between pesticidal and industrial uses. The Committee requested the interim chemical review committee to examine all uses of the two substances and to ensure that information on ongoing uses was included. Countries should be requested to provide clarification of control actions taken, with a view to further refining the decision guidance documents. It was decided to refer the decision guidance documents on bromacil and maleic hydrazide to the interim chemical review committee, with the request that it should consider the policy issues related to adding those chemicals to the PIC list.

The Committee requested that all notifications of control actions, background documents and comments on the decision guidance documents on ethylene dichlo-



Courtesy: Financial Times

ride, ethylene oxide, maleic hydrazide and bromacil should be provided to the secretariat by 31 October 1999 and made available to the interim chemical review committee.

It was decided that the interim chemical review committee should consider a mechanism for collecting and disseminating comments received on decision guidance documents as they were developed, so that countries taking a decision based on those documents were fully aware of the reasons behind the control action.

d) *Inclusion of chemicals in the interim PIC procedure*

The Committee noted that no additional chemicals currently required a decision.

III. Preparations for the Conference of the Parties

a) *Decisions required at the first meeting of the Conference of the Parties*

i) Rules of procedure and financial rules (article 18)

The Committee invited the secretariat to prepare draft rules of procedure, as well as a paper outlining possible options for the financial rules and a draft budget for the first biennium, as a basis for discussion at the next session of the Committee.

ii) Secretariat arrangements and financial provisions for the secretariat (article 19)

The Committee requested the secretariat to integrate secretariat arrangements and financial provisions for the

secretariat into the paper to be prepared by the secretariat on the financial rules and draft budget for the first biennium.

iii) Discontinuation of the interim PIC procedure (paragraph 13 of the resolution on interim arrangements)

The secretariat was invited to develop an analysis of the issues associated with the discontinuation of the interim PIC procedure for discussion by the Committee at its next session.

b) *Functions of the Conference of the Parties in respect of which the Committee may wish to take action*

i) Assignment of specific Harmonized System customs codes (article 13)

In view of the urgency of the issue, the secretariat and the Chair were invited to initiate contacts with the World Customs Organisation (WCO) and the secretariat was requested to report to the Committee at its next session on the outcome of those contacts. The secretariat was also invited to report on progress made by the secretariats of the Montreal Protocol on Substances that Deplete the Ozone Layer and of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal in assigning Harmonized System customs codes.

ii) Adoption of annexes on arbitration and conciliation (article 20)

The secretariat was requested to prepare documentation, for submission to the Committee at its seventh session, on the issue of arbitration and conciliation annexes, and also on procedures and institutional mechanisms for determining non-compliance. Thereafter, a working group might be established, to begin the task of developing arbitration and conciliation annexes and non-compliance procedures at the eighth session of the Committee, or under other arrangements if the state of ratifications so permitted.

IV. Issues Arising out of the Conference of Plenipotentiaries

a) *Support for implementation*

The representative of the group of African countries noted that, while technical assistance in the form of workshops and training was a vital component for effective implementation of the Convention, it was also necessary to provide financial assistance to developing countries and countries with economies in transition to assist them with implementation, and she said that the group wished to see that issue reflected in the Convention.

The Committee agreed to the proposed workshops on implementation and ratification of the Convention, described in the secretariat's note on its activities in the interim period and review of the situation as regards the trust fund (UNEP/FAO/PIC/INC.6/3), as a good basis for a work programme on support for implementation, and supported the provision of complementary assistance. It was noted that the Conference of the Parties should consider the issue of support for implementation. ➤

b) *Dispute settlement, illicit trafficking and responsibility and liability*

It was noted that the Intergovernmental Forum on Chemical Safety (IFCS) would most probably address the issue of illicit trafficking at its next meeting. Further, it was noted that illicit trafficking should still be a matter for consideration by the Conference of Parties at its first meeting.

The group of African countries reiterated the concerns that it had raised at the Conference of Plenipotentiaries, regarding technical and financial assistance, dispute settlement, illicit trafficking and responsibility and liability. The Committee agreed that those items would be placed on the agenda for its seventh session.

c) *Location of the secretariat*

The representatives of Germany, Italy and Switzerland reaffirmed their respective Governments' offers to

host the secretariat of the Rotterdam Convention. The Committee agreed that the secretariat would prepare a list of elements of information required for further consideration of the issue of the location of the secretariat by the Committee at its next session.

V. Status of Signature and Ratification of the Convention

The Committee took note of the relevant report of the secretariat and the recent signing of the Convention by Australia and the Czech Republic. Several representatives announced that the process of ratification had been initiated and was progressing favourably in their countries and that they hoped shortly to deposit their instruments of ratification, to ensure the early entry into force of the Convention. □