

PIC: Satisfaction at Progress Achieved

The seventh session of the Intergovernmental Negotiating Committee (INC) 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 (INC-7) was held from 30 October to 3 November 2000, in Geneva.¹ The goal of the PIC procedure is to promote a shared responsibility between exporting and importing countries to protect human health and the environment from the harmful effects of certain hazardous chemicals that are traded internationally.²

The Rotterdam Convention on the PIC Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was adopted on 10 September 1998. To date, the Convention has been signed by 72 States and one regional economic integration organisation, and ratified by 11 States (Bulgaria, Czech Republic, El Salvador, Guinea, Kyrgyzstan, the Netherlands, Oman, Panama, Saudi Arabia, Slovenia and Suriname). It will enter into force as soon as 50 instruments of ratification have been deposited.

Until the Convention's first Conference of the Parties (COP-1), the INC will continue to provide guidance regarding the implementation of the PIC procedure.

The PIC procedure

During the Geneva Meeting, delegates convened in Plenary, a Contact Group on contaminants and a Legal Working Group on rules of procedure for the Conference of the Parties, dispute settlement and non-compliance. They discussed, *inter alia*, the activities of the Secretariat,

implementation of the interim PIC procedure, the work of the Interim Chemical Review Committee (ICRC), preparation for the Conference of the Parties, and issues arising out of the 1998 Conference of the Plenipotentiaries.

INC Chair Maria Celina de Azevedo Rodrigues (Brazil) welcomed the delegates. She introduced Shafqat Kakakhel, Deputy Executive Director of UNEP who, on behalf of the UNEP Executive Director, thanked Switzerland and Italy for hosting the interim Secretariat.

The Assistant Director-General of the UN Food and Agriculture Organisation (FAO), Louise Fresco, underlined the fact that INC-7 is the result of collaboration and synergies between FAO and UNEP.

Activities of the Secretariat

Jim Willis, UNEP Chemicals, outlined the Secretariat's activities during the interim period and the situation regarding extra-budgetary funds (documents UNEP/FAO/PIC/INC.7/2 and Add.1). He noted that two regional workshops had been held to support efforts toward implementation and ratification, launching of the new PIC Web site, and new contributions to the Trust Fund.

The European Union announced its recent contribution of 100,000 euros to the Trust Fund. Egypt, supported by Syria, suggested the Secretariat consider organising a workshop for the Middle East region. Jim Willis explained that although workshops are a Secretariat priority, only two of the four originally planned could be arranged for 2001. New Zealand suggested that the Secretariat prioritise activities given the financial situation. Switzerland supported the proposed budget.

The Secretariat announced that agreement had been

reached to hold ICRC-2 from 19–23 March 2001, and INC-8 from 8–12 October 2001, both at FAO Headquarters in Rome.

Implementation of the interim PIC procedure

Delegates considered two main topics in this regard: status of implementation, and issues concerning the work of the ICRC.

Status of Implementation

Aase Tuxen, of the Interim Secretariat of the Rotterdam Convention, presented the "Status of Implementation of the Interim PIC Procedure" (document UNEP/FAO/PIC/INC.7/14). She noted that:

- 163 States had nominated 236 Designated National Authorities (DNAs) and that there were no DNA nominations for 20 States;
- no notifications of final regulatory actions submitted before the adoption of the Convention met the information requirements of Annex I;
- only six notifications have been submitted since the adoption of the Convention; and
- no proposals for inclusion of severely hazardous pesticide formulations have been submitted.

She also noted that Annex III currently contains 29 chemicals, including 19 pesticides, 5 severely hazardous pesticide formulations and 5 industrial chemicals. No information had yet been collected on responses concerning future import of a chemical; and no Party had reported to the Secretariat a need for information on transit movements of chemicals included in the interim procedure.

The Republic of Korea, supported by the European Union (EU), suggested that the Interim Secretariat analyse the causes of failure to report information required under Annex I. Jim Willis said the Secretariat would provide Parties with an analysis of the few early notification submissions received. He highlighted lack of data in many fields of the form as the main problem and noted that the analysis will be ready for the next ICRC meeting.

Interim Chemical Review Committee

Delegates discussed a number of issues related to the composition, functioning and work of the ICRC, including the appointment of experts.

Niek van der Graaff (FAO) noted the establishment, form and function of the ICRC under decision INC-6/2. He said that INC-7 is requested to formally appoint the experts designated by governments, and suggested the matter of replacement be discussed in a European regional meeting.

Delegates agreed on amendments to "Confirmation of Experts Designated for the Interim Chemical Review Committee." These reflect three changes to the designated experts, and include changes to preambular text in the annexed INC draft decision appointing the experts (INC.7/L.1).

The final decision of INC-7 on the subject states that the 29 government-designated experts are formally ap-

pointed as members of the ICRC and reaffirms the decision of INC-6 regarding the duration and terms of service of the experts.

ICRC Chair Reiner Arndt (Germany) presented the Report of the ICRC's First Session, held from 21–25 February 2000. He informed delegates that 26 of the 29 government-designated experts attended ICRC-I and noted that there was a balance in the type of expertise. However, he noted an imbalance in the attendance of industry, public interest groups and trade unions.

With regard to the development of an "Incident Report Form for Pesticide Poisoning Incidents," particularly relating to severely hazardous pesticide formulations, the ICRC Chair noted that an ICRC Task Group had drafted a form using available documentation and intended to "test phase" the form.

Many delegates supported the development of the draft Interim Report Form and the Plenary accepted the ICRC recommendation to develop such a Form. The final INC-7 decision encourages the ICRC to continue development of a one-page Incident Report Form in conjunction with a simple guidance document. It recommends that States, regional economic integration organisations, aid agencies, intergovernmental organisations (IGOs) and non-governmental organisations (NGOs) make use of this form on reporting pesticide poisoning incidents once it is available and has been circulated by the Secretariat.

Reiner Arndt outlined the ICRC recommendation to encourage States, aid agencies, NGOs and other actors to assist developing countries and countries with economies in transition in implementing specific projects to "identify severely hazardous pesticide formulations" causing problems under conditions of use in these countries.

Concerning *contaminants*, the ICRC Chair reported on its relevant recommendation to the INC. This issue refers to whether a chemical can be included in the PIC procedure on the basis of specified levels of contamination by impurities of health and environmental concern, rather than on the basis of the active ingredient of the chemical. He stated that the INC should consider adopting a policy on contaminants.

Chair Rodrigues suggested the creation of a Contact Group to analyse this issue and appointed Reiner Arndt as its Chair. Chair Arndt later presented the "Report of the Contact Group on Contaminants," prepared after two meetings of the Group. He reminded delegates that the Group was convened to discuss the adoption of a policy recommendation on whether or not a pesticide for which an acceptable level of contaminant was identified could be the basis for forwarding a notification of control action to the Secretariat. He stated that although they failed to achieve that goal, two divergent approaches to the notification procedure resulted from their work. These were: 1) If the nominated pesticide is considered to be one of two separate entities, the pesticide containing more than the upper limit of contaminant is banned, 2) If it were to be considered a single entity, the pesticide would not likely be considered to have met the criteria of Annex II of the Convention. The Group's recommendation was that the INC requests the ICRC to apply the two approaches to

maleic hydrazide on a pilot basis, without prejudice to any future policy on contaminants.

Egypt, supported by Samoa, noted the lack of discussion on industrial chemicals and suggested establishing a study group. Many other participants supported this. Chair Rodrigues said that this would be included in the INC's report.

The INC-7 decision on contaminants (contained in document UNEP/FAO/PIC/INC.7/L.1) states that the INC adopts a policy on contaminants that includes final regulatory actions to ban a pesticide that has been taken by at least two countries in two PIC regions on the basis of a contaminant contained in that substance, where the notification also meets the requirements of Annexes I and II of the Convention.

Delegates then considered "*Submission of Notifications of Final Regulatory Action for Chemicals Already Subject to the Interim PIC Procedure*." The relevant document notes that when the Convention enters into force, Parties must notify the Secretariat of each final regulatory action in effect at that time and that no exemption is made for chemicals already subject to the Interim procedure.

The US, supported by the EC, suggested the Secretariat develop a paper that identifies options for balancing information requirements and reporting responsibilities.

Delegates in Plenary agreed to request the Secretariat to prepare a paper for INC-8 analysing this issue and outlining options that would reconcile the need for information exchange with the need to avoid placing excessive reporting burdens on Parties of the Secretariat.

Chair Arndt outlined work conducted by the ICRC regarding "*Operational Procedures for the ICRC*," in particular, the development of a transparent mechanism for collecting and disseminating information received for the drafting of DGDs (chemicals for which Decision Guidance Documents were circulated during the voluntary procedure and which are subject to the Interim procedure).

The INC decision on the process for drafting DGDs states that the INC adopts the process for drafting DGDs set out in the flow chart and explanatory notes appended to the decision. The chart indicates that when the Secretariat has identified two notifications from two PIC regions and has verified that a proposal contains the information required, the following procedure will follow:

The Secretariat will forward the notification/proposal and documentation to the ICRC experts. These experts will provide comments on the documentation and an ICRC task group will be established. The task group will incorporate comments and present the notifications at an ICRC meeting, and decide to recommend the chemical and develop an internal proposal. The internal proposal will be circulated to the ICRC and its observers for information. The ICRC task group then incorporates the comments for the ICRC and its observers and prepares a draft DGD. The draft DGD will be distributed as a meeting document for discussion at an ICRC meeting. Finally, the ICRC will forward its recommendation and the draft DGD to the INC for decision.

Issues arising out of the Conference of the Plenipotentiaries

Location of the Secretariat

The current Secretariat host candidates Germany, and Switzerland with Italy, gave details of the conditions and advantages of their offers and indicated their willingness to provide the required information.

The Plenary agreed to adopt a decision inviting interested countries to provide additional information – for example, on health and security risks and visa policy – requesting the Secretariat to compile the offers and submit them to INC-8. It was agreed that offers to host the Secretariat should be received by 15 April 2001.

Support for implementation

Under this heading, delegates highlighted their activities in this area. The Secretariat noted the upcoming workshop in Australia, and two additional workshops scheduled for 2001.

Illicit trafficking

It was noted that the INC discussion on the subject resulted from the request made by the African Regional Group at the Conference of the Plenipotentiaries that illegal traffic be discussed, taking into account the work of the Intergovernmental Forum on Chemical Safety (IFCS).

Matthias Kern (Germany) summarised discussion on the subject undertaken at the third session of the IFCS (Forum III), held from 15–20 October 2000. He noted that the starting points for Forum III discussions were the definitions of illegal traffic in Chapter 19 of Agenda 21 and the request from PIC/INC-6 to discuss this issue. The speaker outlined the two recommendations adopted unanimously by Forum III: 1) The Inter-Organisation Committee for the Sound Management of Chemicals (IOMC) should establish a working group on illegal traffic to assess, among other things, illegal traffic in toxic and dangerous substances; review measures to detect illegal traffic; and make recommendations as to how the IOMC can advance work on this issue. 2) Governments establish national strategies regarding control of illegal traffic and support initiatives in the World Customs Organisation to assign specific Harmonised System codes for certain chemicals falling under the Convention and for persistent organic pollutants (POPs).

Delegates took note of and strongly endorsed the recommendations adopted by Forum III. They requested the IOMC Working Group to report back to INC-8 on the work accomplished in response to those recommendations.

Status of signature and ratification of the Convention

The representative of the Interim Secretariat noted that as of the beginning of October 2000, 11 States had ratified the Convention, but no subsequent information on other ratifications had been received by the Secretariat. Various countries noted their intention to ratify. Switzerland announced that its government had sent the request for ratification to its Federal Parliament on 18 October and that ratification is expected in 2001. Germany said

the Convention had been ratified by its government and would be deposited this year. The EC said its ratification could be expected by 2003. Rwanda noted its absence from the list of country signatures. Togo stressed budgetary problems preventing ratification and requested assistance. Argentina said that it was taking the necessary steps towards ratification. Nigeria noted that it would soon sign and ratify the Convention. Angola and Chad stated that their governments expect to ratify before December 2000. The US said that the Convention had been sent to its Senate for consent, and Cuba said its government is considering ratification in the near future. Cameroon announced its President's authorisation by law to ratify the Convention and to initiate steps to deposit the instrument of ratification.

Preparation for the Conference of the Parties

Discontinuation of the interim PIC procedure

The relevant document states that the interim procedure will cease to operate on a date specified by COP-1. It also notes, among other things, that the number of Parties to the Convention will initially be less than the number of States participating in the interim procedure. Non-Parties to the Convention will lose protection against unwanted imports when the interim procedure ceases; and there is no provision for the continuation of the INC and ICRC when the interim procedure ends.

A representative from the Secretariat emphasised the complexity of issues associated with transition from the interim procedure to the Convention procedure, including how to address notifications from non-Parties. The US proposed to continue the interim procedure for one year after COP-1, but not to continue the mandate of the INC and ICRC. The US delegate noted that this would result in a transition period of close to two years. The Canadian delegate noted that whilst 163 countries currently participate in the interim procedure, once the Convention enters into force with 50 ratifications, 113 countries would be non-Parties and therefore unable to participate. He suggested, with support from the EC, Australia, Hungary, the Republic of Korea, Nigeria, Samoa and Tanzania, a transition period longer than one year and, supported by, among others, Argentina and Ecuador, asked the Secretariat to identify options by INC-8 for managing the transition.

Chair Rodrigues stated that without a continued interim procedure there could be many countries not applying PIC if they are not Parties once the Convention is in force. Australia encouraged delegates to provide comments to the Secretariat regarding different options. The Chair set 1 February 2001 as the date for submission of

comments. China supported a transitional period while warning of potential adverse effects on non-Parties. The US stressed the need for legal advice to clarify the situation of different notifications in the Convention during the interim period.

The final INC-7 decision on the discontinuation of the interim PIC procedure states that the options paper to be prepared by the Secretariat should consider the following:

- the date on which the interim procedure should be discontinued;
- the nature of transitional measures;
- the possible need for measures regarding treatment of non-Parties to the Convention;
- measures to decide on the validity of notifications of final regulatory actions and responses regarding import from non-Parties; and
- draft recommendations concerning the need to mitigate possible negative effects resulting from the termination of the interim procedure.

Rules of procedure, dispute settlement and non-compliance

The Secretariat introduced draft rules of procedure, and possible options for financial rules, settlement of disputes and non-compliance as a package of activities in preparation for the Conference of the Parties.

The speaker said that some items were more urgent than others and noted in this regard the documents on the draft rules of procedure and settlement of disputes. He said that the draft rules for COP-1 adoption were a start and highlighted the annexes on arbitration and conciliation.

Chair Rodrigues noted the intent to form a working group to review the documents and delegates indicated their general support for this.

Regarding settlement of disputes, France, on behalf of the EU, advocated the Convention on Biological Diversity as a model. The UK recommended that the proposed working group on rules and dispute settlement take advantage of precedents under other multilateral environ-

mental agreements but update elements where appropriate.

Procedures and institutional mechanisms for determining non-compliance

The Chair noted the need to adopt a recommendation on this issue due to its importance for many parties. France, on behalf of the EU, suggested the adoption of a non-compliance mechanism that is as effective as possible but flexible enough to allow exchange of and access to information.

The Chair suggested that the Secretariat should be requested to develop a non-compliance model and another for reporting, which is not explicitly provided for in the Convention. Canada, supported by several other delega-



From left to right: Hal Cohen and Niek van der Graaff, FAO, Maria Celina de Azevedo Rodrigues, Chair and Jim Willis, UNEP Chemicals.

Courtesy: IISD

tions, offered to draft a preliminary reporting model. Australia proposed that the Secretariat draft the paper on this subject and Colombia suggested that interested Parties send their comments to the Secretariat.

The Chair invited Parties interested in supporting Secretariat development of models for non-compliance and reporting to send in their comments by 1 February 2001. He proposed the creation of a Legal Working Group on the issues on non-compliance, dispute settlement and rules of procedure, with Patrick Szell (UK) as Chair.

Patrick Szell later presented the report of the Legal Working Group. He said that the report was not final but reflected progress made by the Group, that they had time to cover only the rules of procedure, and not arbitration or conciliation procedures for dispute settlement and non-compliance. He noted that after having examined all of the rules of procedure, six issues would require further consideration. These related to "dates of meetings," "participation of other bodies or agencies," "election of officers," "quorum," "majority required voting" and "method of voting for general matters."

Financial arrangements

Jim Willis outlined "possible options for financial rules," including "Financial provisions for the Permanent Secretariat" and a "Draft budget for the first biennium." He highlighted elements found in the rules adopted by other multilateral environmental agreements and suggested that the Secretariat produce a draft of financial rules based on elements in such agreements.

Proposals on the subject were made by several delegations, and Chair Rodrigues said that the Secretariat would draft financial rules for presentation at INC-8.

Assignment of Harmonised System customs codes

A representative from the Interim Secretariat reminded delegates that INC-6 had invited the Secretariat to initiate contact with the World Customs Organisation (WCO), and that the WCO was encouraged to assign Harmonised System (HS) customs codes to Annex III chemicals. He said that the WCO had provided a list of HS codes for Annex III chemicals, noting that some chemicals were not assigned a code. He explained that HS codes are assigned according to a product's application, but that Annex III chemical uses were not always clear to the WCO. He announced that a meeting would be held in 2001 to discuss a coordinated approach between the WCO and the UNEP Secretariats.

The EC said it was willing to make a proposal to the WCO regarding modification of the HS to include codes for chemicals under the Convention, and suggested that the Secretariat work with the EC on this matter. Chair Rodrigues said that INC-7 would take note of the information presented by the Secretariat and the WCO and suggest that the work of assigning HS customs to PIC chemicals be completed by 2007.

Closing Plenary

On 3 November, delegates considered the draft report of the Meeting and suggested modifications. With regard

to the implementation of the interim PIC procedure, the EC added a sentence referring to 13 new import decisions recently transmitted to the Secretariat and an EC notification of regulatory action concerning asbestos.

Jim Willis stated that two decisions made regarding contaminants would be combined into one decision for the Final Report of the Meeting.

With regard to contaminants, Canada proposed removing reference to chemicals whose use had been banned or severely restricted, and replacing it with wording on pesticides for which specified levels of contaminants had been set. The EC opposed this suggestion, noting that discussions in the ICRC necessarily involve banned or severely restricted substances. The US, opposed by the EC, suggested referring only to the issue of contaminants. The US delegate maintained that the definition of "chemical" under the Convention is ambiguous because it does not state whether a substance is still a chemical if it contains a certain level of contaminant. She suggested, and Plenary accepted, compromise text referring to the issue of pesticides that had been notified as banned or severely restricted.

Concerning issues arising out of the Conference of Plenipotentiaries, Egypt proposed that the Secretariat support the development of workshops in all PIC regions. With regard to dispute settlement, Senegal, on behalf of the African Regional Group and supported by Libya, proposed including a request for further study of procedures for compensation.

The Nigerian delegate, on behalf of the African Regional Group, congratulated the Secretariat and participants for helping to achieve the goals of the Meeting. He presented an African Group Declaration that, among other things, reaffirmed Africa's commitment to the Convention but noted the lack of an international legal framework to address illicit trafficking.

In her closing remarks, Maria Celina Rodrigues thanked all involved in the Meeting for completing their work as scheduled.

There was a general feeling of satisfaction among participants with the progress they had made, although all were aware that some complex issues, in particular non-compliance and the discontinuation of the interim PIC procedure, have just been postponed to the next round of negotiations. (MJ)



Notes

¹ See *Environmental Policy & Law*, Vol. 28, No. 2 (1998) at page 75 and Vol. 28, No. 6 (1998) at page 258 for details of the Convention's adoption, and Vol. 29, No. 5 at page 219 for details of PIC-6.

² The United Nations Food and Agriculture Organisation developed the International Code of Conduct for the Distribution and Use of Pesticides, and the United Nations Environment Programme (UNEP) developed the London Guidelines for the Exchange of Information on Chemicals in International Trade.

Both of these instruments include procedures aimed at making information about hazardous chemicals more readily available, thereby permitting countries to assess the risks associated with their use.

In 1989, both instruments were amended to include a voluntary PIC procedure to help countries make informed decisions on the import of chemicals that have been banned or severely restricted. The voluntary PIC procedure, managed jointly by the FAO and UNEP, provides a means for formally obtaining and disseminating the decisions of importing countries on whether they wish to receive future shipments of such chemicals.