

conference

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CODE OF CONDUCT ON THE DISTRIBUTION AND USE OF PESTICIDES: INTRODUCTION OF THE "PRIOR INFORMED CONSENT" (PIC) CLAUSE

1. The Twenty-fourth Session of the Conference decided in 1987 that the principle of Prior Informed Consent should be incorporated in the International Code of Conduct on the Distribution and Use of Pesticides in the next biennium. To facilitate the inclusion of Prior Informed Consent, the Resolution asked the Director-General to arrange for the establishment of a working group to consider the issues involved in the incorporation of the Prior Informed Consent clause in the Code, including those of implementation, in order to advise member governments on how best to give effect to the principle. It also stated that the results of the work should be presented through the Committee on Agriculture (COAG) and Council to the Twenty-fifth Session of the Conference.

2. Conference Resolution 5/87 was adopted by consensus, although a few countries reserved their position and wanted as a first step an analysis of the Prior Informed Consent provisions which might be incorporated into the Code.

3. In order to develop an acceptable modality of Prior Informed Consent and to draft a revised text for Article 9 (Information Exchange) of the Code of Conduct, FAO undertook a number of actions. In March 1988 it convened an Expert Consultation, which was followed by broad consultations with

all parties concerned and by a Government Consultation in January 1989. Furthermore, the FAO Secretariat participated in a number of meetings organized by UNEP on the introduction of the principle of Prior Informed Consent into their "London Guidelines for the Exchange of Information on Chemicals in International Trade". In early 1989 draft guidelines on the operation of Prior Informed Consent and a draft text and changes to Articles 2 and 9 of the Code of Conduct were prepared and submitted to COAG which discussed and adopted them.

4. In May 1989 the UNEP Governing Council accepted the amended London Guidelines, incorporating provisions for Prior Informed Consent in the London Guidelines compatible with those to be examined by the FAO Council.

5. In accepting the amended London Guidelines, the UNEP Governing Council strongly emphasized the need for cooperation between UNEP and FAO in the implementation of the Prior Informed Consent procedure. FAO and UNEP have held negotiations on a memorandum of understanding between the two Organizations on the operation of a joint programme on the operation of Prior Informed Consent. Actions have already been initiated for the first year of joint operation of Prior Informed Consent and countries have been requested to designate official contact points.

6. The main elements of the proposed PIC procedure are as follows:

- a) Notification by participating Member Countries on the banning or severe restriction of individual pesticides.
- b) Establishment of a joint FAO/UNEP data base.

- c) Notification of relevant information by FAO to importing countries, including reasons for the control action, in order to facilitate a decision on whether or not to allow imports. A comprehensive "PIC Decision Guidance Document", prepared by the Secretariat, will accompany such notification.
- d) Notification by FAO to pesticide exporting countries of decisions by importing countries.
- e) The exporting countries will inform exporters and, if import has been banned, will take measures designed to ensure that no export takes place.
- f) Importing countries will notify interested parties, such as Customs authorities, of the decision, so that importation restrictions can be enforced.

7. The Council examined the versions adopted by COAG of articles 2 and 9 of the Code and the guidelines on the operation of PIC at its Ninety-fifth Session (June 1989) and agreed to request the Conference to approve them.

8. The revised text of Articles 2 and 9 (and the guidelines), as approved by Council for approval by the Conference, are given in the attached Appendix, which also incorporates an extract from the report of the Ninety-fifth Council session.

EXTRACT OF REPORT OF NINETY-FIFTH SESSION OF COUNCIL (CL 95/REP)- Code of Conduct on the Distribution and Use of Pesticides:
Introduction of the "Prior Informed Consent" (PIC) Clause 1/

67. The Council considered the documents prepared in response to Resolution 5/87 of the Twenty-fourth Session of the Conference in 1987, when it was decided that the principle of Prior Informed Consent (PIC) should be incorporated in the International Code of Conduct on the Distribution and Use of Pesticides in the next biennium. Moreover, the Resolution had asked the Director-General to arrange for the establishment of a working group to consider the issues involved in the incorporation of the Prior Informed Consent clause in the Code, including those on implementation and advice to member countries on how best to give effect to the principle. It also stated that the results of the work should be presented through COAG and the Council to the Twenty-fifth Session of the Conference.

68. The Council noted that the Director-General had taken a number of initiatives to implement the Conference decision, including the convening of an Expert Consultation in March 1988 and a Government Consultation in January 1989. It also noted that the Government Consultation in January 1989 had reached general agreement on the operation of the Prior Informed Consent procedure and the amendments required for the inclusion of Prior Informed Consent in the Code. Based on the results of the Consultation, COAG had considered proposals to revise and amend Article 2 (Definitions) and Article 9 (Information Exchange) of the Code as well as the Guidelines on the operation of Prior Informed Consent. The Committee on Agriculture had reached consensus on the Guidelines on the operation of Prior Informed Consent and the revised text of Articles 2 and 9 of the Code of Conduct, as provided in Appendix F of the Report of the Tenth Session of COAG.

69. The Council agreed to the further amendments to Articles 2 and 9.8.1 and 9.8.4, as proposed by COAG in paragraph 172 of its report and expressed its appreciation of the substantial work performed. It noted with satisfaction that FAO, in the preparation of the present texts, had closely cooperated with UNEP to reach compatibility between the texts of the "London Guidelines for the Exchange of Information on Chemicals in International Trade" and the Code of Conduct.

70. The possibility was debated of amending the proposed new Article 2 of the Code by deleting the word "participating", however the Council upheld the consensus reached by COAG. Some members proposed that the Secretariat should try to determine the status of compounds which had either not been registered or had been withdrawn by countries but which were still being traded, and that the Secretariat should present proposals on this matter in its next progress report on the implementation of the Code.

71. The Council stressed the importance of close cooperation between FAO and UNEP on the implementation of the PIC scheme. It welcomed the steps being taken by both Organizations to establish a joint programme and a common database and expressed satisfaction that the Director-General of FAO had

1/ CL 95/9; CL 95/15; CL 95/PV/3; CL 95/PV/4; CL 95/PV/18.

proposed to formalize this cooperation in a memorandum of understanding. In this context it underlined the need to establish a unified and administratively simple system. It requested the Secretariat to keep the Council informed on progress on cooperation with UNEP in the implementation of the PIC scheme.

72. The practical application of PIC was a complex issue and developing countries would require assistance in the training of staff to be able to implement PIC procedures and, even more so, many of the other relevant provisions of the Code of Conduct. The Council therefore stressed the need for FAO to continue placing high priority on such technical assistance work, particularly for developing countries lacking pesticide registration and control schemes. It appreciated the assistance already made available or offered by a number of donors.

73. The Council recognized that PIC would serve mainly as an interim measure, until such time as effective pesticide registration and control procedures had been established by all countries.

74. The Council requested the Conference to approve the Revisions and Amendments of the Code (Article 2 and Article 9) and the Guidelines on the Operation of Prior Informed Consent which are given in Appendix E to this report. Some members however stated that they would make their position known at the Conference.

REVISION OF ARTICLES 2 AND 9 OF THE INTERNATIONAL CODE OF CONDUCT ON THE
DISTRIBUTION AND USE OF PESTICIDES
AND
GUIDELINES ON THE OPERATION OF PRIOR INFORMED CONSENT

A. REVISION OF ARTICLES 2 AND 9 OF THE INTERNATIONAL CODE OF CONDUCT ON THE
DISTRIBUTION AND USE OF PESTICIDES

ARTICLE 2. DEFINITIONS:

The following definitions were added to this Article:

"Prior Informed Consent" (PIC) refers to the principle that international shipment of a pesticide that is banned or severely restricted in order to protect human health or the environment should not proceed without the agreement, where such agreement exists, or contrary to the decision of the designated national authority in the participating importing country.

"Prior Informed Consent Procedure" (PIC procedure) means the procedure for formally obtaining and disseminating the decisions of importing countries as to whether they wish to receive future shipments of pesticides that have been banned or severely restricted. A specific procedure was established for selecting pesticides for initial implementation of the PIC procedures. These include pesticides that have been previously banned or severely restricted as well as certain pesticide formulations that are acutely toxic. This procedure is described in the Guidelines on the operation of Prior Informed Consent.

ARTICLE 9. INFORMATION EXCHANGE AND PRIOR INFORMED CONSENT 1/

9.1 The government of any country that takes action to ban or severely restrict the use or handling of a pesticide in order to protect health or the environment should notify FAO as soon as possible of the action it has taken. FAO will notify the designated national authorities in other countries of the action of the notifying government.

9.2 The purpose of notification regarding control action is to give competent authorities in other countries the opportunity to assess the risks associated with the pesticides, and to make timely and informed decisions as to the importation and use of the pesticides concerned, after taking into account local, public health, economic, environmental and administrative conditions. The minimum information to be provided for this purpose should be:

9.2.1 the identity (common name, distinguishing name and chemical name);

9.2.2 a summary of the control action taken and of the reasons for it - if the control action bans or restricts certain uses but allows other uses, such information should be included;

1/ The operational procedures for the Prior Informed Consent scheme are given in specific Guidelines.

9.2.3 an indication of the additional information that is available, and the name and address of the contact point in the country to which a request for further information should be addressed.

Information Exchange among Countries

9.3 If export of a pesticide banned or severely restricted in the country of export occurs, the country of export should ensure that necessary steps are taken to provide the designated national authority of the country of import with relevant information.

9.4 The purpose of information regarding exports is to remind the country of import of the original notification regarding control action and to alert it to the fact that an export is expected or is about to occur. The minimum information to be provided for this purpose should be:

9.4.1 a copy of, or reference to, the information provided at the time of the notification of control action;

9.4.2 indication that an export of the chemical concerned is expected or is about to occur.

9.5 Provision of information regarding exports should take place at the time of the first export following the control action, and should recur in the case of any significant development of new information or condition surrounding the control action. It is the intention that the information should be provided prior to export.

9.6 The provision to individual countries of any additional information on the reasons for control actions taken by any country must take into account protection of any proprietary data from unauthorized use.

Prior Informed Consent

9.7 Pesticides that are banned or severely restricted for reasons of health or the environment are subject to the Prior Informed Consent procedure. No pesticide in these categories should be exported to an importing country participating in the PIC procedure contrary to that country's decision made in accordance with the FAO operational procedures for PIC.

9.8 FAO will

9.8.1 review notifications of control actions to ensure conformity with definitions in Article 2 of the Code, and will develop the relevant guidance documents.

9.8.2 in cooperation with UNEP, develop and maintain a data base of control actions and decisions taken by all member governments;

9.8.3 inform all designated national authorities and relevant international organizations of, and publicise in such form as may be appropriate, notifications received under Article 9.1 and decisions communicated to it regarding the use and importation of a pesticide that has been included in the PIC procedure.

9.8.4 FAO will seek advice at regular intervals and review the criteria for inclusion of pesticides in the Prior Informed Consent procedure and the operation of the Prior Informed Consent scheme and will report to member governments on its findings.

9.9 Governments of importing countries should establish internal procedures and designate the appropriate authority for the receipt and handling of information.

9.10 Governments of importing countries participating in the PIC procedure, when advised by FAO of control action within this procedure, should:

9.10.1 decide on future acceptability of that pesticide in their country and advise FAO as soon as that decision has been made;

9.10.2 ensure that governmental measures or actions taken with regard to an imported pesticide for which information has been received are not more restrictive than those applied to the same pesticide produced domestically or imported from a country other than the one that supplied the information;

9.10.3 ensure that such a decision is not used inconsistently with the provisions of the General Agreement on Tariffs and Trade (GATT);

9.11 Governments of pesticide exporting countries should:

9.11.1 advise their pesticide exporters and industry of the decisions of participating importing countries; and

9.11.2 take appropriate measures, within their authority and legislative competence, designed to ensure that exports do not occur contrary to the decision of participating importing countries.

B. GUIDELINES ON THE OPERATION OF PRIOR INFORMED CONSENT (PIC)
EXECUTING AGENCY

The report of the Expert Consultation on the Introduction of "Prior Informed Consent" in Article 9 of the International Code of Conduct on the Distribution and Use of Pesticides stressed the importance of cooperation between UNEP and FAO in the operation of a prior informed consent scheme. Because of the expertise FAO has in the field of pesticide use, management and control and the comprehensive network of FAO contacts in UN Member Nations, FAO will operate the PIC scheme as far as pesticides are concerned. FAO will, in cooperation with UNEP, manage and implement the scheme, including the selection of pesticides to be covered by the PIC scheme, mechanisms for information sharing and compatibility of procedures.

OPERATION OF PRIOR INFORMED CONSENT

Step 1 - Participation in PIC

Member nations will be invited, through official FAO channels, to participate in the operation of Prior Informed Consent as importing countries. If there is no reply to the initial contact, a follow up letter will be sent 60 days after the first one. In countries where there is an FAO representation, FAO Representatives will seek a decision from the country. Until a response is received, it will be assumed that the country does not wish to participate. It is expected that all pesticide exporting countries will participate in the PIC scheme.

Step 2 - Designation of National Authority

Member nations will be invited to designate the appropriate authority which should supply FAO with the notices of control action taken by the government. This authority will be responsible for receiving and giving notices on decisions on whether the country wishes (to continue) to receive imports of pesticides included in the PIC procedure. For information purposes FAO will also be informed about the authority that has technical responsibility for pesticide use and/or control (registration authority or equivalent).

Step 3 - Notification of Control Actions

The designated National Authority would advise FAO of control actions taken in the country to ban, to refuse registration, or severely restrict a pesticide for health or environmental reasons, as included in the definition, as well as any other actions to withdraw a pesticide for health or environmental reasons. This does not include actions to revoke or withdraw a pesticide registration for non-submission of data or for commercial reasons.

In deciding to notify, countries must abide by the definitions of banned and severely restricted in the Code of Conduct, namely:

Banned means a pesticide for which all registered uses have been prohibited by final government regulatory action, or for which all requests for registration or equivalent action for all uses have, for health or environmental reasons, not been granted.

Severely restricted - a limited ban - means a pesticide for which virtually all registered uses have been prohibited by final government regulatory action for health or environmental reasons,^{1/} but specific registered use or uses remain authorized.

The information forwarded to FAO should be provided in the format shown in the Annex to this Appendix. It should be noted that the reasons for the control action for health or environmental reasons should be provided in each case. A separate form should be completed for each pesticide. Countries should be prepared to provide additional detailed information on request.

Step 4 - Selecting pesticides to be included in the PIC procedure

FAO will, in cooperation with UNEP/IRPTC and other relevant organizations, review all notifications to ensure conformity with the definitions. Pesticides will be included in the PIC procedure when FAO is advised by a government that it has taken final control action consistent with the definition of banned or severely restricted for health or environmental reasons in the Code of Conduct on the Distribution and Use of Pesticides.

Additionally, an FAO Expert Panel will consider the problem of acutely hazardous pesticide formulations, i.e. those that pose particular handling problems, to determine if there exists a need for a list of such products to supplement the pesticides already subject to the PIC procedure. This Panel should include national pesticide registrars and representatives from WHO and UNEP. They may call upon expertise as they deem necessary and will review formulations which are included in WHO Class 1A. If the Panel concludes that there are acutely hazardous pesticide formulations of concern to developing countries that are not already included in the PIC procedure, a supplemental list of such formulations will be recommended for inclusion.

FAO will develop a "PIC decision guidance document" for each pesticide to be circulated with the notice of control action for response by participating importing countries and for information of other countries.

Pesticides that have already been subject to control action

For pesticides that have already been subject to control action, a different procedure will be followed. Close cooperation with UNEP (IRPTC) will be sought for such a procedure. All FAO Member Governments will be asked to submit notifications of past control actions for health and environmental reasons before 31 December 1989. These will then, in cooperation with relevant Organizations, together with information already available in IRPTC, be evaluated on their conformity with the definitions. PIC guidance documents will be developed, initially for pesticides banned or severely restricted in five or more countries, for those pesticides that conform to the definitions and these PIC guidance documents will be submitted to participating governments for decision. Superseded pesticides will not be submitted to this procedure as they will not appear in international trade.

NOTE: THE MAJORITY OF COAG SUPPORTED LEAVING THE "TRIGGER" LEVEL UNCHANGED, I.E. FIVE OR MORE ACTIONS

^{1/} "For health or environmental reasons" was not repeated in the definition of severely restricted in the Code but is included in this paper for clarification.

Step 5 - FAO Processing of Notification

FAO will inform Member Nations of control actions taken and will send a PIC decision guidance document on the pesticide to the designated national authority. This document will provide a summary of information including chemical and physical properties, uses, source of exposure, toxicity profile, countries that have taken control actions and the reasons for such actions and also, when available, suggested possible alternatives. It should be recognized that any suggestion of alternatives can only be general in nature, as specific alternatives could only be recommended following a careful study of the pest/crop complex in an individual country.

Step 6 - Response by Participating Countries

After each notification, each importing country that has decided to participate in the PIC procedure in Step 1, would advise FAO whether or not it will allow imports of the pesticide(s) in question. ^{1/} A response should be made within 90 days of advice being sent from FAO to the designated national authority. A country may make a final response or an interim response.

Final response

A final response will consist of a statement by the national authority as to whether or not the country will ban imports for health or environmental reasons. It is understood that the country will also discontinue production for the national market if importation is banned for health or environmental reasons, or whether importation will only be allowed under specified, stated conditions. It is also understood that the importing country may wish to permit the use of products that are in stock at the time the prohibition of imports is imposed.

Interim response

In an interim response the country would advise about each pesticide in the PIC procedure in one of the following ways:

1. A request for further information.
2. A statement that future importation is under review.
3. A request for assistance to evaluate the pesticide.

Any of the replies may be accompanied by an interim importation statement that the importation will or will not be allowed, or whether importation will only be allowed under specified, stated conditions, during the period until a final decision is reached. In the event that such statement is not made, the status quo will continue (see meaning of no response).

^{1/} An import order by a Government authority will be assumed to have the consent of the Government and, thus, to have precedence over the PIC procedure.

Meaning of no response

In some instances a participating importing country may not respond. Every effort will be made to avoid such a situation, but if it does occur, it will be considered as described in this paragraph. If a country does not make a final response or if it responds with less than a final response without providing an interim importation statement, the status quo with respect to importations will continue. This means that the pesticide should not be exported without the explicit consent of the importing country, unless the exporter has evidence that it is a pesticide that is registered in the importing country or if it is a pesticide the use of which has been allowed by the importing country.

National control on imports

At the time an interim or final decision to ban importation for health or environmental reasons is made, the national agency responsible for controlling imports will be instructed to take the relevant import control actions. Where such exists, local production will also be subjected to the control action. Importing countries would take all necessary measures to prohibit importation and local production.

Step 7 - Action to be taken by FAO

FAO will advise all designated national authorities of the responses of individual countries. FAO will maintain a database on country decisions and will also make information available to National Authorities at regular intervals in an appropriate form. FAO will seek advice at regular intervals and review the criteria for inclusion of pesticides in the PIC procedure and the operation of the PIC scheme and will report to its member governments on its findings.

Step 8 - Actions to be taken by exporting countries

National authorities of exporting countries would inform the appropriate authorities and the pesticide export industry of decisions by importing countries. Governments would implement appropriate procedures, within their authorities, to help ensure that exports do not occur contrary to the decision of the participating importing country.

INFORMATION EXCHANGE

The successful operation of the process of Prior Informed Consent for pesticides is completely dependant on the free exchange and rapid processing of information provided by various countries. The PIC procedure is in addition to, and does not replace, any system of information exchange between countries nor does it influence the right of any country to seek additional information on the reasons for any control action which a country may take on a pesticide.

BANNED OR SEVERELY RESTRICTED PESTICIDES
REPORT TO FAO

Annex

- 1 COUNTRY
- 2 NAME, ADDRESS AND CONTACT OF ORGANIZATION SUBMITTING REPORT
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.....
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Telex Telephone
- 3 IDENTITY OF PESTICIDE
Common name
Distinguishing name
Chemical name
- 4 SUMMARY OF REASONS FOR BANNING OR SEVERELY RESTRICTING USE
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- 5 SUMMARY OF REMAINING USES OF SEVERELY RESTRICTED PESTICIDE
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- 6 NAME, ADDRESS AND CONTACT FOR FURTHER INFORMATION
(if different from 2)
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.....
Telex Telephone
- 7 LIST ANY RELEVANT REFERENCES
.....
.....
.....
- 8 DATE ABOVE DECISIONS CAME INTO FORCE
.....
(date) (month in words)
- 9 SIGNATURE