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INTERNATIONAL CODE OF CONDUCT ON THE DISTRIBUTION AND USE OF PESTICIDES - IMPLEMENTATION OF THE PRIOR INFORMED CONSENT (PIC) CLAUSE

BACKGROUND

1. The International Code of Conduct on the Distribution and Use of Pesticides, which was developed in close consultation with government representatives, non-governmental organizations and the pesticide industry, was adopted by consensus in Resolution 10/85 of the Twenty-third Session of the FAO Conference in 1985. The Conference further recommended that all FAO Member Nations promote the use of the Code in the interests of safer and more efficient use of pesticides and of increased food production.

2. The FAO Conference at its Twenty-fourth Session in 1987 expressed grave concern on the continued health and environmental problems caused by pesticides. It stressed that serious problems arose out of the continuing importation of pesticides that had been banned or severely restricted in exporting countries. The Conference discussed extensively various aspects related to the principle of "Prior Informed Consent" (PIC). This principle concerned the export and import of pesticides that are banned or severely restricted. A great number of countries emphasized that its adoption would contribute to safer use of pesticides, and reduce hazards to human health and the environment. The Conference reviewed the various initiatives and discussions on the "Prior Informed Consent" Clause in different fora and agreed that this was a matter of major importance to improve the safe use of pesticides, in particular in developing countries. By Resolution 5/87 the Conference decided, by consensus, to include the principle of Prior Informed Consent into the Code.

3. In order to develop an acceptable modality of Prior Informed Consent and to draft a revised text of Article 9 (Information Exchange) of the Code of Conduct, FAO convened several meetings and conducted broad consultations. A proposed procedure and text proposals were submitted through COAG to the 95th Session of the Council and to the 25th Conference of FAO.

4. The "London Guidelines for the Exchange of Information for Chemicals in International Trade" were accepted by the Governing Council of UNEP in June 1987. The Guidelines are addressed to Governments with a view to assisting them in the process of increasing chemical safety in all countries through the exchange of information on chemicals in

international trade. The Guidelines are general in nature and are aimed at encouraging the sound management of chemicals through the exchange of information, including that of banned and severely restricted chemicals in international trade. In the acceptance of the Guidelines the Governing Council requested that modalities of PIC be developed.

5. UNEP developed its scheme on Prior Informed Consent in parallel with FAO, and FAO and UNEP cooperated closely to reach full compatibility between the two proposals and to work out a joint programme of implementation. The amended London Guidelines were accepted by the UNEP Governing Council in May 1989.

6. The FAO Conference during its Twenty-fifth Session in 1989, reviewed the proposals for the introduction of Prior Informed Consent in the Code and adopted Resolution 6/89 on the amendment of Articles 2 and 9 of the Code. It authorized the Director-General to establish a programme jointly with UNEP for the implementation of PIC procedures. (The 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 are shown in Appendix A).

IMPLEMENTATION OF PIC SINCE THE 25TH CONFERENCE

7. After the decision of the 25th Conference, FAO and UNEP initiated a joint programme on the implementation of PIC. The FAO/UNEP joint programme on PIC is being developed in close consultation and cooperation with other relevant international organizations, including WHO, ILO and GATT. A memorandum of understanding between FAO and UNEP is being finalized.

8. It was found that the implementation required a preparatory phase which included:

- appointment of Designated National Authorities (DNAs) by their respective governments;
- development of a joint database on banned and severely restricted pesticides and other chemicals;
- preparation of a list of pesticides and chemicals to be included in the initial stages of implementation of PIC, and preparation of Decision Guidance Documents (DGDs) to assist in decisions of imports of each chemical;
- updating of the joint database with respect to actions of governments to ban or severely restrict pesticides and chemicals for health and/or environmental reasons;
- preparation of guidance to governments explaining the operation of the joint PIC procedure and providing explanations of the kinds of actions to be reported under the definitions of banned and severely restricted for health or environmental reasons;
- formulation of procedures for handling new notifications of bans or severe restrictions of pesticides or other chemicals received subsequent to the start-up of the procedure.

9. FAO and UNEP have established a Joint Expert Group on Prior Informed Consent. The function of the Group is to provide advice and guidance for the implementation of PIC, to review DGDs and other technical matters. The first meeting of the Group was held in December 1989, the second from 1 to 5 October 1990, and the third meeting from 3 to 7 June 1991.

10. FAO and UNEP had sent identical letters to governments on 31 October 1989 and 15 November 1989 respectively, inviting each government to nominate its Designated National Authority (DNA). This was followed by a reminder dated 25 January 1991 to those countries that had not responded. By 30 June 1991, 105 countries had nominated DNAs. Many countries nominated two DNAs, one to handle pesticides and another to handle other chemicals. Other countries nominated one DNA to handle both pesticides and other chemicals. For countries that are yet to respond, the FAO Representatives have been contacted to approach the respective governments.

11. An FAO/UNEP Joint Database on PIC is presently being stored in a mainframe computer, but UNEP will develop software for personal computers so as to make the database as widely available as possible. Information in the database will ultimately include notification of control action, information sent to DNAs, responses from importing countries, notifications from exporting countries, addresses of Designated National Authorities and text of DGDs.

12. To update the joint database on past control actions Member Nations have to submit an inventory of control actions. To assist governments in the submission of an inventory, a document on Guidance to Governments on the operation of PIC has been prepared. This document has been reviewed and amended by the joint FAO/UNEP Expert Meetings. The document is in print in English, French and Spanish.

13. The format and the order of priority for Decision Guidance Documents was determined by the Joint FAO/UNEP Meetings. The order of priority for the preparation of DGDs was established as follows:

- (a) Pesticides banned or severely restricted in five or more countries and which are still actively in use;
- (b) Pesticides banned or severely restricted in five or more countries and whose use is being phased out;
- (c) Pesticides banned or severely restricted for the first time in any participating country;
- (d) Pesticides identified as candidates for inclusion in category IA+;
- (e) Pesticides banned or severely restricted in one to four countries;
- (f) Pesticides whose production/use is discontinued should for the time being be given low priority.

14. Based on the above order of priority, DGDs are being prepared; by May 1991 thirty-four DGDs had been prepared and 18 were being finalized

for translations into French and Spanish, to be printed for use in the initial PIC List.

15. To initiate the PIC procedure the FAO/UNEP Joint Expert Group considered pesticides that had been notified to the IRPTC by at least five countries. It identified 15 pesticides that would qualify for immediate inclusion in the PIC procedure. It also took into account certain pesticides which are largely those in class Ia and Ib of the WHO Hazard Classification and were reportedly causing serious health and/or environmental problems in more than one developing country (referred to as Class IA+). Three additional pesticides were classified as Class IA+ for inclusion in the PIC procedure (Table 1). Twenty-six pesticides would need further review (Table 2). Ten of these pesticides will be considered for inclusion in the IA+ list subject to the result of a survey being conducted to determine which of these highly toxic pesticides cause human health or environmental problems in developing countries. Twelve pesticides met the criteria for inclusion but are not produced any more and, therefore, will not be considered (Table 3).

16. The initial PIC procedure will be started during 1991. It is envisaged that full implementation, in which each valid notification will trigger the PIC procedure, will become effective by 1 January 1992.

TECHNICAL ASSISTANCE TO IMPLEMENT THE CODE AND THE PIC CLAUSE

17. Both FAO and UNEP have a number of activities under way to explain and train country officials on the operation of PIC procedures and to strengthen the decision-making and regulatory capability of developing countries. FAO in cooperation with other international organizations has held regional workshops in Thailand, Philippines, New Caledonia, Chile and Ghana which included modules and case studies on PIC. Sub-regional workshops on pesticide management including PIC for 16 ECOWAS (Economic Community of West African States) member countries, and for 10 SADDCC (Southern African Development Coordination Conference) member countries have been held. In addition, during the last two years, regional workshops for Latin America and the Caribbean as well as individual national workshops on the control and the safe and effective use of pesticides based on the provisions of the Code have been undertaken in 15 countries¹ with the assistance of TCP and other donor funding.

18. FAO is operating a project on the implementation of the International Code of Conduct on the Distribution and Use of Pesticides in Asia and the Pacific, under a Trust Fund financed by the Government of Japan. In addition, it will be implementing programmes in Central America with support from the Netherlands, in the Caribbean and parts of South America with support from Japan, while a project for Africa has been approved by UNDP. These projects are aimed at assisting governments to implement the responsibilities of the Code, of which the PIC procedure is an integral part. In addition, a number of TCP activities have or are being conducted with individual countries to strengthen pesticide regulation, including participation in PIC.

¹ Belize, Bolivia, Chile, Costa Rica, El Salvador, Ecuador, Honduras, Malaysia, Myanmar, Nepal, Panama, Papua New Guinea, Vanuatu, Viet Nam, Samoa.

CONVERSION OF THE CODE TO A BINDING LEGAL INSTRUMENT

19. In its deliberations on the Code of Conduct, the 25th FAO Conference proposed that the Secretariat explore the possibility of converting the FAO Code of Conduct into a binding legal instrument instead of the presently voluntary code. This issue was discussed by FAO/UNEP Panel which felt that the development of such binding instrument may be premature. The Council in its 99th Session concurred with the recommendation of the joint FAO/UNEP Expert Panel that it was premature to consider the conversion of the Code of Conduct into a binding legal instrument.

TABLE 1

INITIAL PIC LIST

Pesticide

Aldrin
HCH (mixed isomers)
Chlordane
Dieldrin
Heptachlor
Hexachlorobenzene
DDT
Inorganic mercury
Organic mercury
Cyhexatin
EDB
Fluoroacetamide
2,4,5-T
Chlordimeform
Dinoseb
Parathion ethyl*
Parathion methyl*
Paraquat*

- * Additional pesticides classified as IA+ on basis of potential for causing problems under conditions of use in developing countries.

TABLE 2

CANDIDATE PESTICIDES NOT IN INITIAL LIST
(subject to further review)

Pesticide

Arsenic compounds
Chloropicrin
Demeton (systox)
Endosulfan
Lindane
Methoxychlor
Aldicarb*
Monocrotophos*
Chlorbenzilate
Strychnine
Sodium fluoroacetate
Amitrole
Methyl bromide*
Methomyl*
Carbofuran*
Phosphamidon*
Dichlorvos*
Carbofuran*
Methamidophos*
Phosphamidon*
Dicofol
Captafol
Pentachlorophenol
Phosphine generators
TEPP
Mirex

- * To be reconsidered on the basis of the the results of the survey of pesticides causing problems in developing countries.

TABLE 3

PESTICIDE ACTIVE INGREDIENTS NO LONGER PRODUCED

Nitrofen
Chlordecone
DBCP
Leptophos
Schradan
Strobane
Telodrin
Thallium Sulphate
Kelevan
Endrin
Toxaphene
Lead compounds

Names will be circulated to designated national authorities for information, but no further action will be taken unless production is restarted.

APPENDIX A

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 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 CONSENT²

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);

² The operational procedures for the Prior Informed Consent scheme are given in specific guidelines.

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;

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 publicize 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 in 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, 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,³ 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 IA. 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

³ "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.

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

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.⁴ 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

⁴ 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.

such statement is not made, the status quo will continue (see meaning of no response).

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 on pesticides in the PIC procedure and the operation of the PIC scheme and will report to its Member Governments on its findings.

Step 8 - Action 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 dependent 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.

ANNEX TO APPENDIX A

BANNED OR SEVERELY RESTRICTED PESTICIDES

REPORT TO FAO

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