

Conclusion of the Intergovernmental Negotiating Committee for an international legally binding instrument for the application of the Prior Informed Consent (PIC) for certain hazardous chemicals and pesticides in international trade, March 1998.

Background

Prior Informed Consent is an international program, designed primarily to benefit developing countries, that provides information about banned and severely restricted pesticides and industrial chemicals in international trade. If a country decides that it does not wish to import a listed substance, or to impose conditions on imports of such a substance, an exporting country is obligated to prohibit export to that country, or to effect compliance with those conditions, as the case may be.

PIC has been a voluntary program in existence for a number of years. Canadian industry currently voluntarily complies with the PIC obligations. Negotiations to turn the voluntary program into a legally binding one concluded at the fifth and final session of the Intergovernmental Negotiating Committee in March 1998.

Next steps for the agreement will be the opening for signature of the Convention at a Diplomatic Conference in September 1998. The Convention will enter into force after it has been ratified by 50 countries. Signature represents a gesture of political support for the Convention. Ratification does not occur until countries have the appropriate legal mechanisms in place to meet their obligations under the Convention. Canada will need to have Cabinet approval in order to ratify and become a party. During the period between signature and entry into force, signatories will develop an interim process to govern the operation of the PIC procedure. Once the Convention enters into force it is our understanding that the voluntary PIC procedure will cease to operate.

Both industry and environmental groups have expressed support for the PIC agreement. There are strong incentives for countries to become a party to this agreement. Only parties can be members of the Chemical Review Committee, which has the responsibility to make recommendations about new chemicals to be included in the procedure. Only parties can participate in the Conference of Parties, which will consider these recommendations.

The PIC Convention

The following is a description of the articles of the agreement of most importance to the PMRA and Environment Canada.

Article 2 Definitions

chemical - consists of three categories of substances, namely, industrial chemicals, pesticides and a special category of severely hazardous pesticide formulations

banned chemical - all use within one or more categories has been prohibited by final regulatory action, in order to protect human health or the environment -- includes those denied approval for first-time use and those voluntarily withdrawn by industry

severely restricted chemical - virtually all use prohibited (almost a ban) within one or more categories by final regulatory action, - includes first time use denials and voluntary withdrawals.

severely hazardous pesticide formulation -- a chemical formulated for pesticidal use that produces severe health or environmental effects observable within a short period of time after single or multiple exposure, under conditions of use ~~in developing countries and countries with economies in transition.~~

final regulatory action -- action that does not require subsequent regulatory action

Article 3 Scope

This article is important because it says what the convention will apply to: banned or severely restricted chemicals and severely hazardous pesticide formulations and also what it will not apply to, for example, pharmaceuticals, food additives, wastes and quantities of PIC chemicals used for research & development. The intent is to avoid overlap with other conventions/international agreements (e.g. waste will be referred to the Basel Convention; Chemicals Weapons to the Chemical Weapons Convention etc). It is important to note that if any party bans or severely restricts a chemical in line with the definitions it becomes a candidate for consideration under the PIC procedure. Certain obligations in the PIC Convention will apply to products that are still registered in Canada where they have been banned or severely restricted in other countries and approved by the Conference of Parties for inclusion in the PIC procedure.

Article 4 Designated National Authorities (DNA)

Each party has to formally designate an authority to act on its behalf, who has responsibility for coordinating PIC activities at the national level and in communicating with the PIC Secretariat. Currently, the DNA for industrial chemicals is within EC while that for pesticides is within PMRA.

Article 5 Procedures for banned or severely restricted chemicals

Whenever a Party takes a final regulatory action that is believed to be consistent with the definitions, it must notify the PIC Secretariat within 90 days and provide specified documentation. The Party must also implement the Export Notification requirements (see Article 12).

The Secretariat circulates a synopsis of information on reported control actions every six months.

When the Secretariat has received at least one notification from each of two PIC regions, it forwards a nomination to the Chemical Review Committee (CRC - an expert panel) which will determine if PIC documentation and criteria are met, and develop a recommendation for the Conference of Parties (COP).

Article 6 Procedures for severely hazardous pesticide formulations

This article is focussed on developing countries and countries with economies in transition. The focus is on those pesticide formulations that are not banned or severely restricted and that meet the definition in

Article 2, (are causing problems, such as poisonings, under the conditions of use) in order that they may be nominated for inclusion in the PIC procedure (Annex III).

When a party nominates a formulation for inclusion in Annex III it must provide specified information. The Secretariat circulates a synopsis of the submitted information every six months. At the same time the Secretariat, will collect additional information regarding the nomination. When the specified information requirements have been met, the Secretariat forwards the nomination to the Chemical Review Committee which will determine if PIC documentation and criteria have been met and develop a recommendation for the COP.

Article 7 Listing of chemicals in Annex III

Annex III contains the list of pesticides and industrial chemicals subject to the PIC procedure. Whenever the COP agrees to add a substance to Annex III, a decision guidance document (which provides a summary of the regulatory actions and the risks) will be prepared and circulated.

The COP decides by consensus if a substance is to be included in Annex III. If it is listed, Articles 10 (Obligations for Imports) and 11 (Obligation for Exports) come into effect, but Article 12 (Export Notification) no longer applies to that chemical.

Once Canada has ratified the Convention it will participate in the deliberations of the COP when it considers nominations from the CRC. Canada will need to develop a process for preparing and consulting on Canadian positions with regard to nominations originating from other countries.

Article 10 Obligations in relation to imports of chemicals listed in Annex III

Importing parties have nine months after a decision guidance document has been distributed to inform the Secretariat of their decision about whether or not to permit the import of a PIC substance.

Article 11 Obligations in relation to exports of chemicals listed in Annex III.

This is the heart of the PIC Convention. Exporting parties are to take “appropriate legislative or administrative” measures to comply with importing party decisions within 6 months after the circulation of a list of country decisions by the Secretariat.

Specifically, if an importing party does not wish to import a PIC substance, the exporting party is obligated to ensure that export does not occur. If an importing party wishes to permit import, the exporting industry should be informed.

It should be noted that an importing party also has the option of placing special conditions on imports which the exporting countries must honor .

This Article also includes the rather complicated notion of “Status Quo.” Based on a principle that shipments should not occur prior to consent, negotiators were left with a quandary: how to ship in the absence of a response? If a country has not responded to a PIC circular, then exporting parties may only

permit export if:

- < the chemical is registered in the importing party
- < the chemical has already been exported or used in that country and there is no regulatory prohibition in that country
- < or, if explicit consent has been sought and received

Based on the premise that Canada's implementation of the entire program has to be as efficient as possible, creative alternatives to the traditional reporting & record-keeping requirements need to be considered.

Article 12 Export Notification

The notification along with specific information regarding the chemical including the basis for the control action in the exporting country, is sent to the DNA in the importing country.

There are three important aspects of export notification process to consider: the scope, the frequency, and the timing.

- < **scope:** those pesticides or industrial chemicals that are considered *banned or severely restricted* in the country of export. Countries must notify the Secretariat of bans or severe restrictions (Article 5). These chemicals are candidates for inclusion in the PIC procedure, however, the final decision on inclusion (by the COP) will likely be taken some years after the first notification. Once a chemical is included in the PIC procedure, the export notification requirement ceases.
- < **frequency:** notifications are to occur, prior to the first export, to each importing country after a regulatory action has occurred, and annually thereafter, until included in the PIC procedure.
- < **timing:** the notice must be transmitted **before** the shipment occurs, although the time period (i.e. how long before export) is not specified in the text.
The importing party is to **acknowledge** receipt of the first notice following the regulatory action, if no acknowledgment is received within 30 days, the exporting party must send another notice and "make reasonable efforts" to ensure that the notice is received.

Article 13 Information to accompany exported chemicals

There are three aspects to this article:

- i) PIC chemicals
 - < The COP will encourage the World Customs Organization to assign specific *customs codes* for these chemicals
- ii) PIC chemicals and chemicals that are banned or severely restricted in the exporting country
 - < shall be subject to labeling that conveys information on risks
 - < accompanied by a safety data sheet.

- iii) chemicals subjected to labeling requirements domestically.
 - < Parties may require that exported labeling is equivalent.

Article 14 Information Exchange

This Article could be described as the “Good Samaritan” requirement. It requires parties to provide information of a scientific or technical nature about regulatory actions which may be of interest to the international community.

It also states that Parties that exchange information under the Convention shall protect any confidential information as mutually agreed. For the purposes of this convention, it delineates the types of information that should not be treated as confidential.

Article 16 Technical Assistance

Parties should cooperate in providing technical assistance for the development of the infrastructure and the capacity necessary to manage chemicals to implement this Convention.

To accommodate this requirement, we will need to look for opportunities to promote chemicals management initiatives relevant to “capacity building” through existing channels e.g. CIDA and IDRC.

Article 18 Conference of the Parties

This Article provides some general guidance on how the program will operate. An important point will be that the Conference of the Parties, or the COP, will take *decisions by consensus*. A chemical will not become a PIC chemical until the COP agrees to it. But once the COP agrees by consensus the chemical is added to the PIC procedure and there is no possibility to opt out of the obligations under the Convention. This highlights the importance of the preparation for the meetings of the COP because there will be no opportunity to return to Ottawa for further consideration (See Article 7).

The COP will establish at its first meeting a *Chemical Review Committee (CRC)*. The CRC will be responsible for carrying out most of the functions of the PIC program, reviewing documentation, making recommendations to the COP on candidates, developing Decision Guidance Documents, also trying to do so by consensus, but if that fails it will use a two-thirds majority vote.

Participation in the CRC and the COP is one of the strongest rationales for ratification and implementation of PIC.