

Committee on Trade and Environment

DRAFT INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR IMPLEMENTING INTERNATIONAL ACTION ON CERTAIN PERSISTENT ORGANIC POLLUTANTS (POPS)

RECENT DEVELOPMENTS

Note by the Secretariat

In February 1997, the Governing Council of the United Nations Environment Programme (UNEP) requested the Executive Director of UNEP, together with relevant international organizations, to convene an intergovernmental negotiating committee (INC) for the preparation of an international legally binding instrument on certain persistent organic pollutants (POPs).¹ A total of 12 POPs had been selected for initial consideration. The First Session of the INC was held in Montreal from 29 June-3 July 1998, and the Second Session in Nairobi from 25-29 January 1999.²

At the Second Session of the INC, a "Preliminary Draft Text of An International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants" was discussed (annexed to the report of the Second Session). The provisions contained in this text, of relevance to the work of the Committee on Trade and Environment (CTE), are reproduced below.

The Third Session of the INC will take place in September 1999 in Geneva.

¹The international instrument is not to be confused with the POPs Protocol recently concluded under the auspices of the United Nations Economic Commission for Europe (UN/ECE). For more information on the latter, refer to the presentation made by the UN/ECE Secretariat before the CTE in 1998 (WT/CTE/W/88).

²See document UNEP/POPS/INC.1/7 for a report of the First Session of the INC, and document UNEP/POPS/INC.2/6 for a report of its Second Session.

I. CERTAIN ARTICLES CONTAINED IN THE PRELIMINARY DRAFT TEXT³

ARTICLE D MEASURES TO REDUCE OR ELIMINATE RELEASES OF POPS INTO THE ENVIRONMENT⁴

Prohibition of the Production and Use of Certain Persistent Organic Pollutants

1. Each Party shall prohibit the production [import, export]⁵ and use of the chemicals listed in Annex A in accordance with the schedules contained in that Annex.

[Destruction of Stockpiles and Wastes]

5. Destruction domestically, or transboundary movements of wastes for destruction shall be undertaken in accordance with the basic principles and provisions in the Basel Convention. The same shall apply to the destruction of substances listed in Annex A, for which production and use are banned according to paragraph 1 above.]

ARTICLE G INFORMATION EXCHANGE

[1.] The Parties shall, in a [transparent and non-discriminatory manner] [manner consistent with their laws, regulations and practices], [create favourable conditions to] [facilitate] [undertake] the exchange of information relevant to:

(a) The reduction or elimination of the production, use or release of persistent organic pollutants; and,

(b) Cost-effective alternatives.

[by promoting, inter alia, the exchange of and access to information on the development and use of alternatives to persistent organic pollutants, as well as on the evaluation of the risks that such alternatives pose to human health and the environment, and information on the economic and social costs of such alternatives; and exchange of information on activities related to such alternatives which are conducted in other [regional and] international forums.]

[2. Parties that exchange information pursuant to this Convention shall protect any confidential information as mutually agreed. Human and environmental health and safety information shall not be regarded as confidential information for the purposes of this Convention.]

³Two Articles (J and K) on Technical Assistance, and Financial Resources and Mechanisms, are still to be developed. In the Report of the Second Session, paragraph 40 states that: "Many representatives noted the importance of including provisions for financial and technical assistance to developing countries, while several expressed specific support for establishing a mechanism similar to the Multilateral Fund for the Implementation of the Montreal Protocol. Some representatives noted that the use of existing mechanisms for financial and technical assistance, including GEF, should be further considered."

⁴In the Report of the Second Session, paragraph 37 states that: "Many representatives supported banning trade in prohibited chemicals except for the purposes of destruction. They considered that those and related provisions, such as that relating to stockpiles, also had to be made fully compatible with the provisions of the Rotterdam and Basel conventions. A number of representatives believed that a discussion on the possible use of trade measures was premature. Attention was also drawn to the need to give very careful thought to the issue of inventories, in particular for by-products."

⁵The import and export issues should be further considered in the light of additional discussions on the related elements in the Basel, London and Rotterdam Conventions. A separate provision could be included pertaining to trade with non-parties.

[3. Each Party shall designate a national focal point for the purpose of the exchange of the information. The Parties shall exchange such information through the Secretariat.]

[4. The Secretariat shall serve as a clearing-house mechanism for other relevant information, including information provided by intergovernmental and non-governmental organizations.]

ARTICLE M NON-COMPLIANCE

The Conference of the Parties shall, as soon as practicable, develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Convention and for the treatment of Parties found to be in non-compliance.

ARTICLE N SETTLEMENT OF DISPUTES

1. Parties shall settle any dispute between them concerning the interpretation or application of the Convention through negotiation or other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party may declare in a written instrument submitted to the Depositary that, with respect to any dispute concerning the interpretation or application of the Convention, it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

(a) Arbitration in accordance with procedures adopted by the Conference of the Parties in an annex as soon as practicable; and [/or]

(b) Submission of the dispute to the International Court of Justice.

3. A declaration made pursuant to paragraph 2 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

4. The expiry of a declaration, a notice of revocation or a new declaration shall not in any way affect proceedings pending before an arbitral tribunal or the International Court of Justice unless the parties to the dispute otherwise agree.

5. If the parties to a dispute have not accepted the same or any procedure pursuant to paragraph 2, and if they have not been able to settle their dispute within twelve months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted to a conciliation commission at the request of any party to the dispute. The conciliation commission shall render a report with recommendations. Additional procedures relating to the conciliation commission shall be included in an annex adopted by the Conference of the Parties no later than the second meeting of the Conference of the Parties.

ARTICLE [N *bis* RELATIONSHIP WITH OTHER AGREEMENTS]

[The provisions of this Convention shall not affect the rights and obligations of any Party deriving from any existing international agreement.]
