

## Committee on Trade and Environment

### RECENT DEVELOPMENTS IN MULTILATERAL ENVIRONMENTAL AGREEMENTS (MEAs)

#### Note by the Secretariat

## I. INTRODUCTION

1. This Note provides Members of the Committee on Trade and Environment (CTE) with an update of the recent developments in the following multilateral environmental agreements:

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Eleventh Meeting of the Conference of the Parties (COP) to CITES took place in Nairobi, Kenya from 10 to 20 April 2000. The Conference adopted several Decisions and Resolutions at this meeting. In addition, a number of the Decisions agreed to at the Tenth Meeting remain valid. The Twelfth Meeting of the COP will take place in the second half of 2002. Chile offered to host the meeting in Santiago.<sup>1</sup>
- Draft International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (POPs). The Fourth Session of the Intergovernmental Negotiating Committee (INC) was held in Bonn, Germany from 20 to 25 March 2000. The Fifth Session of the INC will be held from 4 to 9 December 2000 in Johannesburg, South Africa. Although not previewed, the need for a sixth session might arise to conclude negotiations, possibly back to back with the Conference of the Plenipotentiaries, confirmed for 21-23 May 2001 in Stockholm, Sweden.<sup>2</sup>

## II. CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)

### A. INTRODUCTORY NOTE

2. The Eleventh Meeting of the Conference of the Parties (COP) to CITES drew together some 1400 participants from Contracting Parties, non-party States, inter-governmental organizations and non-governmental organizations. The meeting considered 61 proposals to amend the CITES Appendices. The meeting also discussed 59 other documents on a wide range of topics, including: ways to improve the implementation of the Convention; financial matters; conservation of and trade in tigers, elephants, rhinoceros and Tibetan antelopes; and trade in bears, freshwater turtles and tortoises, seahorses, and traditional medicines.

---

<sup>1</sup> A complete set of Conference documents is available at the WTO Secretariat for delegations to consult. For information provided earlier, including at MEA information sessions, Members may wish to consult documents WT/CTE/W/71 and 119.

<sup>2</sup> The current draft text, as contained in the Report of INC-4 (UNEP/POPS/INC.4/5), is available at the WTO Secretariat. For information provided earlier, including at MEA information sessions, Members may wish to consult documents WT/CTE/W/91, 112 and 130. The international instrument is not to be confused with the POPs Protocol under the auspices of the United Nations Economic Commission for Europe (UN/ECE). For more information on the latter, kindly refer to the presentation made by the UN/ECE Secretariat before the CTE in 1998 (WT/CTE/W/88).

3. At the end of the meeting, 17 new resolutions were adopted, some existing resolutions were revised, and many new decisions were passed. Of the 61 proposals to amend the appendices, 32 were adopted, 17 withdrawn (five of which were replaced by Resolutions on further actions) and 12 rejected. Proposals which had attracted more attention from the participants and the press, such as four proposals on whales, four out of the six proposals on African elephants, two proposals of hawksbill turtles and three proposals on sharks were either withdrawn or rejected. South Africa's proposal to transfer its population of African elephant from Appendix I to Appendix II was adopted as amended (zero export quota for raw ivory).

#### B. RESOLUTIONS AND DECISIONS<sup>3</sup>

4. As CITES is designed to regulate international trade in threatened species, many of its Resolutions and Decisions are trade related. The Decisions adopted at the Eleventh Meeting of the COP will normally be grouped as follows: (i) Decisions directed to the CITES Parties; (ii) Decisions directed to the various CITES Committees; and (iii) Decisions directed to the CITES Secretariat.

5. The CITES Secretariat, at the time this document was drafted, was still in the process of organizing the Resolutions and Decisions taken at the Eleventh Meeting of the COP and of directing the latter to the appropriate bodies. Pending the official list, an indication of selected Resolutions and Decisions under discussion at the meeting that might address trade most directly is given below:

#### 6. Selected revised and new Resolutions:

- Conf. 8.15: Guidelines for a Procedure to Register and Monitor Operations Breeding Appendix-I Animal Species for Commercial Purposes (see Com. 11.27 as amended);
- Conf. 9.22: Universal Tagging System for the Identification of Crocodilian Skins (see Doc. 11.51 Annex as amended);
- Conf. 10.2: Permits and Certificates (see Doc. 11.11.4.2, Doc. 11.51 (see § 6), Com. 11.9 and Com. 11.20);
- Conf. 10.10: Trade in Elephant Specimens (see Doc. 11.31.3);
- Doc.11.17 Annex 2B: Consolidated Resolution on Enforcement and Compliance;
- Doc. 11.47 (Rev.1) Annex 2: Ranching and Trade in Ranched Specimens of Species Transferred from Appendix I to Appendix II;
- Com. 11.5: Conservation of and Control of Trade in Tibetan Antelope;
- Com. 11.7: Conservation of and Trade in Freshwater Turtles and Tortoises in Asia and Other Regions;
- Com. 11.9: Trade in Hard Coral;
- Com. 11.13: Conservation of and Trade in Musk Deer;
- Com. 11.29: Universal Labelling System for the Identification of Caviar;
- Com. 11.35: Definition of the Term "Appropriate and Acceptable Destinations".

---

<sup>3</sup> Explanatory note: There are two types of recorded outcomes of the COP: "Decisions" are generally requests or instruments to be implemented typically by the next meeting of the COP, e.g. by a Committee or the CITES Secretariat. Once implemented they are obsolete. After each COP, those implemented or no longer in effect are deleted. Conversely, "Resolutions" comprise recommendations for improving the effectiveness of the Convention and are long-lasting in nature.

7. Selected Decisions:

- Doc. 11.12.2: Strategic Plan for the Convention, including Strategic Vision through 2005 and Action Plan;
- Doc. 11.25: Terms of Reference for the Review of the Criteria for Amendment of Appendices I and II;
- Com. 11.8: Establishment of a *Swietenia macrophylla* (bigleaf mahogany) Working Group;
- Doc. 11.19 Annex 1: Not to authorize any trade in specimens of CITES species with Parties, determined by the Standing Committee, that have not submitted annual reports for three consecutive years;
- Com. 11.4: Range States to establish annual catch and export quotas for sturgeons and paddlefish specimens and to inform the Secretariat;
- Com. 11.22: To act and report to the Secretariat by 31 July 2001 with regard to implementation of Resolution Conf. 10.8 regarding trade in bear specimens;
- Com. 11.32 [Doc. 11.30(Rev.1)]: Tiger range and consumer States to report to the Secretariat by 31 August 2000 on measures taken with regard to trade in tiger specimens;
- Com. 11.12: To undertake a review of actions taken by musk deer range, transit and consumer States to improve enforcement and conservation of musk deer populations and to report back to COP-12;
- Com. 11.31 (Rev.1): To make recommendations for COP-12, in consultation with the Convention on the Biological Diversity, on the basis of the report from the Animals Committee, on the issues related to the trade in time-sensitive research samples;
- Doc. 11.11.1 Annex: To liaise with Secretary of FAO COFI about Plan of Action on Sharks and report back to COP-12;
- Com. 11.7 Annex 1: To consider the trade in specimens of CITES listed freshwater turtles and tortoises in the context of Resolution Conf. 8.9;
- Com. 11.28: To examine the complex issue related to the origin of founder breeding stocks and the relationship between *ex situ* breeding operations and *in situ* conservation of the species concerned and to report to COP-12;
- Doc.11.44 Annex C: To convene a working group to examine bushmeat as a trade and wildlife management issue and identify solutions and to contact organizations which can contribute to a better and sustainable management of the bushmeat trade;
- Doc. 11.56 Annex: To evaluate the level of captive breeding and artificial propagation of species for medicinal purposes, to develop projects with regard to international trade in medicinal products, to continue developing the list of species traded for medicinal properties;
- Com. 11.24 In consultation with the Animals Committee, the IUCN/SSC Crocodile Specialist Group and the World Customs Organization, to review the ways to streamline procedures for issuing permits for sample and product samples made of crocodilian or other reptile skins and prepare a proposal for COP-12.

### III. DRAFT INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR IMPLEMENTING INTERNATIONAL ACTION ON CERTAIN PERSISTENT ORGANIC POLLUTANTS (POPs)<sup>4</sup>

#### A. INTRODUCTORY NOTE

8. At the opening of the meeting the German Government extended an official offer to locate the future secretariat of the POPs convention in Bonn, which was meant to complement its earlier offer to locate the Secretariat of the Prior Informed Consent (PIC) Convention in that city. Plenary sessions were attended by about 120 governments, ten international, seven intergovernmental and 81 non-governmental organizations. A negotiating group, the Implementation Aspects group and a legal drafting group worked in parallel. Multiple informal contact group meetings were held on Article D, which might be of particular interest to WTO Members.

9. The draft text of Article D, paragraphs 1 and 2 (see section B below), contains references to trade. These paragraphs remained largely unchanged with some brackets being removed. For procedural reasons, a proposed text on imports and exports between parties as well as non-parties was not included in the contact group Chairman's report, but features as an attachment to it, as considered by the contact group (see section C below).<sup>5</sup>

10. The draft text of Article D, paragraph 4 (on management and disposal of wastes containing certain POPs and destruction/disposal of stockpiles), was referred, as amended,<sup>6</sup> to the legal drafting group, which developed several options with regard to cross-referencing to other Conventions for consideration at INC-5.

11. Several provisions, such as Article D, contain bracketed language on making the respective obligations subject to the availability of technical and financial assistance. These issues are linked to the completion of Articles J and K on Technical Assistance and Financial Resources and Mechanisms. Article J contains the recognition of the importance of technical assistance and capacity-building in achieving the objectives of the future instrument; the whole of Article J *bis* on the creation of a capacity assistance network (CAN) remains bracketed, as there had been no opportunity to discuss the text in plenary. Article K discussions mainly circled around the question of whether an independent financial mechanism funded with contributions ought to be set up or whether a combination of existing institutions, including the Global Environment Facility (GEF), could be utilized.

---

<sup>4</sup> This section of the Note is based on factual information contained in document UNEP/POPS/INC.4/5 and was facilitated through the WTO Secretariat's representation at part of the meeting, which greatly contributed to understanding the complexity of negotiations.

<sup>5</sup> Reproducing these texts is meant to contribute to Members' understanding of trade-related discussions on POPs, which are likely to take place in a formal setting at INC-5.

<sup>6</sup> A number of representatives expressed concern that Article D should clearly state the requirements for the management and environmentally sound disposal of POPs wastes rather than rely on criteria set by another Convention (Basel) whose legal relationship to a future convention on POPs was uncertain. Other representatives were of the view that as the subsidiary technical bodies of the Basel Convention were already focused on the relevant issues and contained the appropriate technical expertise, they represented an efficient and well-respected resource on which to draw. There was discussion of how to balance, within the text, the importance of site remediation with concerns for its feasibility and practicality. Several representatives drew attention to the need to distinguish clearly between wastes and products and articles still in use. Several highlighted the importance that appropriate financial and technical assistance would play in allowing developing countries and countries with economies in transition to identify and remediate contaminated sites. The need to ensure that the destruction of stockpiles was adequately addressed was also highlighted.

12. The Precautionary Principle was discussed in the context of criteria for the listing of new substances (Article F), but a number of countries seemed to prefer a reference to the Precautionary Principle in the Preamble.

13. Proposals were made for the amendment of the control annexes (Annexes A and B), which were included in the contact group Chairman's report to be forwarded to INC-5. These might also be considered in the context of discussions on "general exemptions", i.e. whether there was a need for a separate Article (Z bis) or whether some of these issues should be dealt with as specific exemptions under those annexes.

B. CERTAIN ARTICLES CONTAINED IN THE PRELIMINARY DRAFT TEXT

**"Draft Article D. Measures to reduce or eliminate releases**

Prohibition of the production and use of certain persistent organic pollutants

1. [Subject to the accessibility of financial and technical assistance,] each Party shall [prohibit] [prohibit [and] [or] take [other] [the] legal measures necessary to eliminate] [take the legal measures necessary to eliminate], the production[, import, export] and use of the chemicals listed in Annex A (Elimination), in accordance with the provisions in that Annex.

[1 bis. Each Party shall ensure that chemicals listed in Annex A, once their production and use have been banned, shall not be exported or imported except for the purpose of environmentally sound [destruction] [or] [disposal].]

Restrictions on the production and use of certain persistent organic pollutants

2. [Subject to the accessibility of financial and technical assistance,] each Party shall [prohibit] [prohibit [and] [or] take [other] [the] legal measures necessary to eliminate] [take the legal measures necessary to eliminate] the [production] [or] [and] use of the chemicals listed in Annex B, (Restriction), except for the purposes specified therein, in accordance with the provisions in that Annex.

New chemicals

2 bis. With the aim of protecting human health and the environment, each Party having<sup>7</sup> a regulatory and assessment scheme for new pesticides and industrial chemicals, shall take measures within those schemes to [avoid] [prohibit] [prevent] [regulate] the production [import] [export] and use of newly developed pesticides and industrial chemicals which, taking into consideration the criteria in Annex D.1(b) to [D.1(e)] [D.1(f)], exhibit the characteristics of persistent organic pollutants."

---

<sup>7</sup> (Footnote 1 in the original) The Plenary asked the legal drafting group whether this language, which is intended to extend the obligation to Parties having (either at the time of entry into force or if developed at a later date) such a scheme for "new" pesticides and industrial chemicals, achieved its purpose. The legal drafting group confirmed that the language does accomplish its purpose.

C. REPORT OF THE CO-CHAIRS OF THE CONTACT GROUP ON PARAGRAPHS 1 AND 2 OF DRAFT ARTICLE D (ANNEX III OF UNEP/POPS/INC.4/5)

"The contact group discussed and, after exploring and failing to find a compromise acceptable to the countries in the contact group, agreed on text for articles D.1 and D.2, as shown in Appendix I to this report. Regarding D.1 bis, the contact group modified the text coming from plenary to reflect a consistent approach developed for this item. The contact group considered a proposal to split the import and export aspects of this article into separate paragraphs, D.1 ter and D.1 quater, respectively. Following discussion, these approaches to this article were included as alternative bracketed text, including a footnote. The issue of trans-shipment came up in discussions and the contact group noted that one way to deal with the issue would be to define "import" as including only goods marked for final destination in a particular country. Footnote 1 of UNEP/POPS/INC.4/CRP.48 and article D.1.b in UNEP/POPS/INC.4/CRP.46 were discussed and it was agreed by the contact group not to include these points in the text put forward by the contact group (as they are dealt with under article D.4.b). A non-paper containing additional proposals relating to import and export issues under D.1 bis was introduced and considered; the non-paper included an aspect of import and export controls, pertaining to non-Parties to the future Convention, not found in article D.1 bis as submitted by the plenary to the contact group (UNEP/POPS/INC.4/CRP.48). After several interventions on the issue of moving these proposals into the proposed convention text to be put forward by the contact group, the Co-Chair of the contact group ruled that given the non-paper status of the proposals and, because there had been no discussion of non-Party trade provisions in any of the preceding meetings of the Intergovernmental Negotiating Committee or this contact group on Annexes D.1 and D.2, these proposals could not be included in the proposed text put forward by the contact group. The Co-Chair's recollection was checked prior to the ruling with the secretariat. The final version of that draft text, as considered by the contact group, can be found in Attachment 1."

"APPENDIX I

**Article D: Measures to reduce or eliminate releases**

Prohibition of the production and use of certain persistent organic pollutants

1. [Subject to the accessibility of financial and technical assistance,] each Party shall [prohibit] [or] [take the legal, administrative and other measures necessary to eliminate] the production [, import, export] [, transit] and use of the chemicals listed in Annex A (Elimination), in accordance with the provisions in that Annex.

[1 bis.<sup>8</sup> Each Party shall ensure that a chemical listed in Annex A , the production and use of which all Parties have [prohibited] [or] [taken the legal, administrative and other measures necessary to eliminate] shall not be exported or imported [or placed in transit operation] except for the purpose of environmentally sound [destruction] [or] [disposal] [and upon the prior authorization of the importing country].]

[1 ter.<sup>8</sup> Each party shall ensure that a chemical listed in Annex A, the production and use of which that Party has [prohibited] [or] [taken the legal, administrative and other measures necessary to eliminate], is not imported by that Party except for the purpose of environmentally sound [destruction] [or] [disposal].]

[1 quater.<sup>8</sup> Each party shall ensure that a chemical listed in Annex A, the production and use of which all Parties have [prohibited] [or] [taken the legal, administrative and other measures necessary to

---

<sup>8</sup> (Footnote 1 in the original) 1 ter and 1 quater, in combination, represent an alternative to 1 bis.

eliminate], is not exported by that Party except for the purpose of environmentally sound [destruction] [or] [disposal] [and upon the prior authorization of the importing Party ].]

Restrictions on the production and use of certain persistent organic pollutants

2. [Subject to the accessibility of financial and technical assistance,] each Party shall [prohibit] [or] [take the legal, administrative and other measures necessary to eliminate] the [production] [and] use of the chemicals listed in Annex B, (Restriction), in accordance with the provisions in that Annex. [Production of Annex B chemicals shall be restricted to those Parties specified in Annex B, and these Parties shall periodically report to the secretariat the total quantity of each Annex B chemical produced during that period. Use of Annex B chemicals shall be restricted to the Parties and uses specified in Annex B, and those Parties shall periodically report to the Secretariat the total quantity of each Annex B chemical imported for that use by a Party during that period.]<sup>9</sup>

"Attachment 1

Draft Article D.1 quinquiens

[Each party shall ensure that a chemical listed in Annex A, the production and use of which all Parties have not yet [prohibited] [or] [taken the legal, administrative and other measures necessary to eliminate], is only allowed to be exported by that Party to Parties which have a specific exemption under Annex A, [or to any other Party exclusively] for the purpose of environmentally sound [destruction] [or] [disposal] [and upon the prior authorisation of the importing Party ]].

Draft Article D.1 sexiens

Notwithstanding the provisions of this article, exports referred to in paragraph D.1 ter to D.1. quater may only be permitted to any State not Party to this Convention, if that State is determined, in a decision by the Conference of the Parties to be in full compliance with article ... and have submitted written data to that effect to the secretariat or, where applicable, according to the transitional provisions.]"

---

---

<sup>9</sup> (Footnote 2 in the original) Appropriately amended, a corresponding addition to paragraph D1 could also be considered as regards country specific use exemptions. Placement of this bracketed text could also occur under the reporting Article L.