



Summary of Key Elements in the Global POPs Treaty

Prepared by WWF's Global Toxic Chemicals Initiative - 14 December 2000

Shortly after 8 AM on Sunday 10 December 2000, a new treaty was born in Johannesburg, South Africa. The POPs treaty will, for the first time in history, eliminate or severely restrict the use and production of a pernicious group of chemicals that are directly toxic to wildlife, ecosystems and people. WWF, one of the lead NGOs participating in the more than two years' of important and sometimes very contentious negotiations, welcomes the treaty as a giant step forward. That positive assessment is especially true with respect to the treaty's emphasis on addressing toxic chemical issues at their source, by eliminating production, while also prohibiting or severely restricting use, and preventing the emergence of new chemicals with POPs-like characteristics.

The treaty calls for the elimination of some of the world's most dangerous chemicals. POPs pose a particular hazard because of four common characteristics: they are toxic; they are persistent, resisting the normal processes that break down contaminants in the body and the environment; they accumulate in body fat and are passed from mother to fetus in the womb; and they can travel great distances on wind and water currents. Most of the 12 targeted POPs are slated for immediate bans as soon as the treaty takes effect, which is likely to be within three-to- four years after the May 2001 signing ceremony. For the other intentional POPs (DDT and PCBs) and the byproduct POPs (hexachlorobenzene, dioxins and furans), elimination remains a longer-term goal of the treaty.

Throughout the POPs treaty negotiations, WWF participated actively in the International POPs Elimination Network (IPEN), which grew to more than 300 participating NGOs by the conclusion of the negotiations. IPEN served as an extremely important network for exchange of information, educational awareness raising, and development of lobby positions and strategies as part of a broader effort by NGOs to achieve an ecologically sound and socially equitable treaty. Of special note, IPEN coordinated the preparation of and arrangements for NGO workshops immediately prior to each of the 5 negotiating sessions in Montreal, Nairobi, Geneva, Bonn and Johannesburg.

ELIMINATION

Intentionally produced POPs

Article D(1) of the treaty calls on all Parties to prohibit and/or take the legal and administrative measures necessary to eliminate the production and use of the chemicals listed in Annex A (all of the targeted chemicals except DDT and the byproduct POPs).

Separate provisions for listing DDT on Annex B (Restriction) include the goal of ultimate elimination and, in the interim, ensuring that the insecticide is used only for disease vector control in accordance with World Health Organization guidelines. The treaty calls for research, development, and implementation of safe, effective, and affordable alternatives to DDT.

In addition, each Party that has a regulatory and assessment scheme for new chemicals is called on to "take measures to regulate with the aim of preventing" the production and use of new POPs. The treaty urges Parties to take the POPs criteria into account, "where appropriate," when conducting assessments of chemicals currently in use. Article L reporting requirements accompany these provisions.

Byproducts

The treaty calls on parties to take measures to reduce the total releases from anthropogenic sources of dioxins and other byproduct POPs, “with the goal of their continuing minimization and, where feasible, ultimate elimination.” At the request of the U.S. and South Africa, the treaty record will state that this language includes the notion of economic and technical feasibility.

Noteworthy among the measures Parties are called on to take is Article D3(c): “Promote the development and where it deems appropriate, require the use of substitute or modified materials, products and processes to prevent the formation and release of chemicals listed in Annex C....”

Wastes

Article D(4) calls on Parties to identify stockpiles, products, articles in use, and wastes containing or contaminated with POPs and to manage and dispose of such materials. They are to be “disposed of in such a way that the persistent organic pollutant content is destroyed or irreversibly transformed so that they do not exhibit the characteristics of persistent organic pollutants or otherwise disposed of in an environmentally sound manner when destruction or irreversible transformation does not represent the environmentally preferable option or the persistent organic pollutant content is low...”

Strongly held views were expressed late in the week about the relative merits of whether the Basel Convention or the POPs treaty should be the final arbiter of decisions involving standards for levels of destruction and permanent transformation, or in relation to methods that would constitute environmentally sound disposal. In the end, the agreed compromise text called upon both the POPs Conference of Parties and the appropriate bodies of the Basel Convention to work “in close cooperation” in addressing those and other waste-related issues.

Trade

The Convention allows trade in POPs chemicals under limited circumstances only. Most notably, when any Parties still retain country-specific exemptions, export to non-parties is permitted, but only for the purpose of environmentally sound disposal or where the importing State provides a certification that includes its environmental and human health commitments and its compliance with the Article D4 waste provisions.

Dating back to the 2nd and 3rd negotiating sessions in 1999, the Australian delegation and the chemical industry trade associations, among others, advocated a treaty provision referred to by some treaty analysts as a World Trade Organization (WTO) “supremacy clause.” (The proposed wording stated that “[t]he provisions of this convention shall not affect the rights and obligations of any Party deriving from any existing international agreements.”) Such clauses are problematic because they can encourage States to challenge trade measures in multilateral environmental agreements at the WTO. Fortunately, efforts to include such a provision failed, with the only reference to the relative rights and relationships addressed in the Preamble, wherein Parties agree to recognize that “this Convention and other international agreements in the fields of trade and the environment are mutually supportive.”

Exemptions

Exceptions to the control measures are dispersed throughout the treaty text, annexes and accompanying notes, meeting record, and registry. The record of the meeting encourages Parties to promote programs aimed at collecting small quantities of a POP in the possession of an end-user, e.g., “in the farmer’s barn,” through clean sweep and other initiatives. Article D(5) offers a general exemption for quantities of a chemical to be used for laboratory-scale research or as a reference standard. The footnotes to Annexes A and B include a general exemption for quantities of a chemical occurring as unintentional

trace contaminants in products and articles. For POPs occurring as constituents of articles manufactured or already in use before or on the date of entry-into-force, the notes offer a modified general exemption process requiring notification to the treaty secretariat. This information will be publicly available. The footnotes also contain a renewable 10-year exemption for closed-system site-limited intermediates (HCB and DDT). This exemption requires notification to the secretariat including information on total production and use of the chemical, the nature of the process, and the amount of POPs contamination in the final product; this information will be publicly available.

All other exceptions are country-specific. The annexes list the types of specific exemptions available; countries electing these exemptions are listed on a registry. Given the close link between the Article D1bis trade restrictions and the continued use of country-specific exemptions, governments in Johannesburg made an effort to carve out transparent and accountable exemption formats that do *not* involve listing on the annexes or accompanying registries. This limitation on country-specific exemptions will enable the Article D trade bans to come into effect more quickly.

PRECAUTION

As the sun was rising on Sunday morning, 10 December, the EU, US, Australia, Canada, Japan, Iceland, Switzerland, New Zealand, Norway, South Africa, Colombia and Chile finally reached agreement on the inclusion of precautionary language in the treaty. As a result, the objective now states: “Mindful of the precautionary approach as set forth in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Convention is to protect human health and the environment from persistent organic pollutants.”

Precaution as well as transparency and public participation are operationalized throughout the Article F process for adding new chemicals to the treaty. Article F(5) states that: “If, on the basis of the risk profile conducted in accordance with Annex E, the Committee concludes that the chemical is likely as a result of its long-range environmental transport to lead to significant adverse human health and/or environmental effects such that global action is warranted, the proposal shall proceed. Lack of full scientific certainty shall not prevent the proposal from proceeding.”

Article F(7) includes further reference to precaution: “The Conference of the Parties, taking due account of the recommendations of the Committee including any scientific uncertainty, shall decide, in a precautionary manner, whether to list the chemical, and specify its related control measures, in Annex A, B and/or C.” The preamble (Article A) and the determination of best available technologies (Annex C, Part II, A (2)) also include references to precaution.

FINANCE

The treaty requires that developed country Parties “shall provide new and additional financial resources” to developing country Parties and Parties with economies in transition, and encourages contributions from other sources as well. Adequacy, predictability, and timely flow of funds are key elements. Special recognition is given to the difficult social and economic circumstances faced by developing countries, with the needs of the least developed countries and small island developing states receiving particular emphasis. The treaty calls for regular review, by the Conference of Parties, of both the level of funding and the effectiveness of performance of the institutional entities entrusted to operate the financial mechanism.

On an interim basis, the Global Environment Facility (GEF) is identified as the principal entity entrusted with the operations of the treaty’s financial mechanism up until the first Conference of

Parties meeting, or until such time thereafter as the Parties decide which institutional structure will be designated on a permanent basis. The Parties called upon the GEF to fulfill that function “through operational measures related specifically to POPs taking into account that new arrangements for this area may be needed.”

Complementing the GEF’s inclusion in the treaty as the interim financial mechanism, a draft resolution for consideration at the Stockholm diplomatic conference next May (prepared by the same governments that worked out final finance wording in the treaty) includes several pertinent “requests,” i.e., that the GEF establish a new focal area for POPs; that the GEF Council establish as soon as possible and implement an Operational Program for POPs; that the GEF report to the 1st POPs COP on the measures it has taken to ensure the transparency of the GEF project approval process, and that the procedures for accessing funds are simple, flexible and expeditious; and that donors to the GEF Trust Fund contribute adequate additional financial resources through its third replenishment (during 2000-01) to enable the GEF to perform effectively its mandate in terms of the POPs Treaty.

MISCELLANEOUS OTHER PROVISIONS

Amendment of Annexes to Add New POPs

Upon recommendation by the POPs Review Committee and the Conference of Parties to add a new chemical to Annexes A, B, or C, pursuant to Article F, there is a presumption that the amended POPs annex will apply to all Parties. This is an “opt-out” procedure. To address the special concerns of the U.S. Senate, a ratification process is available under Article U – upon ratification of the treaty, Parties may declare that an expanded annex will not apply to them unless and until they deposit an instrument of ratification to include the particular new POP.

Information Exchange

NGOs and some governments urged negotiators to ensure that Treaty Parties act in a transparent manner, so as to increase the exchange of relevant information regarding reduction or elimination of POPs, as well as alternatives thereto. Toward that end, a separate article on “Information Exchange” designates the Secretariat for the POPs Treaty to serve as a clearing-house mechanism for information on POPs. While industry representatives were able to get governments’ support to include traditional wording about the need to protect confidential business information, the provision is noteworthy in two respects: for purposes of the Treaty, “information on health and safety of humans and the environment shall not be regarded as confidential,” and Parties that exchange other information pursuant to the Treaty shall protect any confidential information as “mutually agreed.”

Entry into force

Despite some indications of support for a lesser number of ratifications, the Parties agreed to require 50 countries to ratify, accept, approve or accede to the POPs treaty in order for it to enter into force (90 days after the 50th). The fact that the Prior Informed Consent (PIC) treaty requires 50 countries seemed to be a good reason to choose the same number – enough to ensure a critical mass of developing and developed countries, but not so many as to unnecessarily delay entry into force. Estimates are that it will likely be at least 3-4 years before 50 countries have formally adopted the treaty, although governments participating in the Intergovernmental Forum on Chemical Safety (IFCS) in Brazil in October 2000 adopted a resolution urging expedited country action so that the POPs treaty will enter into force by no later than 2004.