

**TOWARDS THE DEVELOPMENT OF A
GLOBAL TREATY
ON PERSISTENT ORGANIC POLLUTANTS**

*Comments by the
Canadian Environmental Network Toxics Caucus
towards the
Intergovernmental Negotiating Committee 5 Session
in Johannesburg, South Africa*

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EXECUTIVE SUMMARY

Part 1 of this paper sets the scene in an introduction. Part 2 discusses the overarching guiding principles identified by the Toxics Caucus as critical to the success of the global POPs treaty. The treatment of the principles in the treaty will be key for members of the Toxics Caucus in their evaluation of the achievements and potential effectiveness of this treaty. Part 3 provides suggested text for specific articles of the treaty. This text would, in the opinion of the Toxics Caucus, incorporate the guiding principles discussed in Part 2 into the POPs treaty. We offer this proposed text for the consideration of the Canadian delegation, and request that Canada's representatives incorporate our perspective into their presentations at INC5.

All Canadians, in particular susceptible populations such as Aboriginal communities, fish-eaters, women and children, workers, and the Canadian environment continue to be threatened by persistent organic pollutants (POPs). The fifth and final session of the Intergovernmental Negotiating Committee (INC) scheduled for Johannesburg, South Africa in December is expected to determine the fate of the global treaty on POPs. A number of issues pertaining to the current draft treaty must be resolved at INC5; otherwise these negotiations will fall short of delivering an effective agreement for global action on POPs.

- The overall goal of elimination remains in question.
- The role of the precautionary principle in the treaty is limited to the point of being ineffective.
- The concrete commitment of adequate funds for treaty implementation by donor countries, and agreement on treaty language underlying such commitments is under considerable question. In addition, the shape of the treaty's financial assistance mechanism remains under debate.
- The effectiveness of the treaty may be significantly threatened by other international trade obligations.
- The process of adding substances (Article F) may not capture the worse POPs for future action.

The Toxics Caucus recognizes that resolution to the above issues is necessary to ensure the future of the treaty. The following submission provides a detailed analysis of the global treaty, and, where possible provides Caucus' perspective on the issues raised in the Consultation Document prepared by Environment Canada.

The Toxics Caucus supports a global POPs treaty that promotes the use of clean safe technology to prevent the use, production, release and disposal of any POPs.

The general findings and recommendations of the Caucus are as follows

- **The goal of elimination must be maintained.** Even for PCBs, DDT and unintentionally produced by-products like dioxins and furans, hexachlorobenzene, and PCBs, the goal must be elimination, *even if it is a long-term goal*. The Toxics Caucus supports Canada's

position to include PCBs and DDT in Annex A (Target for Elimination), while recognizing that exemptions will be required by specific countries until safe alternatives to these POPs are developed or found. However, the Toxics Caucus is disappointed that Canada is taking a weaker position on the unintentionally produced by-products.

- **The precautionary principle is the key concept in the global treaty.** To ensure that it is effectively implemented, the precautionary principle must be incorporated in key Articles of the treaty such as Article F (Listing of chemicals). The Toxics Caucus strongly disagrees with the current Canadian position that the treaty as currently drafted embraces the precautionary approach. The global text should operationalize the precautionary principle in Article B (Objectives) and Article F with specific language. Several countries, including the European Union (EU), support language that would include the precautionary principle in other key articles of the treaty such as Article F. This is one of the issues identified as a deal-breaker for treaty negotiations.
- **The destruction and disposal of POPs stockpiles and waste needs to be based on non-incineration technologies.** Current treaty text shows a predisposition towards Best Available Techniques (BAT). The Toxics Caucus has a number of concerns, beginning with the lack of clarity on what is considered BAT. For the initial 12 POPs identified, the Toxics Caucus has always maintained the need to promote the use safe alternatives and clean technologies. However, in situations where destruction of POPs is required, the preferred path is to utilize non-incineration technologies that result in complete destruction of POPs and do not release other POPs into the environment.
- **We urge Canada to support strong language in the treaty that obliges donor countries to provide adequate resources for its implementation.** The Toxics Caucus congratulates Canada for its announced early financial contribution to the process, but efforts must be made to secure additional new funds to the treaty. We also urge Canada to show maximum flexibility regarding the shape of the future financial mechanism in order to ensure that this matter does not result in the failure of the negotiations. The recent meeting at Vevey, Switzerland to discuss this matter indicated potential movement on the mechanism issue.
- **The process of adding substances to the treaty is critical to effective protection of the global population and the environment.** There are a number of important concepts that remain contentious, including the criteria proposed for bioaccumulation and persistence factors, the use and consideration of other evidence for nominating additional POPs, the absence of the precautionary principle in the selection process, and the limited role of the public for participation in the selection process. There are some opportunities for public involvement, but terms such as ‘observer’ in Article F must be clearly defined before these opportunities are realized.
- **The treaty should not be subject to a supremacy clause as is stated in Article Nbis.** The effectiveness of the treaty may be severely threatened if obligations of other international trade agreements such those under the WTO have precedence over the terms of the POPs treaty. The Toxics Caucus recommends that Article Nbis should be deleted, a position that is in opposition to the current Canadian stance.

- **The treaty should grant specific country exemptions on the manufacture and use of POPs on the basis that elimination is the ultimate goal.** These country specific exemptions should have a defined expiration or review date to ensure that the transition phase can fully integrate the use of safe alternatives. We consider it critical that exemptions granted for specific POPs should not cause or promote the release of other POPs into the environment.

PART 1 - INTRODUCTION

Globally, people and the environment continue to be exposed to persistent toxic substances (POPs). In the case of northern communities, these POPs are deposited in cold climates far away from their original sources in the south. Aside from aboriginal communities, other susceptible populations at risk from exposure to POPs include children, women, workers, people who eat fish, and populations of developing countries and countries with economies in transition. After thirty years of scientific discussion, the health and environmental impacts from POPs, and their extensive use around the world have finally resulted in recognition of the need for global action.

Discussions for global action were initiated with the first Intergovernmental Negotiating Committee (INC) meeting in Montreal, Quebec, in June 1998. Since INC1, the Canadian Environmental Network (CEN) Toxics Caucus has submitted substantive comments and recommendations to the Canadian delegation on the on-going negotiations. In this submission, the Toxics Caucus continues to provide its comments on a number of critical issues that will be raised during the next and final negotiating session in Johannesburg, South Africa. This submission also attempts to comment on the issues raised during a recent multi-stakeholder meeting held in Ottawa to discuss the Canadian position.

The Toxics Caucus would like to ensure that a global treaty on POPs, first and foremost, focuses on the elimination of POPs. This emphasis on elimination will ensure that pollution prevention strategies, including the use of safe alternatives and clean technologies, are promoted in the efforts to meet the obligations of the treaty. In our view, without a goal of elimination for POPs, the treaty would provide further ammunition for the continued use of hazardous chemicals and control or “end of pipe” technologies that merely reduce immediate emissions to the environment. To fall short of the goal of elimination and promote the continued use of end of pipe solutions guarantees that the health of future generations will continue to be imperiled from our present use of POPs. The Canadian population will continue to be exposed to these toxics.

The Toxics Caucus appreciates the opportunity to provide its input into the global negotiations. The role of the public in developing these international negotiations should not be undervalued. Similarly, the role of elected parliamentarians should also be encouraged to ensure that there is consistency in international and domestic obligations on persistent toxic substances in general, and POPs specifically. Therefore, efforts by Canadian parliamentarians to evaluate the progress of these negotiations, and in particular, the attendance of several members of parliament at INC4, are viewed by the Caucus as promoting transparency and openness in these negotiations. These efforts are encouraged and widely supported by the environmental community in Canada and internationally. In our view, the presence of parliamentarians at these international fora may have a significant impact on the discussions as their participation ensures a level of accountability to the Canadian public and may ensure that current domestic legislation can address these matters. We hope that this level of participation continues through the remainder of the negotiations and ratification of the treaty.

It was expected that INC4 in Bonn, Germany would be a critical step toward resolving many contentious issues related to the treaty including the goal of elimination, the matter of financial and technical assistance to developing countries and countries with economies in transition, and

the role of the precautionary principle. Not only was there very little progress on some of these key issues during INC4, but the INC5 session in South Africa is now the critical negotiating session for the future of the treaty.

This paper identifies issues that require some effort from the Canadian delegation at INC5. Many of the issues presented below have been discussed extensively in previous submissions by the Toxics Caucus and members of the International POPs Elimination Network (IPEN). They remain priorities for INC5 discussions to ensure the treaty's effectiveness. In general, the recommendations presented in this submission are in support of those recommendations made by IPEN members. These IPEN papers can be downloaded from the following website www.ipen.org/inc5papers.

PART 2 - OVERARCHING GUIDING PRINCIPLES

On November 7th, the EU Council of Ministers adopted Council Conclusions on the following specific issues regarding the POP Convention:

- The Precautionary Principle must be integrated into both the scope of the Convention and the Article concerning the addition of new substances to the Convention.
- The POP Convention must contain the explicit objective of prohibiting the production and use of the substances listed in Annex A.
- General exemptions to the POP Convention should be strictly limited.
- The long-term goal of ultimate elimination of dioxin and furan emissions as well as continuous minimization of total emissions from each country are of particular importance to the EU.
- All countries must be ready to do whatever is necessary to ensure rapid and effective implementation of the Convention. The EU should commit itself to provide financial assistance to the developing countries.

From Danish Environment & Energy Newsletter, No 3, November 2000

2.1 Elimination versus Reduction

The Toxics Caucus remains steadfast in its position that the ultimate goal of the international negotiations for a global treaty on POPs is elimination.

Evidence continues to mount regarding the unique properties of POPs and their impacts on the environment and human population. The Canadian delegates are well aware that our northern communities, in particular the northern Aboriginal communities, continue to be recipients of these toxic substances. By eliminating the use, production, release and disposal of POPs, the international community can ensure that these peoples, along with other susceptible sectors of the population such as children, women, fish eaters, workers, and those in developing countries, reduce their exposure levels. Even if elimination of POPs occurs now, for many years to come populations will continue to be exposed to POPs that are currently released into the atmosphere, landfilled or discharged into water systems. The urgency of elimination cannot be understated. Without the goal of elimination in the treaty, the Parties to the negotiations will essentially promote continued use of control or end of pipe technologies, making it difficult to develop the use of safe alternatives and clean production.

The INC4 discussion on the goal of elimination was contentious. We are supportive of the proposed text contained in the Final report from INC4, which included language for elimination of POPs. However, there are reservations about the various qualifications that are included in the

proposed text, in particular the reference to “technical and economically feasible.” This qualification, in our view, should not be included as such concepts may create a loophole in the treaty and act as barrier to the goal of elimination. We are concerned that Canada has not taken a stronger stand on the goal of elimination, while the Nordic Ministers are proposing language for ultimate elimination. Like Canada, the US and industry interests are currently demonstrating little support for the inclusion of such language.

The Canadian delegates should ensure that strong language for elimination is the basis for this treaty, in particular in the Preamble (Article A), Objectives (Article B), and Measures (Article D). It should be noted that during a presentation to the non-governmental organization delegates at INC1, Dr. Klaus Topfer, Executive Director of the United Nations Environment Programme, eloquently said that “The main goal [of the treaty] must be the phase out {POPs}, not to manage risk.”¹ The Physicians for Social Responsibility noted that several international agreements contain strong language promoting elimination of toxic substances. These include *Agreement on the International Dolphin Conservation Program (1998)*, *Agreement Between The United States and Canada on Great Lakes Water Quality (1978)*, and *OECD Decision Protection of the Environment by Control of Polychlorinated Biphenyls (1973)*.² In Part 3 of this report, specific proposed text on the issue of elimination is provided.

While many Parties have demonstrated support for the goal of elimination of 8 of the 12 POPs on the original list, the elimination of several POPs (PCBs DDT, hexachlorobenzene, dioxins and furans) continues to be controversial. Canada “questioned whether such a goal [of elimination] would be realized for most by-product emissions.”³ Canada’s failure to support an elimination goal for unintentionally produced by-products puts into question Canada’s leadership in these negotiations and its commitment towards the development of an effective treaty. In Canada, there are various facilities, including the Magnola plant in Quebec, that are expected to be major sources of new PCBs. The request for specific exemptions for PCBs in electrical equipments serves to demonstrate that the goal of elimination is required to promote safe alternatives and clean technologies.

2.2 Precautionary Principle

The concept of the precautionary principle continues to be a major point of discussion at these negotiations. The concept has been generally accepted into the text of the treaty, however the interpretation of this concept often differs among Parties and the stakeholders monitoring these negotiations. It is our view that the effectiveness of this global treaty will depend on the interpretation of the precautionary principle and how it is operationalized in the treaty. It is critical that the interpretation is articulated to mean that action can be taken against a threat from POPs despite the absence of a thoroughly proven link between it and a harmful effect.

¹ International POPs Elimination Network/Physicians for Social Responsibility. June 1998. *Public Forum on Persistent Organic Pollutants, The Need for a Strong POPs Treaty*. 64 pp.

² See: Physicians for Social Responsibility. 2000. UNEP Global POPs Treaty (INC5/Johannesburg, December 2000): Recommendations for Article B/Objective.

³ Environment Canada. 2000. Fifth Intergovernmental Negotiating Committee Meeting (INC5) on An International Agreement on Persistent Organic Pollutants (POPs): A Consultation Document on Canada’s Approach.

The World Wildlife Fund (WWF) and other IPEN members have articulated their views on the precautionary principle throughout these negotiations.⁴ Further, WWF demonstrated through its recent review of the *Canadian Environmental Protection Act*,⁵ that the precautionary principle will be ineffective if not articulated in the body of the obligations. Many of the international environmental treaties that incorporated the concept in the past did so only in the preamble, and this has often resulted in limited legal force. However, the recent *Cartagena Protocol on Biosafety* moved beyond incorporating the concept in its preamble by including the precautionary principle in the introduction and incorporating it in the decision-making process.

During INC4, Canada and the US opposed the incorporation of the precautionary principle in Article F, while the EU supported inclusion of the precautionary principle in this article. Again in its consultation document, Canada indicated that the treaty is precautionary in nature and does not require articulation of the precautionary principle in specific articles in the treaty. Canada should follow the progress made in the *Cartagena Protocol on Biosafety* and promote the precautionary principle as an integral component in the global treaty. In particular, the precautionary principle should be well articulated in several key articles of the global treaty such as the Preamble (Article A), Objectives (Article B), and Listing of Substances (Article F), as well as other articles (i.e., National Implementation Plan). The incorporation of the principle in this Article will ensure that where "conflicting or less-than-overwhelming evidence of harm exists, firm action can still be taken under the treaty."⁶ Part 3 of this paper includes proposed language that incorporates the precautionary principle in Articles A, B and F.

2.3 Definitions

The Toxics Caucus indicated in its previous papers the need for definitions of key concepts used in the global treaty. The effective implementation of treaty obligations will, in part, be determined by the provision of well-articulated definitions on some key issues. The Toxics Caucus identified the following concepts that require definitions to be included in the Article C: the "precautionary principle," "best available techniques," "elimination," "observers," and "toxicity." Other IPEN members identified and provided appropriate definitions for "Best Available Techniques," as well as "environmentally sound transport" and "environmentally sound destruction."⁷

For Listing of POPs (Article F), the need for definitions is both required and necessary to avoid situations that will result in inaction to eliminate these POPs. Specifically, while definitions are required for such criteria as "toxicity," "half-life," and other technical concepts, equally important are the values established for these criteria. The definitions and value determine the number of POPs that may added for action in the future.

⁴ World Wildlife Fund. June 2000. *UNEP Global POPs Treaty - INC5/Johannesburg: Core Issue Statement*.

⁵ See Craig Boljkovac. August, 1999. Presentation to the Senate Committee on Environment and Energy on Bill C-32.

⁶ Craig Boljkovac and Paul Muldoon, 2000. Canada in the POPs Treaty Negotiations. *Alternatives*, Fall 2000, Vol. 26(4).

⁷ See Sierra Club and Basel Action Network. 2000. *UNEP Global POPs Treaty (INC5/Johannesburg, December, 2000): Best Available Techniques for Transport and Destruction of POPs Wastes*.

For issues relating to the destruction of POPs stockpiles and reservoirs (Article D), definitions of key terms like “Best Available Techniques,” “environmentally sound destruction,” and “environmentally sound transport,” provide a level of effectiveness that potential destruction technologies must meet to be adopted.

2.4 Selection Criteria for Additional POPs

The work of the Criteria Expert Group has been completed, and, in general, the process for adding POPs is supported by the Toxics Caucus. However, to ensure that the most dangerous POPs are identified for action in the future, we along with other members of IPEN reiterate that there are major concerns regarding aspects of the process the specific criteria values proposed for selecting future POPs, the absence of the precautionary principle, and a role for the public. If these issues are not addressed the effectiveness of the selection process is threatened.

In previous submissions, the Toxics Caucus highlighted the need to review the proposed thresholds for various criteria such as half-life of POPs, and bioaccumulation factors. The current proposed values for criteria do not ensure that the worst POPs will be targeted for action in the future. To ensure effectiveness, these values should be lowered. For example, the persistence value in water should be a half-life of 2 months rather than the proposed 6 months, and a bioaccumulation factor of log K_{ow} of 4 rather than log K_{ow} of 5 should be supported.

Furthermore, Canada’s position does not support the need to consider other statements of adverse effects than potential damage to human health or to the environment. Such a position may be limiting. The admission of other adverse effects should not be restricted to the Criteria Statement (f) where it would have very little impact on the selection process. A more detailed discussion on this topic has been prepared by World Wildlife Fund.⁸

In a recent meeting with Environment Canada to discuss proposed screening criteria for persistent toxic substances under CEPA, the Toxics Caucus expressed concern about the proposed values. Environment Canada’s current proposal for bioaccumulation factor is log K_{ow} of 6⁹, a much higher value than that proposed by the Criteria Experts Group for POPs. In our view, this proposal illuminates a critical contradiction between domestic and international obligations. The proposed domestic value of log K_{ow} of 6 does not ensure that Canada can meet its international obligations for POPs.

To ensure that the goal of elimination of POPs is maintained throughout the treaty, it is equally important that the selection criteria process include language to incorporate the precautionary approach. By operationalizing the precautionary principle in Article F, the goal of elimination is emphasized.

The selection process should also define a role for the public to nominate additional POPs. By providing the public with a role in this process, the treaty benefits from any new information that

⁸ World Wildlife Fund. August 2000. *UNEP Global POPs Treaty-INC5/Johannesburg Criteria and Procedures for Adding New Substances*.

⁹ See Environment Canada’s presentation handouts regarding the implementation of the *Canadian Environmental Protection Act*, Parts 4 and 5 provided to CEN Toxics Caucus on September 19, 2000.

the public can provide and further encourages transparency and accountability in the treaty. Presently, opportunities exist to articulate a role for the public in this process.

2.5 POPs Stockpiles and Wastes

The debate that surrounds the issue of destruction of POPs stockpiles continues. We recognize that the treaty, in addition to promoting the goal of elimination of POPs, must also be able to provide for the disposal of current POPs stockpiles and wastes that exist around the world.

We want to ensure that the treaty embraces pollution prevention strategies that would inadvertently include the promotion of clean technologies and use of safe alternatives. However, in situations where destruction of POPs stockpiles and waste are required, then we would like to ensure that non-incineration combustion technologies are given priority and that these technologies result in no release of emissions. The Caucus cannot support the use of incineration technologies as they are known to produce by-products such as dioxins.

Article D of the treaty recognizes that reduction of POPs stockpiles and wastes can be addressed by employing destruction techniques for these POPs. However, there is very little commentary on another related and critical issue—transportation or movement of POPs wastes. Article D(4)9(c)(currently in bracketed text) does note that “...products, articles, and stockpiles upon becoming waste, are

i) Handled, transported and stored in an environmentally sound manner;”¹⁰

However, it is unclear what is meant by ‘environmentally sound manner,’ the type of technologies that will be considered for destruction, or the methods proposed for transporting the waste. In the event that wastes do need to be transported for destruction, a comprehensive list of the conditions/criteria should be outlined in the treaty, similar to the list outlined for BAT. Guidance on these matters is critical as it should not be the intent of the treaty to transport waste for destruction to distant locations, unless an environmentally sound technique is not available locally.

The previous INC sessions spent a significant amount of time focussed on what is meant by environmentally sound manner and the Best Available Techniques. We reiterate our concerns around the possible consideration of incineration technology as **it does not guarantee 100% destruction of POPs**. We are concerned that, without articulation of the conditions under which the transport and destruction of POPs stockpiles and wastes can occur, the treaty may promote the increased movement of POPs for destruction purposes. This would increase the risk of spills and contamination of the environment and human health during the transportation. A report by Sierra Club and Basel Action Network on this topic¹¹ provides a good rationale on the importance of including some commentary on this topic and merits strong consideration from the Canadian delegation. These groups call for appropriate definitions for these key terms in Article D, and also call for guidelines on situations when POPs waste can be transported for destruction.

¹⁰ United Nations Environment Programme. August 3, 2000. *Preparation of an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants*. Draft Text by the Chair. UNEP/POPS/INC.5/5.

¹¹ See Sierra Club and Basel Action Network. 2000. *UNEP Global POPs Treaty (INC5/Johannesburg, December 2000): Best Available Techniques for Transport and Destruction of POPs waste*.

Similarly, World Wildlife Fund also produced a report focused on the disposal of obsolete POPs stockpiles.¹² Part 3 of this paper elaborates on specific changes to proposed text in Article D and related Annexes.

2.6 Public Right to Know

We support efforts that expand the public's access to information on environmental matters, in particular, on persistent toxic substances. Further, the Toxics Caucus sees this component as part of the effort to create and encourage transparency in the treaty and ensure a level of accountability. In domestic initiatives, such as CEPA, our member organizations have been vocal about the increase need for transparency and access to information. In our view, increase transparency foster efforts on information exchange which will be critical to meeting obligations of the treaty, in particular in the area of developing implementation plans.

There are currently a number of noteworthy initiatives that promote the public's right to know. For example, databases on release, use and disposal of toxic substances, such as Canada's *National Pollutants Release Inventory* and the U.S. *Toxics Release Inventory*, promote the public's right to know. Efforts to improve these programs continue with participation from stakeholders. Various aspects of the treaty offer Parties an opportunity to share information on POPs through inventories on the use, release and production of POPs, as well as information on efforts undertaken and clean technologies available to eliminate or reduce POPs. The issue of transparency, a public right to know component, and enhanced public role should be incorporated in various Articles of the treaty, including but not limited to Articles E (National Implementation Plans), Article F (Listing of chemicals...), G (Information Exchange), and H (Public Information, Awareness and Education).

2.7 Role of Public

The global treaty on POPs could ensure that the public has a meaningful role in the implementation of the treaty. Sectors of the public, including Aboriginal and indigenous communities, workers and women, can make significant contributions to implementation plans. In particular, women in developing countries and Aboriginal communities who are responsible for food gathering, production and preparation may provide insights on the most effective approaches to be taken on addressing POPs. The involvement of the public in meeting the obligations of the treaty should be articulated in key Articles of the treaty including Articles A (Preamble), B (Objectives), D (Measures), E (Implementation Plans), F (Listing of Substances), G (Information Exchange), H (Public Information, Awareness, and Education), I (Research, Development and Monitoring), and J (Technical Assistance).

2.8 Technical and Financial Assistance

Financial and technical assistance will be required in virtually all aspects of the treaty to ensure that implementation and fulfillment of treaty obligations are met. This is one of four major issues that pose a threat to the ratification of the global treaty on POPs.

¹² See World Wildlife Fund. August 2000. *UNEP Global POPs Treaty – INC5/Johannesburg: Disposing of Obsolete Stockpiles*.

The World Wildlife Fund prepared a report to investigate the options available on the issue of financial resources and technical assistance. While the WWF report highlighted that each of the proposed options for financial mechanisms has strengths and weaknesses, there was certainty in the conclusion that donor countries need to provide adequate technical and financial assistance so that all nations can participate in the implementation of the treaty.¹³ It is clear from INC4 that new funds must be secured to ensure the future of the global treaty.

The report from the INC4 outlined the diversity of views on these matters, as Canada, the EU, the US and the various countries from the Group of 77 provided their insight on various options available to ensure financial and technical assistance. The announcement by the Canadian government during INC4 of a substantial commitment to assistance of developing countries and countries with economies in transition should be commended. We encourage the continued leadership demonstrated by Canada in this area. However, the \$20 million committed by Canada, along with commitments of \$500,000 and \$115,000 by the US and Japan, cannot ensure effective implementation of the treaty obligations. Unless other agencies and Parties make similar commitment to the recently established POPs Trust Fund, the future of the global treaty appears to be grim.

The availability of technical assistance will also be a determining factor in the effectiveness of a global treaty on POPs. The developing countries and countries with economies in transition are positioned to benefit from the expertise of agencies and other Parties in several areas, including pollution prevention strategies, availability of clean technologies, development of and promotion of safe alternatives, knowledge on non-incineration destruction technologies for POPs stockpiles and wastes, design and implementation of national implementation plans, and information on POPs' impact on health and the environment. Canada and the other donor countries have a clear obligation to ensure that all nations requiring technical assistance have the necessary funds and tools.

2.9 Trade Issues

It remains the position of the Toxics Caucus that the World Trade Organization (WTO) as well as other international trade agreements should not override the obligations of a global treaty on POPs. The POPs treaty, a multilateral environmental agreement, is being developed to address a specific global concern and should not be subject to the goals of other previously ratified international agreements. Therefore, all supremacy clauses such as that outlined in Article Nbis, which was proposed by the Australian delegation and remains in bracket in the final report from INC4, should be deleted to ensure that the Parties to the treaty can meet the goals of the treaty. It is disappointing to hear that Canada does not see the potential implications of Article Nbis to the effectiveness of the treaty.

The Council of Canadians prepared a detailed discussion paper on the implications of trade agreements on a global treaty on POPs.¹⁴ The report indicates that trade activities may have profound implications for the goal of elimination in the treaty. For example, the issue of importing and exporting POPs between member and non-member countries of this treaty should

¹³ See World Wildlife Fund. June 2000. *UNEP Global POPs Treaty-INC5/Johannesburg Core Issues Statement*.

¹⁴ See Center for International Environmental Law, Council of Canadians, and National Toxics Network. 2000. *Trade Issues in the POPs Convention*.

be clearly outlined in the treaty. The obligations of the *Basel Convention on the Transboundary Movement of Wastes*, must also be met to ensure that protection to the environment and human population is maintained. Currently, Article A, various sections of Article D, and Article Nbis have trade implications that should be reconsidered by the Canadian delegation. Specific recommendations on these articles will be proposed in the following section of this submission.

2.10 Liability Protocol

The proposed text for a global treaty on POPs does not currently address the issue of liability. The effectiveness of the treaty to eliminate POPs globally would increase if an article on liability was included. The *Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal* in Article 12 addresses the issue of liability. Article 12 states:

The Parties shall co-operate with a view to adopting, as soon as practicable, a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes.

The Basel Convention has not yet defined the rules and procedures for liability and compensation but the obligation to do so remains. The Parties to the INC negotiations should support the concept of a liability protocol and begin discussions on this matter.

PART 3 - RECOMMENDED TEXT TO SPECIFIC ARTICLES OF THE PROPOSED TREATY

Part 3 of this submission provides proposed text on specific Articles and Annexes of the treaty and a rationale for these proposals. This part does not aim to provide comments on every Article in the treaty as other organizations are better positioned to make comments on specific Articles. Below does provide some insight into several of the overarching guiding principles raised in Part 2 of this submission.

ARTICLE A PREAMBLE

Recommendation: The Preamble should include strong language for the goal of elimination, the precautionary principle, protection of human health and the environment, with specific emphasis on the protection of susceptible populations such as the Aboriginal communities, children, women, and workers.

Proposed Text

The Parties to this Convention,

Recognizing that persistent organic pollutants possess toxic properties, resist degradation, bioaccumulate and are often transported across international boundaries and are deposited far from their site of origin through air, water and migratory species, where they accumulate in terrestrial and aquatic ecosystems,

[Conscious of the presence of persistent organic pollutants in the bodies of human beings around the world and particularly of the need to emphasize protection of susceptible populations such as Aboriginal communities, children, women, workers,]

[Concerned that persistent organic pollutants have been associated with a variety of effects on human health, among them impacts on growth and development, immune function, neurological function, reproduction, and various cancers,]

Acknowledging the health concerns, particularly in developing countries, resulting from local exposure to persistent organic pollutants, in particular women, and through them future generations,

Mindful that the Arctic ecosystems and especially its indigenous people[s] are particularly at risk because of the biomagnification of persistent organic pollutants, and that contamination of their natural foods is a public health, spiritual, and cultural issue for them,

Conscious of the need for global action ~~on~~ to eliminate persistent organic pollutants,

[Recognizing that sufficient evidence of environmental damage and human toxicity exists to warrant the phaseout of twelve POPs beginning immediately, and that there is existing and emerging evidence regarding the effects of additional POPs,]

Recalling the pertinent provisions of the Rio Declaration on Environment and Development and Agenda 21,

Reaffirming Resolved to take measures to prevent releases of persistent organic pollutants, taking into account the precautionary approach as set forth in Principle 15 of the Rio Declaration on Environment and Development,

Mindful of decision 19/13 C of the Governing Council of the United Nations Environment Programme, on international action to protect human health and the environment through measures which will reduce and/or eliminate emissions and discharges of persistent organic pollutants,

Recognizing the relevant international environmental conventions, especially the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal,

Reaffirming that States have, in accordance with the Charter of the United Nations and the principles of international law, the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment or development of other States or of areas beyond the limits of national jurisdiction,

Taking into account the circumstances and particular requirements of developing countries and countries with economies in transition, in particular the need to strengthen national capabilities for the management of chemicals elimination of persistent organic pollutants, including the transfer of technology, providing financial and technical assistance and promoting cooperation among the Parties,

Recognizing the important contribution [of] the private sector and nongovernmental organizations ~~can make~~ to knowledge of the effects associated with persistent organic pollutants, available alternatives and prevention techniques, and the role of these sectors in [achieving] the ~~reduction and/or~~ elimination of ~~emissions of~~ persistent organic pollutants,

Determined to protect human health and the environment from harmful impacts from persistent organic pollutants,

Have agreed as follows

Rationale

The purpose of the Preamble is to present the guiding concepts of the treaty. As discussed in the Part 2 of this submission, we recognize the importance of establishing the appropriate tone for the treaty through Article A - Preamble. The proposed text is based on the recommendations made by the Physicians for Social Responsibility and emphasized the following

- the goal of eliminating POPs;
- the precautionary principle;
- the impacts of POPs on the natural environment with specific reference to the Arctic environment;¹⁵ and
- the impacts on human health, particularly on susceptible populations.

ARTICLE B OBJECTIVES

Recommendation: Article B should include the goal of elimination of POPs, the protection of human health and the environment, and the precautionary principle.

Proposed Text

The objectives of this Convention are:

- (1) to protect human health and the environment through the elimination of persistent organic pollutants of global concern and their anthropogenic sources, either immediately or over time, taking into account the precautionary approach;
- (2) to build the capacity of all countries to eliminate POPs and their sources, and to identify and implement safe alternatives that are not POPs; and
- (3) to ensure that health and safety are not compromised while POPs are being phased out and eliminated.

Rationale

The current draft text for Article B¹⁶ does not fully embrace the scope of the treaty. The proposed text is drawn from that of the Physicians for Social Responsibility. It includes several key

¹⁵ See: Canadian Arctic Resources Committee. 2000. *The Arctic, POPs and the Recognition of a Duty*. See also: Canadian Environmental Law Association. May 2000. *Environmental Standard Setting and Children's Health*.

¹⁶ United Nations Environment Programme. August 3, 2000. *Intergovernmental Negotiating Committee for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants. Fifth Session. Item 4 of the provisional agenda. UNEP/POPS/INC.5/5*.

concepts that are missing in the current text but are necessary to the focus of the treaty. We view the goals of elimination of POPs, the precautionary principle, and ensuring the protection of human health and environment from exposure to POPs, as the overarching aims of the treaty and they should be articulated in this Article.

In our previous submission towards INC4, we proposed text for Article B which incorporated all the concepts discussed in the previous paragraph.¹⁷ This report provided a good rationale for incorporating the goal of elimination in Article B, which remains relevant in the current discussions around objectives of the treaty. The proposed text draws on other international agreements such as the *Agreement on the International Dolphin Conservation Program (1998)*; *Great Lakes Water Quality Agreement Between the United States and Canada (1978)*; and *OECD Decision Protection of the Environment by Control of Polychlorinated Biphenyls (1973)*, all of which include language supporting the elimination of toxic substances as an objective. Further, the proposed text is not too limiting as it does take into consideration other important issues raised throughout the negotiations. In particular, the objectives address the matter of promoting clean technologies and safe alternatives to POPs, the need for 100% destruction technologies for POPs stockpiles and waste, and the issue of just transition when POPs are being phased out/banned.

While the Canadian delegation's current position does not support the language of elimination with respect to unintentionally produced by-products, it is important that consistency in language between domestic and international obligations is maintained. Language for "virtual elimination" currently exists in the new CEPA. The definition for "virtual elimination" in the new CEPA continues to be a source of debate, but it cannot be denied that CEPA does recognize the need to "virtually eliminate" certain substances. Furthermore, domestic policies in Canada and Canada's bilateral commitments with the US on toxic substances are supportive of this goal.¹⁸ The Canadian delegation should support inclusion of the goal of elimination of POPs in this Article.

ARTICLE C DEFINITIONS

Recommendation: Include the definitions proposed below for "environmentally sound destruction" and "precautionary approach" in Article C.

Proposed Text: the following terms and their definitions should be included in Article C.

"environmentally sound destruction" should be defined as those processes that destroy all the toxic constituents and toxic by-products of the feedstock to the maximum extent available and do not create or release other POPs.¹⁹

¹⁷ See: Canadian Environmental Law Association. March 2000. *Comments by Members of the CEN Toxics Caucus on Final Report to INC3: Providing Direction towards INC4 Session*. Submission prepared for the CEN Toxics Caucus. Annex A.

¹⁸ Refer to the *Toxic Substances Management Policy*, the Canadian Council of Ministers of the Environment's *Policy for the Management of Toxic Substances*. Also see: *The Great Lakes Water Quality Agreement, Binational Great Lakes Toxics Management Strategy*.

¹⁹ See Sierra Club and Basel Action Network. 2000. *UNEP Global POPs Treaty (INC5/Johannesburg, December 2000): Best Available Techniques for Transport and Destruction of POPs Waste*.

“precautionary approach” should be taken where there is lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the extent of the potential adverse effects.²⁰

Rationale

The proposed text presents a limited number of terms and their definitions. Without definitions, terms are open to wide interpretation which can have major negative implications for meeting the obligations of the treaty. A treaty on POPs should include an expansion of the existing list of definitions to ensure that the intent of eliminating POPs and the development of implementation plans for POPs elimination are appropriately interpreted.

The term “environmentally sound manner” is not currently defined and there is some concern that this may include reference to technologies such as incineration, a process that is a source of the POPs by-products, dioxins and furans. A treaty that promotes the use of clean technology and safe alternatives is preferred. However, the Toxics Caucus recognizes that certain situations will require the use of destruction technologies. Members of the Toxics Caucus have outlined their concerns on this topic in previous submissions, with specific reference to the CCME Canada-Wide Standard Setting Process. Incineration technologies and their creation of POPs by-products have been debated endlessly. Non-incineration destruction technologies are preferred because incineration produces harmful by-products and its use further entrenches the end-of-pipe control technologies that are not ultimately protective of human health. Often, incineration technologies require large initial monetary investments which could otherwise be freed up to employ safe alternatives or develop clean technologies. Therefore, we submit that in situations where destruction of POPs is necessary, then only those technologies which have proven to result in 100% destruction of POPs stockpiles and waste should be considered “environmentally sound.”

The debate on the precautionary principle has been at the forefront of these international negotiations. Several Parties to these negotiations, including the Canadian delegation, claim that the treaty is undertaking a precautionary approach in addressing POPs. However, various Articles in the global treaty put this intent into question. For example, the precautionary approach, while mentioned in Article A (Preamble) has not been defined in Article C. The absence of a definition for the precautionary approach opens the concept to different interpretations and applications. We have noted that the precautionary principle should be incorporated at every stage of the decision making process towards implementation of the treaty. To entrench the precautionary principle, the Toxics Caucus identifies the need to incorporate the precautionary principle, at least in the following: Articles A (Preamble), B (Objectives), C (Definitions), and F (Listing of Substances). The definition proposed above was presented in the *Cartagena Protocol on Biosafety*, and commits Parties to evaluate all available options and alternatives in events of uncertainty. The World Wildlife Fund prepared a comprehensive paper to discuss the importance of the precautionary principle in the global treaty that should be carefully considered.²¹

²⁰ See the *Cartagena Protocol on Biosafety*. June 2000.

²¹ See: World Wildlife Fund. August 2000. *UNEP Global POPs Treaty-INC%/Johannesburg Incorporating Precautionary Measures*.

ARTICLE D MEASURES

Article D is a critical provision in the treaty as it details the measures to be taken on each of the 12 POPs by each Party. Article D and its Annexes details the POPs targeted for elimination or restriction in production. Included in this Article is a list of various exemptions provided to Parties on specific POPs. Many environmental organizations and Parties to these negotiations have expressed concerns over various aspects of this Article and the relevant Annexes including the list of exemptions (general, modified or country specific), the proposals outlining import and export activities on POPs, and the proposed guidance on the disposal and destructions of POPs stockpiles and wastes.

The goal of elimination, as noted, has been debated feverishly. Many developing countries and countries with economies in transition continue to argue that elimination of the 12 POPs is unattainable because of the uncertainty that surrounds the availability of safe alternatives and/or the uncertainty of financial and technical assistance. Recognizing these concerns, and the need for increased efforts to demonstrate safe alternatives and share information among countries, the Parties should maintain the long-term goal of elimination of POPs. Annex A (Elimination) and Annex B (Restrictions to Production) should certainly specify timelines for elimination but allow for flexibility for those countries that face these uncertainties. DDT, PCBs, and dioxins and furans are four POPs that continue to be the focus of debate. The issue of de minimus levels of POPs and the exemptions granted to specific countries may have implications to the goal of elimination. The following paragraphs comment on the need to maintain the ultimate goal of elimination for POPs.

Trade matters

Recommendation: Delete the words import, export from D1.

Recommendation: Delete current paragraph D1 bis.

Proposed Text

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.

Add the following

{add1 bis. Each Party shall ensure that a chemical listed in Annex A, the production and use of which that Party has prohibited is not imported by that Party except for the purpose of environmentally sound destruction. }

{add1 ter. Each Party shall ensure that a chemical listed in Annex A, the production and use of which all Parties have not yet prohibited, is only allowed to be exported by that Party to Parties which have a specific exemption under Annex A, or exclusively for the purpose of environmentally sound destruction. }

{add1 quater. Each Party shall ensure that a chemical listed in Annex A, the production and use of which all Parties have prohibited, is not exported by that Party except for the purpose of environmentally sound destruction. }

{add1 quinquens. Notwithstanding the provisions of this article, exports referred to in paragraph D.1 ter and 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 xx and have submitted written data to that effect to the Secretariat or, where applicable, according to the transitional provisions. }

Rationale

The proposed text is based on recommendations made by the Council of Canadians.²² Activities relating to the import and export of POPs should be carefully monitored to ensure that the goal of elimination of the POPs in Annex A is not compromised. It is critical that any import and export activities should only occur between members of the treaty. The ban on export of POPs to non-members to the treaty is encouraged to ensure that implementation activities to eliminate POPs are undertaken by signatories of the treaty. Similarly, importing POPs listed under Annex A must only be for the purposes of environmentally sound destruction of these POPs or for those members which have been given a specific exemption under Annex A with specified timelines. Once a POP has been targeted for elimination, in particular those POPs which have specific country exemptions, trade activities on these POPs should be discontinued.

Goal of elimination

Recommendation: changes to D2bis and to D3 to ensure that the goal of elimination is consistent throughout the treaty.

Proposed Text

2.bis Each Party that has a regulatory and assessment scheme for new pesticides or industrial chemicals shall take measures to prohibit the production and use of newly developed pesticides or industrial chemicals which, taking into consideration the criteria of persistence, bioaccumulation, toxicity and potential for long range transport outlined in Annex D.

3. Party shall at a minimum [,within its capabilities and subject to the availability of technical financial assistance,] [aim to] take the following measures to reduce the [total] releases derived from anthropogenic sources of [each of] the chemicals listed in Annex C, with the [aim] [goal] of their continuing minimization [and~~[where[technical and economically] feasible]~~ ultimate elimination]

(a) Promote the application of available, feasible and practical measures that can expeditiously achieve source elimination or a realistic and meaningful level of release reduction;

Rationale

The ultimate goal of elimination of POPs should be the main objective of this treaty, including the POPs by-products, dioxins, furans, hexachlorobenzene and PCBs. Achieving the goal of elimination is compromised with the qualifiers “technical and economically feasible,” and these

²² For further commentary refer to Center for International Environmental Law, Council of Canadians and National Toxics Network. 2000. *Trade Issues in the POPs Convention*.

should not be supported. While we recognize that elimination of some POPs may take a longer time for some countries than other POPs because of uncertainties about available alternatives and financial and technical assistance, these should not mask the real purpose of this treaty—ultimate elimination of POPs. Similarly, the language to “prohibit...of newly developed pesticides or industrial chemicals...” should be supported as it does not create loopholes that may threaten the overall goal of elimination.

While the text regarding Annex A and B includes exemptions to specific countries on many of these POPs, the goal of elimination is intact. Questions around expiry dates to these exemptions remain under negotiation. At the INC4 session, the main debate regarding elimination was on POPs listed under Annex C — by-products. It is encouraging that the result of this debate was the inclusion of the elimination goal along with its qualifications in the draft treaty to be negotiated at INC5. Several Parties including the US and Australia opposed this inclusion. It remains unclear what position Canada will take on this matter at INC5.

The Toxics Caucus has indicated that without the goal of elimination, including for by-products, the treaty will not result in protective measures for human health and environment. The Canadian delegation should take a strong position to support the goal of “ultimate elimination” without the accompanying qualifications “where economically feasible” for by-products. Many of these by-products are the result of combustion of chlorine-based products and they are often created through the use of incineration technologies. A call for elimination of POPs by-products would promote the development of safe alternatives and technologies.

Support for the goal of “ultimate elimination” of by-products will require that other Articles in the treaty be supportive of this goal, including Articles D3(d), Article E (Implementation plans), Article G (Information Exchange), Article H (Public information, awareness, and education), Article I (Research development, and monitoring), Articles J (Technical Assistance), and Article K (Financial Assistance).

Destruction of stockpiles and waste

Recommendation: The treaty should provide stronger language for implementation of BAT, therefore the word ‘require’ rather than ‘promote’ in D3(d) is supported.

Recommendation: Support D4 and include (c) in D4 as it is important to ensure that all aspects, including the transportation of wastes is conducted in an environmentally sound manner. Also remove brackets around “or C.”

Proposed Text

3(d) Require ~~Promote~~ the use of best available techniques [and/or other prevention strategies] for new sources within major source categories [, identified in Part II of Annex C] [and for which Annex C specifies that best available techniques exist,] taking into consideration the general guidance on [the] release reduction measures [in Annex C] and the guidelines on best available techniques to be adopted by decision of the Conference of the Parties [as well as the feasibility, cost and timing];

4. In order to ensure that stockpiles, wastes, as well as products and articles upon becoming wastes, consisting of or containing a chemical listed in Annex A, B [or C] are managed in a

manner protective of human health and the environment, each Party shall [, within its capabilities and subject to the availability of technical and financial assistance]

- (a) Develop, for the chemicals listed in Annex A or B, appropriate strategies for identifying
 - (i) Products, articles and wastes consisting of, or containing, those chemicals; and
 - (ii) Stockpiles of those chemicals;
- b) Manage, as appropriate, stockpiles of chemicals in Annex A or B in a careful and efficient manner and, upon their becoming wastes, treat them in accordance with subparagraph (c) below; [and]
- c) Take measures to ensure that wastes, as well as products, articles and stockpiles upon becoming wastes, are
 - (i) Handled, transported and stored in an environmentally sound manner; and
 - (ii) Managed so that the persistent organic pollutant content is destroyed or otherwise transformed into chemicals that do not possess the properties of persistent organic pollutants as specified in Annex D or, when appropriate, otherwise disposed of in an environmentally sound manner consistent with the *Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal*; and
- (d) Develop appropriate strategies for identifying sites contaminated by chemicals in Annex A, B or C and, if remediation of those sites is considered to be feasible and practical, to ensure that such remediation is performed in an environmentally sound manner.

Rationale

The proposed text is based on recommendations made by the Basel Action Network and Sierra Club.²³ We highlighted the need for definitions of key concepts within the treaty. The term ‘Best Available Technique’ (BAT) which is currently not defined in Article C of the treaty, is addressed in Annex C. It provides a list of possible techniques for addressing current sources of POPs. The term BAT should be defined to ensure that techniques under consideration meet a level that ensures the protection of human health and the environment. The guidelines for BAT will be developed by the Conference of the Parties, an effort that we will monitor. At this point, we strongly recommend that any techniques considered as BAT should not result in the production of other POPs but ensure 100% destruction. Furthermore, these guidelines should ensure that safe practices (including concerns related to transportation of POPs, occupational safety matters, etc.) are integrated in the deployment of these technologies.

The report of the Sierra Club and Basel Action Network for INC5 provides a detailed discussion on concerns regarding transboundary movement of POPs and the destruction techniques used on POPs stockpiles and wastes. Most notably, the Toxics Caucus supports the recommendations put forth in this report on “Parties ... not to participate in trans-oceanic transport of POPs ... except when the wastes are being shipped for environmentally sound destruction and where such destruction on site proves infeasible.” We have outlined in detail our concerns regarding destruction technologies in Part 2 of this submission. Most importantly, we prefer destruction of

²³ See *Best Available Techniques for POPs Transport and Destruction*. 2000.

POPs waste (under very defined conditions) over their disposal. There is some inconsistency with the current Basel Convention which allows for inappropriate and unacceptable disposal methods.

Implementation Plans

Recommendation: Include D3(e) in the body of the treaty.

Proposed Text

(e) Within one or two years of the date of entry into force of this Convention for it, develop and implement an action plan [or, where appropriate, participate in the development and implementation of a regional or subregional action plan] [as part of the implementation plan specified in Article E] designed to identify, characterize and address the release of the chemicals listed in Annex C and to facilitate implementation of subparagraphs (a) to (d) above. The action plan shall include the following elements

- (i) An evaluation of current and projected releases, including the development and maintenance of source inventories and release estimates, taking into consideration guidance to specified by decision of the Conference of the Parties;
- (ii) An evaluation of the adequacy of the laws and policies of the Party relating to the management of such releases;
- (iii) Strategies to meet the obligations of this paragraph, taking into account the evaluation in (i) and (ii) of this paragraph;
- (iv) Steps to promote education and training with regard to, and awareness of, those strategies;
- (v) Means for monitoring the progress of those strategies, including a review every (5) years of the strategies and their success in meeting the obligations of this paragraph; such reviews shall be included in reports submitted pursuant to Article L; and
- (vi) A schedule for implementation of the action plan, including for the strategies and measures identified therein.

Rationale

The inclusion of 3(e) puts emphasis on the implementation plans required by each Party. We support Canada's position that implementation plans be submitted one year after entry into force. The development and implementation of such plans should include transparency and accountability. Active participation in development of these plans should be sought from various sectors of society including ENGOs, Aboriginal communities, women, and indigenous communities among others.

ANNEX A

The ultimate goal of the treaty should be the elimination of POPs, recognizing that some countries may require specific exemptions in use and/or production before a complete ban is determined. All POPs listed in Annex A²⁴ should remain on the elimination track.

²⁴ Annex A chemicals include: aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, hexachlorobenzene, mirex, toxaphene, and PCBs.

Elimination of DDT

Recommendation: Delete the brackets around DDT in Annex A with the understanding that there are financial assistance issues and availability of safe alternatives issues to address.

Rationale

The proposed text currently includes DDT in Annex A (Elimination) along with 9 other POPs. The controversy around whether DDT should be eliminated or merely targeted for reduction under Annex B (Reduction) continues. Some developing countries consider DDT a critical vector control for malaria. These Parties have also expressed that safe alternatives to DDT in vector control are uncertain, and as well the lack of financial and technical assistance for substitution of safe alternatives makes it very difficult to support the target of elimination. Organizations such as World Wildlife Fund have prepared supporting documents²⁵ that indicates the elimination of DDT is not only achievable but necessary to ensure the protection of global and local environments and human health. We recommend that DDT remain on Annex A for a complete ban, but with specific exemptions for its use and production in specific countries. We support Canada's position on this matter.

This commitment to eliminate DDT should be articulated effectively in various articles of the treaty including Articles E (Implementation Plans), J (Technical Assistance) and K (Financial Assistance). Since Canada, especially the northern Canadian region, continues to be a sink for many POPs including DDT, its commitment to providing financial and technical assistance towards DDT elimination is encouraged.

Elimination of PCBs

Recommendation: The inclusion of PCBs in Annex A is supported with exemptions on uses of PCBs. To address the matter of contaminated sites with PCB, the recommendation to ensure accountability for clean-up of these sites is reiterated through suggested amendments to D4(d).

Rationale

Similar to DDT, PCBs are also listed in Annex A (Elimination). There is general agreement among the Parties that production of PCBs is no longer necessary with availability of alternatives. However, due to the extensive use of PCBs in the past, the human population will be exposed to PCBs for a very long time.

The focus of debate at these negotiations is the presence of PCBs in equipment currently in use and PCBs from contaminated sites.²⁶ In these situations, the issue of destruction of POPs stockpiles and waste or their disposal, addressed in Article D4, has a direct impact on how effectively the treaty can move toward the elimination of PCBs. This provides further support to the recommendations made in Article D4, noted above.

²⁵ World Wildlife Fund. August 2000. *UNEP Global POPs Treaty-INC%/Johannesburg Dioxins: Aiming for Ultimate Elimination.*

²⁶ See: World Wildlife Fund. August 2000. *UNEP Global POPs Treaty-INC5/Johannesburg: Polychlorinated Biphenyls (PCBs).*

The Toxics Caucus supports the exemptions listed in Annex A (Elimination) for PCB uses. Substantial efforts by various Parties, including Canada, to address the use of PCBs in equipment has begun. Because of the wide spread use of PCBs in equipment, especially in electrical production equipment, implementation plans by individual countries to eliminate PCBs should consider the level of commitment and resources required to undertake the tasks. However, guidance by the Conference of the Party on the determination of the expiry date as well as on management options is required.

Finally, PCBs in contaminated sites will continue to be a source of concern for local and global communities. Article D4(d) ensures that there is accountability for the clean-up of these contaminated sites.

Exemptions

Recommendation: We support Canada’s position that country specific exemptions on the use of POPs should have clearly defined language on the use of the POPs and timeframes for phasing out its manufacture and use.

Recommendation: Delete Dbis2.

Recommendation: General exemptions are not supported.

Rationale

We support a deletion of Dbis 2 because Canada should not agree to grant any exemptions that will result in the intentional release of POPs.

Several organizations, including World Wildlife Fund, prepared a report, *UNEP Global POPs Treaty-INC5/Johannesburg General, modified-general, and country-specific exemptions*, that is worthy of review by the Canadian delegation.²⁷ We support the Canadian position that country specific exemptions should be limited and include an expiration or review date.

We have concerns regarding general exemptions, in particular with regard to *de minimus* contaminants in products. The term “de minimus” is subject to interpretation and may depend on existing legislation of a country. Such a term may allow for approval of POPs level in pesticides, fertilizers, soil amendments, and cleaners. These levels may differ depending on the country. The only general exemption that is acceptable is that for laboratory scale research with well defined conditions.²⁸

ARTICLE E IMPLEMENTATION PLANS

Recommendation: We support Canada’s position on the need to submit implementation plans to the Conference of the Parties, one year after entry into force.

²⁷ See: World Wildlife Fund. August 2000. *UNEP Global POPs Treaty-INC5/Johannesburg: General, modified-general, and country-specific exemptions*.

²⁸ Ibid

Recommendation: In E1(c), it is recommended that annual updates for implementation plans be submitted.

Proposed Text

1.(b) Transmit the implementation plan to the Conference of the Parties within one [or two years] of the date on which this Convention enters into force for it; and

(c) Update the implementation plan at regular intervals to be specified in a decision of the Conference of the Parties. Each such plan shall include information on how the Party intends to meet its obligations under this Convention and any other relevant information specified in a decision of the Conference of the Parties.

2. In order to facilitate the development, updating and implementation of the plans referred to in paragraph 1 above, each Party is encouraged, ~~where appropriate~~, to cooperate directly or through global, regional and subregional, organizations and to consult national stakeholders.

Rationale

The amendments proposed above further efforts to establish transparency and accountability by Parties of the treaty and provide a role for public involvement in the development of implementation plans. In addition, such proposals initiate movement towards the goal of elimination. Members of the environmental community as well as other sectors of the public may provide significant insight into the development of action plans. While the nature of consultation with the public is not clearly defined in the treaty, it is recommended that the role of the public be incorporated throughout the decision making process and implementation of this treaty. Providing a public role can further the efforts of the Party towards meeting their obligations in the treaty.

ARTICLE F LISTING OF CHEMICALS IN ANNEXES A, B AND C

Recommendation: The proposed text to F(3), F(4), F(5), F(6) and addition of F 6 bis, aims to embrace the precautionary principle and defines a role for the public in the process to list chemicals in Annex A, B and/or C. Incorporating a precautionary approach will not prevent the Committee from listing chemicals because of insufficient information.

Proposed Text

3. The Committee shall examine the proposal and apply the screening criteria specified in Annex D in a preventative, transparent and integrative manner taking into account the precautionary principle. If the Committee is satisfied that the screening criteria have been fulfilled, the Secretariat shall make the proposal available to all Parties and observers and invite them to submit the information specified in Annex E. If the Committee is not satisfied that the screening criteria have been fulfilled, [the Secretariat shall inform all Parties and observers accordingly before the proposal is set aside.]
4. The Committee shall review the proposal, taking into account any relevant additional information received, and shall prepare a draft risk profile in accordance with Annex E. It shall make the draft available to all Parties and observers, collect technical comments from them and, taking those comments into account, complete the risk profile.

5. If, on the basis of the risk profile, the Committee concludes that the proposal should proceed, it shall invite information from all Parties and observers relating to the considerations specified in Annex F. It shall then prepare a risk management evaluation that includes an analysis of possible control measures for the chemical in accordance with Annex F. If, on the basis of the risk profile, the Committee concludes that the proposal should not proceed, it shall recommend to the Conference of the Parties that the proposal should be set aside. The Conference of the Parties shall decide whether to set the proposal aside.
6. Based on the risk profile referred to in paragraph 4 above and the risk management evaluation referred to in paragraph 5 above, the Committee shall recommend whether the chemical should be considered by the Conference of the Parties for listing in Annex A, B and/or C.
- 6 bis. Lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding a chemical shall not prevent the procedure specified in this article, from proceeding and shall not prevent the listing of chemicals in Annex A, B and/or C.

Rationale

To ensure that the treaty can comprehensively address the current POPs listed under Annex A, B and/or C, as well identify future POPs, the Toxics Caucus identified several key components that should be integral in Article F and Annex D, which list the criteria for determination of POPs. The process should take a precautionary approach as well as provide a defined role for the public throughout the selection process, from nomination to collection of data and review of proposals. The proposed changes to Article F address these matters. This position is not supportive of the current Canadian position which believes that the treaty is precautionary in nature. There are many loopholes in the current treaty text that do not support the precautionary approach. The proposed changes address these concerns. Here is a clear opportunity to ensure that the precautionary principle becomes operational. The EU has proposed language on this matter. The incorporation of the precautionary approach as highlighted in F6 bis., follows the efforts made in the *Cartagena Protocol on Biosafety* to incorporate the precautionary principle beyond the Preamble section.

ANNEX D INFORMATION REQUIREMENTS AND SCREENING CRITERIA

Recommendation: The screening criteria for persistence and bioaccumulation should be two months and log Kow of 4, respectively, to ensure that all POPs of concern are captured under the proposed screening process. Higher screening thresholds will not be protective of human health and the environment.

Recommendation: Canada should consider other evidence as indicated in Annex D e (ii).

Proposed Text

1. (b) Persistence
 - (i) Evidence that the half-life of the chemical in water is greater than two months, or that its half-life in soil is greater than six months, or that its half-life in sediments is greater than six months; or

- (c) Bio-accumulation
- (i) Evidence that the bio-concentration factor (BCF) or bio-accumulation factor (BAF) in aquatic species for the chemical is greater than 5,000 or in the absence of BCF and BAF data, that the log K_{ow} is greater than 4.

1 bis. [(f) Rationale] [(f) Statement of concern] The proposing party is encouraged to provide a statement of the reasons for concern, including, where possible, a comparison of toxicity or ecotoxicity data with detected or predicted levels of a chemical resulting or anticipated from long-range environmental transport, and a short statement indicating the need for global action.

Rationale

The Toxics Caucus has participated in a number of consultations that required the development of screening criteria, for example, the federal *Toxic Substances Management Policy*, and the CEPA review. It is important that the screening process is flexible enough to capture the worst POPs and ensure the protection of human health and the environment. The current proposed screening criteria may not be effective in capturing all POPs of concern and therefore the proposed thresholds should be lowered.

Furthermore, the process for nominating substances under this treaty should not be too cumbersome for Parties and should truly embrace the precautionary approach in both Annex D and Annex F. For example, Parties should not be “required” but should be “encouraged to provide a statement of the reasons, including, where possible, a comparison of toxicity or ecotoxicity.”²⁹

ARTICLES J AND K TECHNICAL AND FINANCIAL ASSISTANCE

As noted earlier in this submission, the members of the Toxics Caucus recognize that a resolution to the issue of technical and financial assistance is critical if the treaty is to be negotiated successfully. The reports from the inter-sessional meeting held in Vevey, Switzerland this summer showed signs of progress as Parties were in general agreement on the need for technical and financial assistance to developing countries and countries with economies in transition to meet the obligations of the treaty. The INC5 session will address this matter at the onset of the plenary session to ensure that sufficient time is dedicated to this topic.

At this time, only a handful of countries have announced financial commitments to the treaty. Canada’s commitment of \$20 million towards this effort is commendable but it is clear that new funds are required to ensure that the obligations of the treaty are met. Canada must continue to encourage the financial commitment of other Parties, especially Northern countries and the US. It is unclear from the multi-stakeholder discussion with Environment Canada whether the treaty can be settled without settling the issue of financial and technical mechanism. There has been talk that the G-77 will not agree to a POPs treaty without resolution to this matter.

There are several models under consideration by the Parties at this time. Whatever option is chosen there are critical issues that must be addressed. These issues include

- equitable governance,

²⁹ See: World Wildlife Fund. August 2000. *UNEP Global POPs Treaty-INC5/Johannesburg: Core Issues Statement*.

- use of appropriate implementing agencies,
- efficient project cycles,
- clarification of project costing concepts,
- flexibility to address cross-cutting issues,
- transparency,
- independent monitoring and evaluation, and
- public participation.³⁰

ARTICLE N BIS. RELATIONSHIP WITH OTHER AGREEMENTS

Recommendation: Delete Nbis.

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

Rationale

It was argued in Part 2 of this submission that trade activities around POPs should be carefully monitored and meet obligations of related international agreements such as the *Basel Convention on the Transboundary Movement of Hazardous Waste*. For example, the import and export of POPs should only occur only between members or members and-non-members that are compliant of the treaty and only undertaken under specified conditions (i.e., exemptions). These trade activities would cease to occur when these exemptions expire to ensure protection of the environment and human health.

However, the POPs treaty can flagged as a violation against international trade rules under World Trade Organization if N bis. is included in the treaty. A supremacy clause in the POPs treaty would imply that the protection of the environment and human health from POPs is subordinate to trade rules. To this point, the Parties to the POPs treaty have effectively been able to avoid wording in the Article A (Preamble) or Article B (Objectives) that protects trade rights over the obligations of the POPs treaty.

PART 4 CONCLUSIONS

Future generations and their environment depend in part on the way the global treaty is negotiated. There are several critical principles that cannot be weakened. First and foremost, the effectiveness of the treaty is predicated on the overall goal of elimination of POPs. Without a solid foundation that includes operationalizing the precautionary principle, having a process to add additional POPs for action, promoting the use of clean technology and safe alternatives, defining a role for the public, and promoting transparency and accountability, the goal of elimination would not be possible. However, such matters will be made possible only when the treaty can clearly design financial and technical assistance mechanisms that allow all Parties to meet their obligations under the treaty.

The recent multi-stakeholder meeting sponsored by Environment Canada provided some important insight on the views held by the Canadian delegation. While there were some positive and supported positions, there are a number of contentious matters that may threaten the future of the treaty. Because Canada is a recipient of POPs, it is important that an effective treaty be

³⁰ See: World Wildlife Fund. August 2000. *UNEP Global POPs Treaty-INC5/Johannesburg: Core Issues Statement*.

negotiated. Failure to uphold the goal of elimination will result in the continued exposure of Canadian environment and population to POPs.