



POPS INC-5 HIGHLIGHTS FRIDAY, 8 DECEMBER 2000

Delegates met in morning, afternoon and evening Plenary sessions to consider Articles D (Measures to reduce or eliminate releases), I (Research development and monitoring), H (Public information, awareness and education), O (Conference of the Parties), V (Entry into force) and L (Reporting). Contact Groups on Article F (Listing of chemicals in Annexes A, B and C) and Wastes, as well as the informal group on Article K (Financial resources and mechanisms), also convened during the day.

PLENARY

MEASURES TO REDUCE OR ELIMINATE RELEASES

(ARTICLE D): Prohibition and Restriction: The WORLD ALLIANCE FOR BREASTFEEDING ACTION called for women's participation to be ensured in the convention. Contact Group Co-chair Peter Hinchcliffe (UK) outlined progress made and highlighted bracketed text referring to technical and financial assistance and to "import, export." COLOMBIA, supported by THAILAND, called for retention of "import, export" even if this issue is addressed in other articles. CANADA, supported by AUSTRALIA, the EU and MEXICO, said that a cross-reference to the other paragraphs on import and export was necessary in order to accept this proposal.

Pending discussions of related articles, delegates agreed to consider language on restriction of production and use of chemicals listed in Annex B, subject to the availability and accessibility of technical and financial assistance. Delegates agreed to language: stating that Parties shall take measures to prevent or regulate the production and use of new pesticides or industrial chemicals which exhibit POPs characteristics; stating that each Party shall take into consideration the criteria in the provision on prohibition when conducting assessments on pesticides and industrial chemicals; exempting quantities of a chemical to be used for laboratory-scale research; and ensuring that production or use under exemptions is carried out in a manner that prevents or minimizes release into the environment and human exposure. On the prevention and regulation of production and use of new pesticides

or chemicals which exhibit POPs characteristic, COLOMBIA requested that the final report include a statement that the convention has not prohibited the production and use of new substances having POPs characteristics.

On the import and export of Annex A [or B] chemicals, Co-chair Luis Almagro (Uruguay) noted remaining brackets regarding, *inter alia*, environmentally sound "destruction" or "disposal," and new text identifying non-parties. ECUADOR, supported by BRAZIL, CHILE, COLOMBIA and the EU, called for reference to exporting countries receiving prior authorization from the importing country. COLOMBIA suggested text that provides for exporting a chemical "subject to the prior authorization of the importing country." The US, supported by several countries, noted that the Rotterdam Convention addresses this issue, and that not all Parties to the Rotterdam Convention will necessarily be Parties to the POPs convention.

After a drafting group session, COLOMBIA presented text stating that export of Annex A or B chemicals is "subject to the prior informed consent (PIC) of the importing party, taking into account the existing international PIC procedures that are in force between the exporting and importing countries." CANADA, CHILE and the EU supported the proposal. The US said the Rotterdam Convention is not yet in force and, with JAPAN, pointed out duplication of reference to PIC. CANADA suggested replacing "are in force" with "apply as." IRAN suggested language on evaluating the continued efficiency and need for the procedure. The text will be reissued as a CRP.

The SEYCHELLES lamented that text on exporting to non-parties undermined the objective of eliminating the use of POPs. IRAN, supported by INDONESIA, said that the proposed language could be a disincentive for States to join. The RUSSIAN FEDERATION called for greater control over exports and exporters. SOUTH AFRICA noted these concerns could be addressed in other parts of the text. CANADA pointed out a time-limit for trade with non-parties. SAUDI ARABIA said that imports and exports of wastes would fall under the Basel Convention.

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Regarding general exemptions in Annex A (Elimination), Part I, Co-Chair Hinchcliffe noted group consensus on unintentional trace elements, but brackets remain indicating that a decision is needed on whether to address closed-system site-limited intermediates and articles in use as general or specific exemptions. He also highlighted the table in Annexes A and B containing uses for specific exemptions.

The US clarified that unintentional trace elements was a general exemption, whereas closed-system site-limited intermediates and articles in use were conditional procedures that operate with Party notification. He noted, *inter alia*, that the general exemption for articles in use avoids future amendment of the Annex upon cessation of use. Hinchcliffe explained that a reference to “Registered Parties” in the specific exemption table under “Party” signified placement of Parties registering specific exemptions in a register. SWITZERLAND supported the general exemption approach in the chapeau over specific exemptions. PESTICIDES ACTION NETWORK (North America) called for transparency, review, and sparing and responsible use of exemptions. Delegates agreed on the general exemption for unintentional trace elements.

Concerned with implications for the paragraph on import and export, the EU specified that articles in use shall not be considered as “a production or use specific exemption” upon the relevant notification. The US accepted this. Brackets remain on articles in use.

The US noted their text submission, supported by others, amending the closed-system site-limited intermediates general exemption, and highlighted provision for exemption extensions after 10 years unless the COP decides otherwise. Regarding bracketed text that the COP [decides by consensus] [decides by consensus without the vote of the Party concerned] [decides], the EU and the RUSSIAN FEDERATION supported “decides.” The EU advocated text on production, use and storage of a closed-system site-limited intermediate not being considered as a production and use exemption. Chair Buccini reiterated the need to reflect that this exemption did not apply to eight of the intentionally-produced POPs.

Regarding Annex A (Elimination), Part II on PCBs, on making efforts to identify, [label] and remove from use equipment with more than 0.05 percent PCBs and volumes greater than 5 litres, the US and CANADA called for deletion of “label.” After further comments, Chair Buccini indicated that the LDG, advised by the Co-Chair, would further consider Part II.

In Annex B (Restriction), Part II on DDT, delegates noted agreement, except regarding a qualifier on financial and technical assistance.

Hinchcliffe then highlighted, and delegates briefly discussed, new Article R *Bis* on a Registry of Country Specific Exemptions and Review Progress. He later reported clear advice from the LDG that the current approach adopted for the Registry may breach international law, but that the LDG could produce a “bare bones” architecture setting up the Registry and providing for the COP to further elaborate it. Discussion was suspended.

New Chemicals: In the evening, the G-77/CHINA, supported by CHAD, the EU, SENEGAL and ARGENTINA, proposed that the production and use of new pesticides or industrial chemicals be prevented, with deletion of previously agreed language also referring to regulation. AUSTRALIA opposed. This text was left for resolution on Saturday.

Byproducts: Contact Group Co-Chair Reiner Arndt (Germany) introduced the text forwarded to Plenary by the Group. Arndt highlighted remaining brackets in the chapeau and the provision on substitutes, and two bracketed alternative proposals for the provision on use of Best Available Techniques (BAT) for new sources. One option requires the use of BAT for new sources; the second promotes and, in accordance with the implementation schedule of its action plan, requires the use of BAT for new sources within source categories that a Party has identified as warranting such action. The second option further requires that BAT be phased-in no later than four years after entry-into-force. Regarding this subparagraph, ARGENTINA, SOUTH AFRICA and CHINA supported the second option. AUSTRALIA said it could accept either. The EU, supported by NORWAY and NIGERIA, supported the first option. The EU drew attention to CRP.75, which proposes amendment to Article J (Technical Assistance) on developing action plans and BAT. CANADA and the US said they could accept the second. Supporting the second option, NEW ZEALAND feared that if the first option were chosen, some countries may not ratify the convention. He stressed that countries that are able to follow the first option should do so. The RUSSIAN FEDERATION proposed adding phasing-in “as soon as practicable” and no later than four years, to the second option. The second option was accepted with this amendment.

Regarding the promotion of the development and use of substitute or modified materials, the US opposed a reference to “where appropriate, require”, and the reference remains bracketed.

Regarding the chapeau and a bracketed reference to “total” releases, delegates debated the range of meanings and interpretations resulting from inclusion of the word total. AUSTRALIA, EL SALVADOR, the PHILIPPINES and SOUTH AFRICA, opposed by NORWAY and the US, proposed deleting the reference. No agreement was reached. On reference to ultimate elimination, NEW ZEALAND, the EU, with the PHILIPPINES, supported the goal of ultimate elimination without any qualifying language. CANADA supported a goal of ultimate elimination where feasible, and said this would convey a sense of technical and economic feasibility. The US expressed concern about the ability to technically achieve the goal of elimination, and could accept the qualifier “where feasible” on the understanding that the term include consideration of technical and economic feasibility, and that this be reflected in the report of the meeting. AUSTRALIA noted its original support for continuing minimization, but could accept “where technically and economically feasible, ultimate elimination.” INDIA, SOUTH AFRICA and CHINA supported this language. NORWAY said it could accept “where feasible” if “total” was



retained. Chair Buccini proposed “where feasible, ultimate elimination,” but there was opposition to this proposal and the qualifying language to ultimate elimination remains bracketed. Chair Buccini asked Arndt to informally facilitate with a group to resolve these issues.

On Annex C and the section on general reduction release measures under general BAT guidance, delegates agreed to add text to reflect that priority consideration should be given to alternative processes, techniques and practices when considering proposals to construct new facilities or significantly modify existing facilities that use processes that release substances in Annex C. Plenary forwarded Annex C to the LDG, with language on precaution remaining in brackets.

RESEARCH, DEVELOPMENT AND MONITORING (ARTICLE I): On items identified for these activities, delegates lifted brackets on environmental “transport,” fate and transformation, and on socioeconomic “and cultural” impacts. Delegates agreed to harmonized methodologies for making inventories of generating sources and analytical techniques for measurement of releases, and to storage and maintenance of information generated from the activity items. Delegates also agreed to take into account the concerns and needs of developing countries and CEITs, particularly in the field of financial and technical resources. Article I was cleared with agreement on undertaking research work geared towards alleviating the effects of POPs on reproductive health.

PUBLIC INFORMATION, AWARENESS AND EDUCATION (ARTICLE H): Noting a footnote on relocated text, delegates agreed to this Article.

CONFERENCE OF THE PARTIES (ARTICLE O): On the POPs Review Committee (POPRC), delegates deleted reference to “a limited number” of government-designated experts and “ensuring a balance between developed and developing country Parties.” The Article was agreed.

ENTRY INTO FORCE (ARTICLE V): Delegates deleted brackets around references to the 50th ratification, and the Article was agreed.

REPORTING (ARTICLE L): On providing the Secretariat with statistical data on total quantities of production, import and export of Annex A and B chemicals, IRAN, supported by others, proposed deletion of text enumerating this, preferring to leave such detail for the COP. The EU, with the US, preferred to retain the text. After informal consultations, delegates agreed to delete the requirement for Parties to provide the Secretariat with information on the foreseen use of Annex A and B chemicals in each State to which such chemicals are exported, and with copies of associated certifications. The Article was approved.

CONTACT GROUPS

ARTICLE F: The group used the Chair’s text on Article F (Listing of chemicals in Annexes A, B and C) as a basis for discussion, and had before it proposals from JUSCANZ and the EU. One delegate lamented the low number of developing country partici-

pating in the group. Delegates agreed to delay discussion on the issue of the precautionary principle pending discussion of the procedure for identifying new chemicals. Delegates agreed to the EU suggestion stating that a proposal could be resubmitted to the POPRC after an initial rejection based on the screening criteria in Annex D. However, lengthy discussions revolved around an EU proposal for an appeals procedure that would increase the role of the COP at different stages of the procedure. Delegates generally agreed to discuss an increased role for the COP, with one country reiterating that it had originally only envisioned a role for the COP at the end of the procedure regarding the listing of the chemicals in the Annexes. The group debated the scope of the COP’s decision-making criteria if a proposal rejected twice by the POPRC was brought forward. The proposing group noted that the intent was to inject a new perspective, and that the COP decision should not be based on the same criteria used by the POPRC, otherwise the appeals process would be irrelevant. Opposing this, one delegate felt that the same criteria should be used and that because the COP was a different body it would be applying judgment in making a decision.

A similar appeals procedure was put forward following the risk profile stage if the POPRC determined that the proposal should be set aside, whereby a Party could request the COP to request the POPRC to reconsider the proposal based on any new information. After a second rejection, the Party would have the option of asking the COP itself to consider the proposal. Some countries feared this would complicate the procedure and that the POPRC would be irrelevant if the COP had the final say in all decisions. No agreement was reached.

Turning to discussion of the precautionary principle or approach, delegates debated direct references to, and implicit language on, precaution in text regarding screening criteria, the risk profile, and the procedure in general. One delegation advocated adding reference to “full” scientific certainty. A delegation suggested, and a group of countries opposed, moving all references to precaution into one paragraph. A group of countries preferred text stating “in accordance with the precautionary principle.” Many delegations supported “mindful of the precautionary approach as set out in Principle 15 of the Rio Declaration.” The text was referred back to Plenary with outstanding issues on, *inter alia*: the precautionary principle or approach; COP decisions “based on” or “taking into account” the screening criteria in Annex D; and the role of the COP.

WASTES: The Contact Group met throughout the day in an attempt to agree text to the management of wastes, stockpiles of chemicals, and contaminated sites. On stockpiles of Annex A and B chemicals, delegates agreed that these should be managed in a “safe, efficient and environmentally sound” manner.

Extensive discussions occurred on the measures relating to the management of wastes, and products and articles upon becoming wastes. Reference to whether Parties should “require” or “ensure” these measures remains bracketed. Bracketed reference is also



made to the modifiers “appropriate” measures “if feasible.” Delegates agreed that wastes should be handled, collected, transported and stored in an environmentally sound manner, but were strongly divided on the measures to be adopted for the disposal of wastes. While delegates agreed that wastes should be disposed of in such a way that the POP content is destroyed, there was disagreement on whether to provide for the POP content to be “permanently transformed so that they do not exhibit the characteristics of POPs.” This remains bracketed.

Disagreement was also evident on the role of the Basel Convention and its guidelines, and on the role of the COP, in determining the suitability of alternative disposal options to the destruction of the POP content of waste. Reference to the Basel Convention and the COP remains bracketed, as does reference to international rules, standards and guidelines. Delegates agreed to a provision stating that the transboundary movement of POPs wastes should be guided by relevant Basel Convention requirements, but failed to agree on the prohibition of disposal options that may lead to recovery, recycling, reclamation, direct reuse or alternative uses of POPs chemicals.

On the development of appropriate strategies for identifying sites contaminated by chemicals in Annex A and B, bracketed reference was made to Annex C, and there was disagreement whether Parties should “develop” or “endeavor to develop” such strategies.

IN THE CORRIDORS

The language of compromise began to echo in the corridors Friday, with at least one participant stating that the forming agreement “may not be perfect, but it has to happen.” Others pointed out that last minute concessions and late night sessions are not unusual in international negotiations, with various delegations simply trying to get the best possible deal. One observer suggested that this display of brinkmanship was almost certainly the case regarding the sometimes edgy deliberations over language involving the precautionary principle. However, a note of caution was sounded by another participant regarding the number of brackets in the working draft article on a financial mechanism.

THINGS TO LOOK FOR TODAY

PLENARY: Delegates will reconvene in Plenary at 10:00 am in Ballroom 1 to hear reports from the Contact Groups and the informal group on Article K (Financial resources and mechanisms), and suggestions from the Chair on how to proceed on the final day. The closing session is not expected until late in the day or evening.



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