

IPEN Quick Views of Stockholm Convention COP4

April 2009

The following is a summary statement of the views of the International POPs Elimination Network (IPEN) on issues that COP4 will be called upon to address:

New POPs: Listing chemicals in Annexes A, B or C of the Convention

All of the nine substances recommended for listing by the POPs Review Committee should be added to Annex A of the Convention.¹ Pentachlorobenzene should be added to both Annex A and Annex C. No exemptions should be included for any substance except for PFOS. Unfortunately, the POPRC could not decide where to list PFOS. IPEN believes that PFOS and PFOSF should be listed in Annex A. An Annex B listing would permit a potentially large number of uses, and would allow them to continue for an indefinite period of time. This would likely result in substantial and continuing increases in the amount of extremely persistent PFOS present in the global environment. An Annex A listing of PFOS would permit certain uses based on time-limited, possibly renewable, exemptions. These exemptions could be described in a Part III of Annex A that outlines exemptions and phase-out timelines as done for PCBs in Part II. No PFOS exemptions should be permitted for dispersive uses. Parties should recall that the COP's decision to list additional POPs in Annexes A, B, or C is governed by Articles 21 and 22 of the Convention, providing that amendments to these Annexes may be adopted by a three-fourths majority vote if all efforts at consensus have been exhausted.

Exemptions

COP4 should reject India's request for extension of its specific exemption to produce and use DDT as an intermediate in the production of dicofol. India failed to address four of the six conditions that the COP is required to take into account when deciding whether or not to grant an extension of a specific exemption.² For the two conditions that India did address, India failed to provide information that demonstrated that it had met the condition. For additional information, please see the IPEN legal analysis of India's request.³

DDT

1. COP4 should establish a multi-stakeholder global partnership to develop and deploy alternative products, methods and strategies to DDT for disease vector control in support of the three-phase timeline proposed by the Secretariat.⁴
2. WHO and the Secretariat should continue to strengthen the capacity of countries to report on the production and use of DDT.

¹ Alpha hexachlorocyclohexane (Alpha HCH); Beta hexachlorocyclohexane (Beta HCH); Chlordane; Hexabromobiphenyl (HBB); Lindane; components of C-Octabromodiphenyl ether (OctaBDE), Hexabromodiphenyl ether (HexaBDE) and Heptabromodiphenyl ether (HeptaBDE); components of C-Pentabromodiphenyl ether, Tetrabromodiphenyl ether (TetraBDE) and Pentabromodiphenyl ether (PentaBDE); Pentachlorobenzene (PeCB); and components of Perfluorooctane sulfonate (PFOS), PFOS and its salts and Perfluorooctane sulfonyl fluoride (PFOSF).

² Decision SC-2/3.

³ Legal analysis of request by India for an extension of its specific exemption to produce and use DDT as an intermediate in the production of dicofol, IPEN, 23 March 2009, <http://www.ipen.org/ipenweb/documents/ipen%20documents/CIEL%20DDT-Dicofol.pdf>.

⁴ The three phases are: 1) Preparation of a global business plan and partnership on developing alternatives to DDT and establishing the national capacities to deploy these alternatives (2007-2010); 2) Deployment of selected alternatives to DDT, resulting in a termination of DDT production (2009 – 2017); and 3) Destruction of all remaining stocks and stockpiles of DDT by the year 2020.

3. COP4 should invite WHO to participate actively in evaluating the continued need for DDT for disease vector control and in identifying safer alternatives.
4. COP4 should request WHO to include all countries producing and using DDT in its monitoring program to measure DDT and its metabolites in humans and the environment.

Effectiveness evaluation

1. The baseline evaluation of the Convention suffers from major gaps: 1) two-thirds of the Parties did not report information as required and 2) monitoring programs are not available in many developing countries, leaving out entire sub-regions. COP4 should request Parties to supply the information by 31 October 2009. The final report should describe data gaps.
2. The format for national reports should be revised to allow provision of appropriate, consistent, and comparable data.
3. The global monitoring program should:
 - Archive human samples to permit subsequent testing for new POPs.
 - Include a subset of hotspot sites since these contribute to wider contamination from long-range transport.
 - Include measurement of priority and emerging POPs in traditional and market food sources, particularly traditional foods of Arctic Indigenous Peoples including fish and marine mammals, rendered oils, blubber, liver and other organ tissues.
 - Publicly release its results at the national level to raise awareness of POPs. This also should include informing biomonitoring participants of their individual results upon request, providing information about the significance of the results, and providing enhanced support for educational programs promoting human milk as the best food for babies.
 - Include public interest NGOs and CSOs to: assist with study design that incorporates sensitivity for cultural and national traditions; help recruit participants; and conduct public awareness-raising of the results.
4. Future evaluations by the proposed expert group and the work of the monitoring coordination group should follow the practice of other expert group processes by allowing participation of observers, including public interest NGOs and CSOs.
5. COP4 should strongly encourage Parties to participate in the global monitoring program.

Reporting and specific exemptions

1. The COP should request Parties to fully report their import and export of Annex A and B substances as required by Article 3.2(b) of the Convention.
2. All Parties should report in accordance with Article 15. The COP should request Parties to submit their outstanding reports by 31 October 2009 and their second reports for evaluation at COP5 by 31 October 2010.⁵
3. COP4 should review progress on the submission of reports on eliminating PCBs required under Article 15 and Decision SC-3/18 and should request all Parties to submit them by 31 October 2009.⁶

National Implementation Plans (NIPs)

1. Country priorities should be taken into account for decisions regarding financial assistance, capacity building, technical assistance, regional center assistance, and other forms of cooperation and assistance.

⁵ At the time of this writing, only 44 Parties have submitted reports pursuant to Article 15.

⁶ Less than 25% of Parties have submitted these reports on PCBs as required by SC-3/18.

2. COP4 should reiterate with urgency the request of COP3 to all Parties that have not done so to finish and transmit their completed NIPs.⁷
3. COP4 should request all relevant Parties to develop and implement an action plan to control the dioxin sources that they have identified in their national dioxin inventories.⁸
4. COP4 should request all Parties to strengthen multi-stakeholder consultation in the design and implementation of NIPs and to comply with their Article 11 commitments.

Best Available Techniques / Best Environmental Practices (BAT/BEP)

1. The COP should request that each Party report by 31 October 2009 on how it has defined best available techniques (BAT) for Annex C Part II source categories. Each Party should additionally report on the legal instruments it employs to require the use of BAT for all new or substantially modified facilities in these source categories as it is required to do under Article 5(d). (For most Parties, this obligation entered into force in May 2008.)
2. Parties should provide feedback on the use of the guidelines and comments to the Secretariat for developing a proposal for updating the BAT/BEP guidelines for consideration at COP5.

Standardized Toolkit for Identification and Quantification of Dioxin and Furan Releases

The Secretariat should continue its process of ongoing review and updating of the Toolkit, specifically to avoid overestimation of diffuse sources and for operations producing or releasing Hexachlorobenzene. The process should include all stakeholders; should adequately address key sources for which limited monitoring data are available; and should support developing countries 1) to identify their sources, including those not specifically addressed in the Toolkit, and 2) to verify emission factors.

Financial resources and mechanism

1. There is a large gap between the full incremental costs that developing countries and countries with economies in transition need to fulfill their Convention obligations and the amount of funds that are available through the Convention financial mechanism.⁹
2. COP4 should request the Global Environment Facility (GEF) to simplify and clarify the process by which eligible countries can access funds to cover their incremental costs.
3. COP4 should recommend that the cleanup of obsolete POPs stockpiles, POPs wastes, and POPs contaminated sites be one of GEF's priorities for funding.¹⁰
4. COP4 should recommend to the GEF that it restore its past practice of allowing NGOs with the capability to do so to execute GEF Medium Sized Projects (MSPs).¹¹
5. The GEF's Resource Allocation Framework (RAF) should not be expanded to the POPs focal area, since doing so would undermine the provisions of Convention Article 13, paragraph 6.¹²

⁷ Slightly more than half of the Parties (88) have transmitted completed NIPs. Many are more than a year past due.

⁸ All Parties, within two years of the Convention's entry into force, are obliged to develop these plans. For most Parties, the two-year period ended in May 2006, but it appears many have not yet completed this action plan. Only 30 Parties (less than 20%) have reported completing this activity.

⁹ The draft report on the second review of the financial mechanism states that "that the full needs identified in this study for 2004-2009 were USD 3,336.48 million, and that the POPs funding level at the GEF for this period of time was USD 300 million."

¹⁰ Only a small portion of all obsolete POPs stockpiles and wastes will be addressed by GEF projects funded so far. Some of the countries with the largest number and quantities of obsolete POPs stockpiles and contaminated sites are not yet included.

¹¹ It appears that the GEF has a new policy making NGOs ineligible to execute projects other than through the Small Grants Programme, a policy which fails to recognize the important and unique contributions to the success of the Convention that NGOs can make.

¹² See UNEP/POPS/COP.4/INF/17.

Measures to reduce or eliminate releases from wastes

The current “low POPs content” levels provisionally set in the Basel General Technical Guidelines are inappropriately high, not protective of human health and the environment, and therefore inconsistent with the Stockholm Convention and its objective.¹³ These provisional levels could be used to justify the export of hazardous, POPs-contaminated wastes from developed to developing countries. The Stockholm Conference of the Parties should therefore assume its obligation under Article 6, paragraph 2(c), and develop its own proposed definition of “low POPs content” that is consistent with the Convention and its objective. COP4 should refer the task of developing a recommended definition to the Toolkit expert group with a request that it conclude this work in time to provide a recommendation for consideration at COP5. The process for developing this recommendation should include full stakeholder participation.

Synergies

1. COP4 should request a substantive analysis of how implementation activities and progress toward achieving the goals of the Stockholm Convention could be potentially affected by association with the other conventions. The analysis should include both administrative and programmatic aspects. COP4 should reinforce the importance of maintaining the protective objectives of each convention and the need not to weaken treaties that may have overlapping policies, technical issues, or activities.
2. Synergies between the three chemicals conventions should preserve the participation of public interest NGOs and CSOs in COPs, intersessional meetings, expert groups, and other aspects of global, regional, and national convention implementation.

Non-compliance

Non-compliance with Convention obligations, including non-compliance with reporting requirements, may undermine the ability of the Convention to achieve its objectives. For example,

- Approximately 40% of Parties have not transmitted their NIPs to the Secretariat¹⁴ even though Article 7, paragraph 1(c) requires this to be done within two years of entry into force;
- Less than 15% of Parties have provided import/export data on POPs;¹⁵
- Less than 30% of Parties have submitted complete national reports pursuant to Article 15, even though COP3 (SC-3/18) requested all Parties to submit these reports by 31 July 2007;
- Five Parties that use DDT have not notified the Secretariat and WHO as required.¹⁶

Article 17 requires the COP to develop a compliance system “as soon as practicable.” Negotiations have been dragging on since COP2; they must not continue unresolved past COP4. The Chair’s proposal included in the Appendix to decision SC-3/20, UNEP/POPS/COP.4/34, has many serious flaws, especially its reliance on consensus decision-making, which will ensure that the compliance committee will likely never be able to take decisions on controversial or difficult matters. Nonetheless, the Chair’s proposal may represent the most reasonable chance to achieve agreement and move forward on this issue. COP4 should finalize agreement, using the Chair’s proposal, and comply now with the requirements of Article 17 by approving procedures and mechanisms for determining and treating non-compliance.

Rules of procedure

Parties should support effective operation of the Convention by removing the brackets in Rule 45.1 that surround the sentence permitting voting when all efforts at consensus have been exhausted.

¹³ The Basel Convention has suggested that wastes be considered to have *low POPs content* if they contain less than 15 parts per billion (ppb) of dioxin, or less than 50 parts per million (ppm) of other POPs; see UNEP/POPS/COP.3/INF/7.

¹⁴ UNEP/POPS/COP.4/30.

¹⁵ UNEP/POPS/COP.4/30.

¹⁶ UNEP/POPS/COP.4/5; This represents 33% of the estimated number of countries using DDT.