

Greenpeace briefing paper for the fifth Intergovernmental Negotiating Committee (INC5) meeting on POPs elimination, December 4-9, 2000, in Johannesburg

## **THE ROAD TO A TOXIC FREE FUTURE: WILL PERSISTENT ORGANIC POLLUTANTS BE OUTLAWED?**

### **NOT IF AUSTRALIA HAS ITS WAY !**

#### **Australia's International Position on POPs.**

Over a hundred countries will attend the fifth Intergovernmental Negotiating Committee meeting (INC5) in Johannesburg, South Africa, on 4-9 December 2000, to finalise the negotiations of the draft text for a global treaty to eliminate persistent organic pollutant (POPs).

POPs are a group of chemicals that are particularly resistant to natural breakdown and are therefore extremely stable and long-lived. Once released into the environment, many POPs persist for years, even decades. Many POPs are also highly toxic and build up (bioaccumulate) in the fatty tissues such as body lipids and organs of animals and humans. POPs end up in our food chain. In fact, the main route for human exposure is through food.

These three properties - persistence, toxicity and bioaccumulation, make them the most problematic chemicals to which natural systems can be exposed. POPs include end-products such as pesticides (e.g. DDT) and industrial chemicals (e.g. PCBs), as well as by-products from industrial and production processes such as dioxins and furans.

If the negotiations succeed, the POPs treaty will be legally binding and provide the general framework and obligations for national and international measures to put an end to the production and use of all existing POPs and prevent new POPs from being introduced to the market. INC5 will be the last planned negotiation round on the draft text of the treaty, which will be adopted in Stockholm in May 2001.

A majority of the world's governments support the elimination of POPs but, at INC3 (Geneva, September 1999), it became clear that the United States is leading Canada, Australia, New Zealand, Japan and South Korea (also named JUSSCANZ), to take a regressive position during the negotiations with a view to watering down the treaty to make it weak and meaningless.

The US and Australia strongly oppose any obligations that will have an impact on their domestic production, trade or consumption and may force them to change their polluting practices by implementing cleaner industrial processes, materials and consumer products.

The impact of this on the negotiations represents a significant potential cost to the environment and human health, as well as a significant cost to their position in the international community. The fact that the Australia government is seen by many countries, including some major trading partners, as supporting a watering down of the treaty may undermine our reputation as a clean and green food producer and exporter.

In contrast, at INC3 and INC4, many developing countries and the EU expressed their commitment to phasing out not only existing POPs that are produced as end-products or by-

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products of industrial processes, but also the identification and elimination of new chemicals with POPs characteristics.

## **Key areas of concern.**

### **No New POPs**

At INC3, the EU put forward a proposal to prohibit the development and commercialisation of new chemicals with POP characteristics. European governments agreed to prevent the introduction of all new hazardous chemicals at the OSPAR Convention for the Northeast Atlantic marine environment in 1998, and this EU proposal was generally welcomed at INC3. However, the US, Canada and Australia are opposing a provision that ensures no new chemicals with POP characteristics are produced. These countries are pushing for a weak, non-prescriptive version that only encourages governments to prevent the production of new POPs. However, this will give no guarantee that the production of new POPs will actually be halted.

We can not succeed in phasing out POPs if new POPs chemical development and production is allowed. The key to this issue is to ensure that the language is prescriptive and not flexible or qualified to allow exceptions.

***Greenpeace believes it is essential that no new POPs should be allowed under the treaty because the problems they cause to human health and the environment will never be solved if the continual flow of new chemicals with POPs characteristics into the environment is not stopped.***

### **Elimination of 'unintentional' POPs**

Unintentional POPs, such as dioxins and furans, are amongst the most toxic chemicals known to exist.

UNEP's proposed list of 12 POPs that are of primary concern for action includes those that are unintentional by-products from industrial and combustion processes such as dioxins, furans and hexachlorobenzene (HCB) as well as those that are intentionally produced (end-products), such as some organochlorine pesticides (e.g. DDT) and industrial chemicals (e.g. PCBs).

Several regional conventions have already agreed on the aim to eliminate POPs, including unintentionally produced POPs. These conventions include the OSPAR Convention for the Northeast Atlantic marine environment, the Barcelona Convention for the protection of the Mediterranean Sea; the Bamako Convention that addresses hazardous waste in Africa; and the Great Lakes agreement between the US and Canada.

Inclusion of the aim to eliminate unintentional POPs in the treaty's draft text was proposed at INC3 by the African countries group and supported by some other developing countries and the EU. However, this met strong opposition from the US, Canada and Australia. In a leaked memo from the US to the EU, the US even threatened to block the negotiations at INC4 if the EU would not join forces with the US to weaken the treaty by deleting the aim of elimination from the text.

In the context of unintended by-product POPs (dioxins/furans) in Article D, paragraph 3, it is essential that the words "with the aim of their ultimate elimination" are included. No qualifying

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words such as “where technically and economically feasible” should be allowed. Clearly, this aim of ultimate elimination language is needed to establish the overall policy objective.

The Australia Government rejects the elimination language on the basis that it is not economically or technical viable. This position is a misrepresentation of what the impact of the text will be. The chapeau (Article D.3 - Byproducts) introduces the specific obligations that follow in separate paragraphs designated as (a)-(e). The chapeau language, therefore, is aspirational in nature.

The preferred language would have the effect of placing an obligation on Parties to take (rather than “aim to” take) certain steps to gradually reduce their releases of by-product POPs. At the same time, it would reflect the desire of the world community to strive for the ultimate aim of elimination of each of the identified by-product POPs. The use of the term “total releases” makes it clear that measures must be designed to achieve actual decreases in environmental releases, not to simply shift releases between environmental media. Reducing air emissions through the use of pollution scrubbers and filters, for example, merely shifts by-product POPs to incinerator ash and slag, scrubber water, and scrubber water treatment residues, and would not necessarily contribute to the goal of reducing total releases. The use of the phrase “where technically and economically feasible” to qualify the goal of elimination would only serve to undermine this goal, and should be avoided at all costs.

***Greenpeace believes that the aim to eliminate unintentionally produced POPs is an essential part of the treaty because it discourages ‘end of pipe’ technologies that attempt to contain POPs from entering the environment once they have been produced and encourages the use of cleaner products, materials and production processes that avoid their production in the first place.***

### **Material substitution**

The only way to implement a treaty to eliminate POPs is by stopping the production and use of POPs. This includes measures to stop the production and use of intentionally produced POPs and the substitution of products, processes and materials to prevent the production of unintentionally produced POPs. The current draft text includes such language. But again, the US, Canada and Australia are opposing this and seek to delete this from the treaty. Instead of weakening the text, it should rather be strengthened as that is the only way to actually eliminate unintentionally produced POPs.

Indeed, any POPs phase-out treaty should have at its centre a provision requiring substitute materials and technologies to replace those which release or have the potential to release POPs to the environment. This provision (Article D, paragraph 3, (b), derived from the African position paper from INC4, and is supported by the majority of delegations.

***Greenpeace believes that this paragraph is another key provision necessary for an adequate treaty.***

### **Exemptions**

There are no ‘safe’ levels for POPs poisons because of their intrinsic hazardous properties, i.e. they are persistent, toxic and liable to bio- accumulate. The US is pushing for general exemptions to the treaty, e.g., minimum levels below which no measures are required. Another example supported by Australia is to exclude from the treaty stockpiles, in existence up to the

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time the treaty enters into force for a particular country, of POPs and POPs containing materials which would be allowed to continue to be used, and continue to pollute. Such general exemptions would undermine the treaty because some level of continued production and use would be permitted.

Australia is also asking for an exception to continue to use the short-listed pesticide mirex. Australia is the only OECD country and one of the few countries in the world which continues to use this pesticide, which is used in Northern Australia against giant termites. There is believed to be enough stocks of technical grade mirex in the Northern Territory to continue to use the pesticide for between 20-40 years.

Interestingly, the Australian Federal Government has also funded stockpile programs for pesticides covered by their Organochlorine Pesticide (OCP) management plans. The bulk of these substances are also short-listed by the UNEP i.e. DDT, Aldrin, Dieldrin, heptachlor, chlordane etc. It is unlikely that a convention which did not include general exceptions would have, at least for the initial short list, much economic impact on Australia and would be consistent with existing national policy on these types of substances.

Greenpeace agrees with the majority view that no general exemptions allowing POPs to continue being produced or used can be allowed in the treaty. The only exemption recognised is the use of POPs for laboratory experiment and research. The other US & Australia proposed general exemptions can actually result in an increase in POPs production and use. These exemptions are far too dangerous since they would create loopholes in the treaty which would continue to allow POPs pollution, as well as render the treaty difficult, if not impossible, to enforce.

***Greenpeace believes that any exemption to the elimination of POPs should be placed as a specific exemption and details of location, use and the timeframe for the expiry of the exemption should be given.***

### **Precautionary Principle**

Despite the fact that the US was voting Member of the UNEP Governing Council in 1989 when it adopted the precautionary principle by consensus, it is now leading the opposition to the adoption of the precautionary principle, and is attempting to have it removed from the main body of the POPs treaty.

Australia likewise is a signatory to the 1992 Rio Declaration, and includes the precautionary principle in its own domestic laws via the Intergovernmental Agreement on the Environment (IGAE). Australia has in the past used the 'precautionary principle' to defend its own interests. Some examples include:

- In August 1999, the Attorney-General Darryl Williams, on behalf of the Australian government, was arguing before the International Tribunal for the Law of the Sea that the precautionary principle is a customary norm of international law binding on all countries in the Southern Bluefin Tuna cases:
- In an earlier case, the same argument was put by Australia in trying to reopen the International Court of Justice 1974 Nuclear test Case against France, when nuclear testing resumed in 1995.

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The precautionary principle, accepted by the international community in the context of environmental protection, is also essential for inclusion in the treaty as a general provision. It is unclear why Australia opposes this provision other than an emotional or political desire to oppose provisions supported by the European Union. After consultations with members of the Australia Delegation to the INC5 comments such as " *Australia does not oppose the precautionary principle, however we oppose the EU desire to put a blanket provision which is undefined* " or " *we don't want some open ended provision which the EU could use against us for political purposes*".

Apart from claims of 'vagueness' by Australia the proposed text for the convention is quite specific i.e. Article F 6 bis " Lack of scientific certainty due to insufficient relevant information and knowledge regarding a chemical shall not prevent the procedure specified in the article from proceeding and shall not prevent the listing of chemicals in Annex A,B and /or C. "

The above text, if adopted in relation to screening of new POPs, would be used in conjunction with the other criteria outlined in the draft convention i.e. persistence, toxicity or bioaccumulation.

***Greenpeace believes that the precautionary principle is an essential provision for inclusion in the text. It requires that preventive measures are taken to stop the release of substances to the environment where there is reason to believe that they can cause harm, without waiting for scientific proof. Prevention is required based on the inherent hazards of the substance in question, e.g. , toxicity, persistence, or bioaccumulation potential.***

#### **Financial Assistance**

The negotiations also focus on financial and technical assistance programmes to facilitate the implementation of the POPs elimination by developing countries. The US, supported by Australia, is leading opposition against new mechanisms and funding for such assistance programmes.

The treaty should have the strong, progressive provisions necessary to solve environmental problems. Subsequently, the assistance programmes would be more comprehensive and effective than would be the case with weaker obligations in the treaty. A stronger treaty means stronger implementation programmes. Voluntary contributions could provide the primary source of assistance. However, should the voluntary fund be inadequate to meet the demands, a secondary tier of funding should be required based on guaranteed contributions, taking into account that POPs producers (including production in the past) , and users should also be contributing pursuant to the polluter pays principle.

***In addition to government funding mechanisms and resources provisions, Greenpeace supports the 'polluter pays' principle which would ensure that the producer is (and remains) liable for damage caused by its production processes, materials or products.***

#### **Appropriate destruction technology**

Any technology chosen to destroy POPs stockpiles and wastes must not create other POPs nor disperse POPs pollution into the wider environment. It is important to recognise that incineration as a means of disposing of POPs is itself a major source of POPs. Even in state-of-the-art incinerators which operate to world's best practice for air emissions, dioxins and other POPs are

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still released to the air and are accumulated in the ashes (bottom and fly-ash) – creating another toxic disposal problem and perpetuating the on-going production of POPs.

***This question is partly addressed in Article D 4 (c) (ii) which states that POPs wastes must be “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”.***

Alternative non-combustion destruction technologies present a viable alternative to incineration of existing POPs stockpiles and contaminated sites, and must be accommodated in the treaty.

The goal in addressing the issue of POPs destruction is to ensure that destruction of all existing POPs occurs, rather than considering traditional disposal options, all of which are pollution sources. In this respect, it is not enough to simply refer to the Basel Convention where all disposal options are considered for a wide variety of hazardous waste. POPs-specific destruction should be addressed directly in the POPs treaty itself.

Australian governments (State & Federal) have banned the use of high temperature incineration for POP waste through the Australian New Zealand Environment & Conservation Council (ANZECC) Scheduled Waste Process in the early 1990's. This has led to the development of some promising alternative technologies in Australia. World scale clean-up programs at HCB stockpiles at Orica's plant in Botany in NSW and dioxin contamination at Homebush Bay will further support this industry, leaving Australia companies very well positioned to benefit from the inclusion of alternative destruction provisions in the proposed treaty. The Australia Government by opposing these provisions is in fact disadvantaging the Australian environmental technology industry.

***Greenpeace believes that a provision is needed in the POPs treaty for alternative non-incineration destruction technologies. That is the only option for the safe disposal of existing POPs stockpiles and remediation of POPs contaminated sites. It is also essential that a provision requiring that POPs are destroyed in any treatment process be included.***

#### **Dioxin and other POPs wastes**

In order for the treaty to be truly protective of the environment and human health, all of the “dirty dozen” POPs must be considered in the wastes and stockpiles provisions of the treaty (Article D (4)). The US, Canada and Australia are currently attempting to remove by-product POPs (eg. dioxin) wastes and stockpiles from consideration in the treaty. Such a move is completely inconsistent with the aims of the POPs treaty.

***Greenpeace believes that it is essential for all POPs related wastes, including dioxins and furans, to be included in the provisions of the POPs treaty.***

**For more information contact Matt Ruchel, Greenpeace Australia-Pacific 03- 9478-9769**

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