

***COMMENTS BY MEMBERS
OF THE CEN TOXICS CAUCUS
ON FINAL REPORT TO INC3:***

Providing Direction towards INC4 Session

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1.0 INTRODUCTION

The global human populations, wildlife and the natural environment continue to be threatened by exposure to the continued use, generation, release, and disposal of persistent toxic substances (PTS). Despite the growing evidence that link exposure to PTS and certain health impacts and the increase in understanding that the elimination of these substances is the most effective approach needed to address these substances, many jurisdictions continue to address persistent toxic substances through pollution control technologies. Addressing PTS has been a focus of many public policy debates, and no doubt will continue to illicit views that support the need for elimination versus control of these substances in the future. However, unless effective public policy is implemented to curtail the effects of these substances, the health of humans and the environment remains under tremendous threat from exposure to these substances.

Of particular concern are those substances known as persistent organic pollutants (POPs). The understanding around the impacts from exposure to POPs, which are known to be persistent, toxic and bioaccumulative, and have the ability to travel long distances from their sources, is increasing. Recent studies demonstrate that POPs are being detected in remote northern regions that do not have industrial activities. These substances also have the ability to act as endocrine disrupters which means that they can affect various points of normal developmental in human and wildlife populations. Many POPs have been identified as pesticides, as products of industrial processes or as unintentional by-products of other processes. Given the pervasive traits of POPs, the global communities recognized, through the current development of an international legally binding treaty on POPs, that immediate action at a global level was necessary to address these substances.

At the onset of the global negotiations on POPs, the environmental community expressed a high level of excitement towards the anticipated legally binding treaty as its main objective was focused on eliminating twelve POPs for initial action. The Intergovernmental Negotiating Committee (INC), the committee responsible for the development of the legally binding treaty, has held three negotiating sessions to date. The fourth meeting for the INC, which is scheduled to begin on March 20, 2000 in Bonn, Germany, is anticipated to be a critical negotiating session where many of the outstanding issues are expected to be resolved. In light of the many different agenda presented at these negotiation sessions, the Canadian environmental community intends to ensure that INC4 focus on the main objective of the global treaty - that is eliminating POPs.

2.0 PURPOSE OF REPORT

The Canadian Environmental Network (CEN) Toxics Caucus has prepared position papers for the each of the first three sessions of the INC. The purpose of these position papers was to provide the Canadian delegates to INC sessions with an overview of the issues that the Toxics Caucus identified as critical to effectively addressing and developing a legally binding global treaty on POPs. These position papers included analysis of the Canadian regulatory and program initiatives focussed on toxic substances

that may be affected by a global treaty on POPs. More importantly, these papers attempted to emphasize the need for elimination of PTS.

The purpose of this submission is to continue to ensure that the recommendations outlined in previous position papers are carefully considered by the Canadian delegates as they enter into a critical phase of the international negotiations. Further, this submission which is based on the review of the final report from INC3 aims to provide input into the development of the Canadian position to be presented at INC4 and guidance on the proposed text for the global treaty. The previous three INC meetings have resulted in considerable progress on a number of issues including the process for selection of additional POPs; and financial and technical assistance to developing countries. However, a number of issues remain contentious. For example, despite the growing evidence on impacts of POPs and the negotiations initial objective to ensure a global treaty aim at elimination of POPs, the goal of eliminating POPs versus their reduction remain unresolved. Other issues such as implementation of a global treaty and timelines for elimination also remain unresolved. With the submission of this paper and continued participation as a delegate to INC4, the CEN Toxics Caucus wants to ensure that the Canadian delegation understands their views on these critical issues.

This document is designed to provide an overview and context for several key issues. Annex A provides more specific commentary on various provisions, with some suggested draft text.

3.0 OVERARCHING PRINCIPLES FOR A POPS GLOBAL TREATY

The CEN Toxics Caucus, in its previous position papers outlined several guiding principles for the international negotiations towards a legally binding treaty on POPs. They are re-iterated below.

3.1 Elimination of POPs

3.1.1 What we want

The CEN Toxics Caucus wants to ensure that the language for elimination of POPs is included in the global treaty. The language for elimination should be included in the Obligation sections as well as the Objective section of the treaty.

3.1.2 Context

More now than ever before, the research is showing the extent of POPs impact on human health and environment. To ensure that the threat from POPs ceases, there must be a coordinated effort globally to eliminate POPs from use, generation, release, and disposal. The member organizations of the CEN Toxics Caucus have outlined in its previous papers the urgent need to eliminate PTS and, in particular, POPs. While the original objective for the global treaty was the elimination of POPs, the final report from INC3

indicate that the issue of elimination remains under considerable debate and that the global treaty may reflect solely a management or control regime for POPs. The original objective of elimination for the global treaty must be maintained. The global treaty negotiations provide an appropriate forum to communicate the urgency for elimination of POPs. The discussions supporting the language for elimination, currently proposed in the draft negotiating text, must be at the forefront of the INC4 negotiations. Parties that aim to focus negotiations on reduction over elimination should be clearly reminded that the risk to susceptible populations such as the northern populations and children must be stopped immediately.

In our view, the questions surrounding the need to eliminate POPs should not be focused on why POPs should be eliminated but how and in what timeframe elimination of POPs should occur. The global treaty should outline definite timeframe for action plans to achieve elimination of POPs. Where some concerns remain regarding elimination timeframe for specific POPs such as in the case of PCBs and DDT (which remain in brackets in the draft global treaty text), it is critical that timeframe for these POPs are established to ensure timely transition to safe alternatives. In addition, member organizations of the CEN Toxics Caucus have expressed concern that the Canadian delegation is viewing these negotiations as an opportunity to bring other nations up to Canada's current standards for the management of toxic substances and it is not to change the domestic regime that address POPs in any way. This approach is unacceptable. The Canadian delegation need only to review recent domestic programs on toxic substances to gain a better understanding of how ineffective a control regime framework protects the Canadian environment and human health.

3.1.3 Rationale

Canada's record on toxic substances remains weak and, in fact, may not be meeting many of its commitments on PTS including some key POPs. For the protection of the Great Lakes basin, the *Great Lakes Water Quality Agreement* (GLWQA) outlines as its objective, a specific goal for elimination of persistent toxic substances. The recent report, Third Report of Progress under the Canada-Ontario Agreement (COA) Respecting the Great Lakes Basin Ecosystem: 1997-1999,¹ demonstrates that elimination of persistent toxic substances is far from being achieved. For example, the Canadian and Ontario governments, under COA aimed to reduce Tier 1 substances by 90% by the year 2000. According to the report, Tier 1 substances such as hexachlorobenzene, and dioxins and furans, all of which are POPs, have been reduced by 61 percent and 77 percent, respectively. With the target year set at 2000, the reduction target of 90% for these POPs may be difficult to achieve. Similarly, other programs such as the Accelerated Reduction and Elimination of Toxics (ARET), a voluntary program initiated by the federal government and industry associations, also include a goal of virtual elimination of persistent toxic substances by 2000. Recent report on ARET indicate that the reduction

¹ Environment Canada and the Ontario Ministry of the Environment. 1999. Third Report of Progress Under the Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem: 1997-1999. P.12.

of persistent, bioaccumulative and toxic substances is proving somewhat slower than expected.² The effectiveness of ARET, which is in its final year, is currently being evaluated.

At the national level, the recent passage of the *Canadian Environmental Protection Act* (CEPA) in September 1999, was shrouded in controversy. Member organizations of the CEN Toxics Caucus, along with public interest organizations from the health care and labour sectors expressed their concerns on the weaknesses of CEPA and its inability to eliminate persistent toxic substances. CEPA will not protect the health of Canadians and their environment. Generally, the sections in CEPA to address PTS is weakened by the virtue of the definition provided for a virtual elimination.³ Furthermore, the elimination of PTS is dependent on a measurable level of that substance. Due to these high threshold, very few, if any, PTS will be eliminated under CEPA. The CEPA framework has entrenched the control regime for toxic substances. This framework does not bode well for a global treaty on POPs and Canada's ability to undertake domestic action. It is imperative that the framework for elimination of POPs is outlined without the complexities that hinder CEPA.

Finally, the Canadian Council of Ministers of Environment (CCME), under the *Canada-wide Harmonization Accord* (Accord), began the Canada wide standard (CWS) setting process for three groups of substances: mercury, dioxins and furans, and particulate matter and ozone. The views of the environmental community on the *Canada-wide Harmonization Accord* are well documented and should be reviewed. Many environmental organizations viewed the signing of the Accord as a trend towards weakening the regulatory framework for environmental and health protection. The CWS setting process, which includes pollution prevention among its objectives, is of particular interest to the CEN Toxics Caucus. For example, the consultation on dioxins and furans included a release of a Canadian inventory of sources for dioxins and furans and hexachlorobenzene, two major POPs identified for action under the current global negotiations. This inventory may be valuable to other countries in establishing similar inventories as part of the development towards action plans. However, the member organizations of the CEN Toxics Caucus are closely monitoring the progress of the consultation to ensure that the principles of pollution prevention and concepts of Precautionary Principle are given consideration.

The above examples on Canada's performance in addressing toxic substances demonstrate that the Canadian delegation has a real opportunity, through the international negotiations, to make progress on POPs. The inclusion of language with the aim of elimination of POPs in the global treaty is not inconsistent with Canada's domestic policy on toxic substances.

² ARET - Environmental Leaders 3: Executive Summary. Access website http://www.ec.gc.ca/aret/el3/es_e.html, dated December 12, 1999.

³ See: Paul Muldoon (August 26, 1999). [Presentation to the Senate Standing Committee on Environment and Energy Regarding Bill C-32: The *Canadian Environmental Protection Act*.](#)

Recommendation: The following language with the aim of elimination of POPs should be incorporated into the Objectives and Obligation sections of the global treaty. Additional text and comments are provided in Annex A.

3.2 Precautionary Principle

The concept of Precautionary Principle has been viewed as a critical component for pollution prevention strategies and, more specifically, elimination of PTS. The views of the CEN

Toxics Caucus on the concept of Precautionary Principle has been well documented. Most recently, these views were expressed during the CEPA review.⁴ The inclusion of the Precautionary Principle in a global treaty on POPs outlines the user/polluter responsibility in use, generation and release of POPs. Action can be taken under the Precautionary Principle in times of scientific uncertainty where potential harm to the environment and human health exist. Such a concept places responsibility on users and polluters of POPs to demonstrate their safety rather than the need for governments to demonstrate their harm.

Further, it is imperative to note that the effectiveness of the Precautionary Principle diminishes significantly if the term cost-effectiveness is included in the definition. It is our view, that including the reference to cost-effectiveness provides users and polluters of POPs opportunities for inaction and obstacles towards elimination efforts. Throughout the CEPA review, the members of the Toxics Caucus would not support inclusion of the phrase cost-effectiveness as this term clearly only benefit users and polluters. Similarly, member organizations of the CEN Toxics Caucus would not be supportive of a definition for Precautionary Principle in a global treaty on POPs that included reference to cost-effectiveness.

At this time, the proposed global treaty text does not include a definition for Precautionary Principle. The CEN Toxics Caucus maintains that the concept should be an integral component of the global treaty and will provide comments when a definition is proposed. The Precautionary Principle has direct implication on the overall effectiveness of the global treaty and the work of the Criteria Experts Group (CEG), which has submitted its proposed criteria selection framework for adding substances for action.

Recommendation: The Precautionary Principle should be incorporated into the Preamble and Criteria for Selection sections of the global treaty. The definition proposed for the Precautionary

⁴ See: Craig Boljkovac, Presentation to the Senate Committee on Environment and Energy on Bill C-32. August 1999.

Principle should not include reference to Acost-effectiveness.® Proposed text is provided in Annex A.

3.3 Adding substances to the list - Criteria Expert Group

The second meeting of the CEG was held between June 14-18, 1999 in Vienna, Austria. The INC was given a number of issues to resolve with regard to the criteria framework proposed by the CEG. The issues raised by the CEN Toxics Caucus in its previous position papers with regard to the work of the CEG remain relevant. For example, the determination of levels for criteria such as persistence or bioaccumulation potential remains unresolved by the CEG and has been left to the INC to resolve. It is important that the criteria framework effectively captures all POPs that are harmful to human health and environment. Therefore, the threshold limits proposed for the screening criteria such as persistence, bioaccumulation and long range environmental transport should be low enough to capture additional substances such as lindane or tributyl tin. It should be noted that the World Wildlife Fund (WWF) completed a technical report⁵ on the criteria framework prior to the second session of CEG that raised many of the same issues relevant to those issues facing the INC. The Canadian delegation should review this document with respect to the screening criteria levels.

At this time, it should be noted that the work of the CEG should be commended as they have proposed a criteria selection framework that may capture additional POPs for action. However, there are a number of issues that were raised in previous briefing sessions by the Canadian delegates on the CEG to the environmental community that should be reiterated at this time. The following issues require further clarification from the Canadian delegation to CEG.

- determining a role, if any, for environmental organizations to participate actively in proposing or reviewing POPs for action. The environmental community may possess information that may assist the POPs Review Committee in its work;
- a potential role for environmental and other public interest organizations will, in part, ensure accountability and transparency with the selection process;
- the issue of providing financial and technical assistance for information gathering required by other countries;
- the inclusion of indigenous knowledge in the data collection and review stages of the selection process;
- the issue of proposing criteria values for persistence, bioaccumulation, etc. that ensure protection of human health and environment from exposure to POPs; and
- proposing definitions for key terms that may have implication for the selection process other than those terms listed under the section on definitions including Precautionary Principle.

⁵ See: World Wildlife Fund. March 1999. Technical Issue Brief: Persistent Organic Pollutants: Criteria and Procedures for Adding New Substances to the Global POPs Treaty.

Recommendation: The criteria for selection of POPs as proposed by CEG should ensure that the threshold limits are set to capture the worst POPs. Limits for persistence, bioaccumulation and long range environmental transport have been proposed by WWF Canada.

3.4 Destruction of Stockpiles and Waste

The issue around the destruction of POPs stockpiles and waste continue to be a focus of debate within the INC forum. It is essential that a global treaty on POPs be aimed at elimination. Generally, employing destruction techniques or even the transboundary movement of hazardous waste to destruction facilities to eliminate POPs stockpiles may result in unnecessary exposure to the environment and surrounding populations from POPs. The Canadian delegation should carefully consider what circumstances may warrant support towards the destruction of stockpiles and waste. In our view, employing destructive technologies, pose obstacles towards real elimination efforts on POPs as resources that may otherwise be directed to the development and promotion of safe alternatives are directed toward the development and promotion of destruction technologies.

However, there are exceptional circumstances where safety to surrounding population and the environment and meeting elimination target can be achieved only by employing destruction technologies. Such may be the case for some southern countries where products, including pesticides, containing POPs may exist in significant amounts that may be a major exposure pathway for surrounding population and environment. In many of these cases, it may be difficult to determine who may be responsible for use, release and generation of POPs or even determine the composition of the stockpiles. It is therefore necessary, in these exceptional circumstances that POPs stockpiles and waste be targetted for environmentally sound destruction. In INC4 session, the Canadian delegation should make it a priority to discuss the development of a set of criteria for consideration of technologies aimed at the destruction of stockpiles and hazardous waste. For example, technologies such as incineration technologies, which are major producers of by-products such as dioxins and furans, must meet strict criteria to ensure the protection of local populations and environment. It should be noted that a report on this issue by Greenpeace titled, Technical Criteria for the Destruction of Stockpiled Persistent Organic Pollutants,⁶ outlined a number of criteria that require careful consideration by the Canadian delegation. At a minimum, the following criteria should be met when considering technologies for the destruction of stockpiles and waste.

- Destruction efficiencies of effectively 100 percent for the chemicals of concern;

⁶ Greenpeace. October 1998. Technical Criteria for the Destruction of Stockpiled Persistent Organic Pollutants. ISBN 90-73361-47-8.

- Complete containment of all residues (which include reprocessing to ensure that no residues contain detectable levels of chemicals of concern and other harmful substances); and
- No uncontrolled releases.⁷

In Canada, it is worth noting, that the federal government recently approved Swan Hills facilities in Alberta to accept hazardous waste (i.e., PCBs) for destruction from other countries without a comprehensive environmental assessment study.⁸ In our view, such decisions require a full review of the environmental and health impacts. This decision signals Canada's approval for the continued exposure of Canadians and the natural environment to the most hazardous substances, dioxins and furans, by-products of incineration. The Canadian delegation should make clear the conditions, which should be considered for the destruction of stockpiles and take opportunities to explore and promote the use of safe alternatives to POPs.

Recommendation: Destruction of Stockpiles and waste should only be undertaken in exceptional circumstances. Further, the technology to achieve destruction should meet stringent criteria to ensure the protection of human and wildlife populations. Greenpeace outlined a minimum set of criteria for destructive technologies.

3.5 National POPs Inventories/Information Exchange and Dissemination

The CEN Toxics Caucus recognizes the usefulness and necessity of national inventories on POPs. The Toxics Caucus supports the need to develop and maintain an inventory on POPs including those POPs that are by-products. As noted in earlier position papers by the Toxics Caucus, Canada's national inventory, the National Pollutants Release Inventory (NPRI), is an appropriate database to include information on POPs. In December 1999, the Canadian Government announced an expansion to the NPRI to include reporting on several key POPs such as hexachlorobenzene, and dioxins and furans.⁹ However, further revisions to the NPRI should be undertaken to include data on all POPs. The NPRI, as well as the other pollutant inventories such as the U.S. Toxics Release Inventory provide useful information to the public on the sources, transfers and releases of toxic substances. However, these inventories are often limited because of the threshold requirements that must be met before reporting is required. The Canadian delegation should promote and encourage the development of national inventories on POPs for other countries (in particular, developing countries), also keeping in mind to promote an expansion of its own toxic inventory, NPRI, to include all POPs. Expansion

⁷ *Ibid.*, p. v.

⁸ See: *Globe and Mail*. December 9, 1999.

⁹ Department of the Environment. *Canadian Environmental Protection Act*. Canada Gazette Part 1. December 25, 1999.

of the NPRI to include POPs will require that no threshold for reporting POPs be required.

National inventories on POPs can be useful tools in the development of action plans for elimination of POPs as inventories are able to demonstrate current trends in POPs releases and transfers. Canada has an opportunity to demonstrate its leadership in the area of establishing and maintaining a national pollution inventory by sharing its experience with other countries. The efforts to exchange and disseminate information to other countries on matters such as inventories may minimize duplication and demonstrate transparency in the process.

Recommendation: The CEN Toxics Caucus supports the establishment of national inventories on POPs. In Canada, the NPRI should be further expanded to include an inventory on additional POPs. This would require that POPs do not have to meet threshold limits for reporting.

3.6 Financial and Technical Assistance

In INC2 and INC3, the issue of financial and technical assistance to developing countries and countries in transition was identified as a primary issue in need of further discussion as they may affect the effective implementation of action plans on the elimination of POPs. Further, financial and technical assistance can facilitate a country's ability to meet obligations under the global treaty as well as exceed them.

In previous position papers by the CEN Toxics Caucus, the Caucus recognized and supported the position that assistance should be provided to those countries in need. Further, the Toxics Caucus recognizes that any effort to facilitate action on POPs in one area of the world will have significant benefits to other parts of the world. It is not appropriate for the Toxics Caucus to comment on the type or level of assistance that should be provided to countries requesting assistance nor could it outline a set of criteria at this time that should be used to evaluate each request. There are a number of non-governmental organizations involved in these POPs negotiations that are evaluating actively the issue of assistance mechanisms within the Global Environment Facility (GEF) and other financial mechanism forum. In addition, WWF Canada is currently preparing a report to address this issue.

Recommendation: The Toxics Caucus is supportive of providing assistance - financial and technical, to developing countries and countries in transition. However, further analysis regarding this matter is required. Additional comments are provided in Annex A.

3.7 National Implementation Plans

Article E which focuses on the issue of national implementation plans is, in our view, a necessary component of the global treaty on POPs. The development of implementation plans by each Party to the treaty will provide a framework for the country to meet its obligations under the treaty and perhaps exceed their efforts on POPs. Many countries may already have implementation plans in development to address other toxic substances. These countries can use existing plans as models for the development of implementation plans specific to POPs for that a country. It should be noted that a certain level of co-operation is required among countries that have developed implementation plans to provide assistance to those countries that have not developed implementation plans. The Canadian delegation should promote and support the inclusion of Article E in a global treaty.

Recommendation: The Toxics Caucus support inclusion of Article E on National Implementation Plans in a global treaty.

4.0 OTHER ISSUES FOR CONSIDERATION

One issue that may have direct implication on the effectiveness of a global treaty on POPs is its relations with other international agreements. This issue was highlighted in Article N and N bis, which indicate that a global treaty on POPs should not supersede previously signed agreements. It is our view, that further investigation on this topic is necessary. We would like to highlight two reports published by Earthjustice Legal Defense Fund¹⁰ and a joint report by the Asia Pacific Environmental Exchange and Basel Action Network¹¹ that provide some insight into the implications of the World Trade Organizations (WTO) on a global treaty on POPs. Copies of these reports are available upon request.

Recommendation: Further investigation may be required to evaluate the potential impacts of existing international agreements on the proposed global treaty on POPs.

5.0 CONCLUSIONS

While the CEN Toxics Caucus has attempted to provide its insight on a number of issues relevant to the upcoming INC4 session, the Caucus is well aware that much more work

¹⁰ Earthjustice Legal Defense Fund. November 1999. Trading Away Public Health: The World Trade Organization Obstacles to Effective Toxics Controls.

¹¹ Jim Puckett. October 1999. When Trade is Toxic: The WTO Threat to Public and Planetary Health. Prepared for the Asia Pacific Environmental Exchange and the Basel Action Network.

remains to be completed. The Caucus looks forward to continuing its participation in this process. During INC4, the Canadian delegation has an opportunity to demonstrate its leadership in several areas including the promotion of the goal of elimination of POPs. The CEN Toxics Caucus hopes that, through this paper and the attached Annex, it has provided the Canadian delegation with supporting evidence to promote the development of an effective global treaty on POPs that focuses on elimination. Lack of effort towards the goal of elimination of POPs may have profound impacts on the health of the global population and environment.

ANNEX A

COMMENTS AND SPECIFIC SUGGESTIONS FOR SELECTED PROVISIONS

Proposed Text and Rationale for Certain Provisions

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And

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Prepared for the CEN Toxics Caucus

INTRODUCTION

In order to clarify the position of the member organizations of the CEN Toxics Caucus, the Caucus has provided suggested text and rationale for the POPs global treaty. *It is hoped that the Canadian delegation to the global POPs negotiations will incorporate our suggestions into its negotiating positions for INC4.*

While this commentary provides some feedback to the document, “A Consultation Document on Canada’s Approach,” [hereinafter referred to the “Consultation Paper,”] dated February 4, 2000, it is not a full response to that document. Further comments regarding the Consultation Paper will be provided after member organizations of the CEN Toxics Caucus has had the opportunity for in-depth discussion.

SUGGESTED TEXT AND RATIONALE

Preamble

The Preamble provides an opportunity to outline key guiding concepts and a vision for a global treaty on POPs. We support the position of the Canadian Arctic Indigenous Peoples Against POPs (CAIPAP) that the Arctic be recognized as a region that is particularly sensitive to the threat of POPs. In addition, language that addresses the vulnerability of people and ecosystems where the uses of POPs often originate should be included.

The two central concepts that, in our opinion, should be included in the Preamble are:

- 1) the need for the elimination of POPs; and
- 2) the Precautionary Principle must be applied to decision-making under a future global treaty.

The recommended text for the Preamble, therefore, is:

The Parties,

Recognizing that persistent organic pollutants are transported across international boundaries and are deposited around the world, often far from their places of origin, and that national and regional actions alone are not sufficient to protect human health and the environment,

Aware that persistent organic pollutants resist degradation under natural conditions and can biomagnify in upper trophic levels to concentrations which may affect the health of exposed wildlife and humans,

Concerned that persistent organic pollutants have been associated with adverse effects on human health, impacting growth and development, immune function, neurological function, reproduction, and inducing mutations and cancers,

Emphasizing that these effects may be seen at extraordinarily low levels of exposure, and that young children and developing fetuses are most at risk,

Acknowledging that the Arctic region and especially its indigenous people, who subsist on Arctic fish and mammals, are particularly at risk because of the biomagnification of persistent organic pollutants and their accumulation at northern latitudes,

Acknowledging that special provision is required to build the capacity of developing countries and economies in transition to undertake POPs elimination efforts,

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

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 of other States or of areas beyond the limits of national jurisdiction,

Considering that the predominant sources of environmental releases of persistent organic pollutants are the use of certain pesticides, the manufacture and use of certain chemicals, and the unintentional formation of certain substances in waste incineration, combustion, metal production and mobile sources,

Recognizing that sufficient evidence of environmental damage and human toxicity exists to warrant the phaseout of certain POPs beginning immediately,

Noting that evidence is emerging regarding the potential adverse health and environmental effects of additional POPs,

Acknowledging that billions of tons of manmade chemicals have been manufactured and released to the global environment, and that hundreds of new chemicals are synthesized each year, most inadequately studied for their effects on the environment and health,

Taking into consideration existing scientific and technical data on existing levels and continuing releases of persistent organic pollutants and their effects on human health and the environment, and acknowledging the need to continue scientific and technical cooperation to further the understanding of these issues,

Noting the important contribution of the private and non-governmental sectors to knowledge of the effects associated with persistent organic pollutants, available alternatives and prevention techniques, and their role in assisting in the elimination of persistent organic pollutants,

Recognizing that there are subregional, regional and global regimes in place to control persistent organic pollutants, such as the POPs Protocol of the United Nations Economic Commission for Europe's Convention on Long-range Transboundary Air Pollution, as well as other international instruments governing the management of hazardous wastes, their transboundary movement and disposal, in particular the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal,

Noting the need for global action to eliminate on persistent organic pollutants,

Rationale

- *Elimination:* (See “Objectives,” below, for details of Canadian commitments to the concept of elimination). POPs are, by their very nature, inherently unmanageable substances that pose a threat to human health and the environment. Without a clear commitment to elimination of these substances in the Preamble, Objectives and Control Measures sections of the treaty text, a future treaty runs the risk of merely legitimizing continued releases of POPs.

An example of a Convention that contains elimination language in the Preamble is:

International Convention For The Prevention Of Pollution From Ships (1973):
“Desiring to achieve the complete elimination of intentional pollution of the marine environment by oil and other harmful substances and the minimization of accidental discharge of such substances...”

- *Precautionary Principle:* The Precautionary Principle was agreed to at Rio as a central means to guide action where there are threats of serious or irreversible harm. Taking precautionary action on POPs before there is full scientific certainty is undoubtedly justified under the Rio definition because, due to the very persistent nature of POPs “there are threats of serious or irreversible damage.” Precautionary action can help to prevent such damage before it occurs. Therefore, specific reference to the Precautionary Principle should appear first, but not solely, in the Preamble to the treaty (article A).

An example of a Convention that includes the Precautionary Principle is:

Montreal Protocol on Substances that Deplete the Ozone Layer (1987):

“Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, with the ultimate objective of their elimination on the basis of developments in scientific knowledge, taking into account technical and economic considerations...”

Objectives

The objectives to the global treaty should be overarching and provide the vision to guide the document’s implementation. Some of the components of Objectives section are listed as follows:

1. *To undertake measures to protect human health and environment through pollution prevention;*
2. *To prevent new chemicals and processes that create persistent organic pollutants;*
3. *To eliminate persistent organic pollutants, and where elimination is not practical in the short term, severe restriction in the use and generation of POPs (with the aim of elimination for the longer term);*
4. *To develop techniques and technologies that are capable of destroying stockpiles and cleaning up contaminated sites that do not create, generate or release the same or other persistent organic pollutants;*
5. *The meaningful incorporation of the Precautionary Principle into the Convention as a central tool to assess and take action on POPs;*
6. *To encourage citizen participation in the implementation of the treaty;*
7. *To financially assist countries to meet requirements of treaty; and*
8. *To ensure that health and safety are not compromised while POPs are being phased out and eliminated.*

Objectives 1 and 2 – Pollution Prevention

Canada should aggressively pursue a pollution prevention objective for the treaty. In 1995, the federal government issued its policy in 1995 with the statement: *Pollution Prevention: A Federal Strategy for Action*. According to the new *Canadian Environmental Protection Act* (CEPA), pollution prevention is the preferred approach to the protection of human and environmental health. The concept is defined in section 3 as follows:

“pollution prevention” means the use of processes, practices, materials, products or energy that avoid or minimize the creation of pollutants and waste and reduce the overall risk to the environment or human health.

At the provincial level, many provinces have adopted a pollution prevention definition, although there are some differences among them. Nevertheless, in 1998, the Canadian Council of the Ministers of the Environment (CCME) adopted a pollution prevention policy entitled: *A Strategy to Fulfil the CCME Commitment to Pollution Prevention*. The definition of pollution prevention in that document is:

The use of processes, practices, materials, products or energy that avoid or minimize the creation of pollutants and wastes, at the source.

The key point to be made with respect to the definition is that pollution prevention must be contrasted with pollution control. While pollution prevention seeks to avoid the creation of the pollutants in the first place, pollution control deals with or addresses the pollutants once created. By their very definitions, therefore, pollution prevention is separate and does not include pollution control measures.

Again, although there are differences, the federal and provincial policies provide a hierarchy where pollution prevention is the preferred way of addressing the issues with the other pollution control approaches as subordinate methods.

Objective 3 - Elimination

Canada should ensure that the ultimate goal for persistent organic pollutants is elimination. The general objective in the treaty is meant to give the instrument a vision and state its long-term goals, while the control sections provide the more immediate obligations. Nevertheless, it is important that those long term goals are in the document in order to give clear direction to those interests that use or generate these substances.

There are three basic reasons to support this objective. First, the substances caught in the treaty are those POPs that are known to be the most harmful to human health and the environment. It cannot be the goal of the treaty to better manage the risks associated with

POPs or merely attempt to control their release to the environment since these substances are inherently unmanageable.

Second, the proposed elimination language is consistent with existing Canadian commitments and domestic law. Elimination language can be found in article II of the *Great Lakes Water Quality Agreement* (GLWQA) (and the interpretations provided by the International Joint Commission (IJC) in their biennial reports on water quality), as well as federal and provincial laws and policies.

Article II of the GLWQA commits to the policy that,

The discharge of toxic substances in toxic amounts be prohibited and the discharge of any or all persistent toxic substances be virtually eliminated.

In Annex 12, the GLWQA also commits to ensure that, when designing regulatory programs, “the philosophy adopted for control of inputs of persistent toxic substances shall be zero discharge.”

In its Seventh Biennial report, the IJC outlines its understanding of “virtual elimination” under the GLWQA and notes that:

*[w]e...want to continue attempts to **manage** persistent toxic substances after they have been produced or used, or ... **eliminate** and **prevent** their existence in the ecosystem in the first place ... [s]ince it seems impossible to eliminate discharges of these chemicals ... a policy of **banning** or **sunsetting** their manufacture, distribution, storage, use and disposal appears to be the only alternative.*

It should also be mentioned that the federal government has made specific commitments to the “virtual elimination” goal by setting interim targets through the conclusion of the *Binational Great Lakes Toxics Management Strategy* (between U.S. and Canada) and the *Canada-Ontario Agreement* (between the federal government and the province of Ontario).

At the federal level, the *Toxic Substances Management Policy* (TSMP) specifically recognizes the need to eliminate certain substances. It should be noted that the TSMP has two key objectives. One of these objectives include:

- Virtual elimination from the environment of toxic substances that result predominantly from human activity and that are persistent and bioaccumulative (Track 1 substances);

Provincially, in the *CCME Policy for the Management of Toxic Substances*, the goal of elimination is also recognized. It notes that:

It has been demonstrated that many toxic substances can be properly managed using the pollution prevention approach. A select few that are persistent, bioaccumulative and toxic pose an unreasonable and otherwise unmanageable risk and the pollution prevention goal must be virtual elimination.

More recently, the new CEPA outlines the goal of “virtual elimination,” and then defines the goal of virtual elimination. Although there was considerable controversy in outlining how the goal should be defined and its implementing provisions, the reality is that the law does recognize the need to “virtually eliminate” certain substances.

It is because of the controversy surrounding the definition of virtual elimination that it is suggested that a definition of the term not be proposed at this time for the inclusion in the treaty.

Third, Canada has committed to further the elimination language. The TSMP notes that:

Since toxic substances or substances of concern can originate either within Canada or abroad, domestic actions have to be complemented by international measures to protect the Canadian environment. As Canada takes a leadership role in seeking international action, this policy will serve as the centrepiece for the country’s position on managing toxic substances in discussions and negotiations with the world community.

Similarly, the *CCME Policy for the Management of Toxic Substances* notes that:

3. strong domestic action will provide the basis for a more effective negotiating position abroad in dealing with global, transboundary or long range transport of atmospheric pollutants;

In summary, elimination is the most effective means to address POPs; it is consistent with existing law and policy in Canada and Canada has already made commitments to advocate this approach.

One issue that has been raised is whether Canada can support “elimination” language internationally when its bilateral commitments and domestic legislation refers to “virtual elimination.” It is suggested that, contrary to the view expressed in the Consultation Paper, there is an inherent consistency between the term “elimination” and “virtual elimination.” Both terms are meant to express the same result and have common ends. Moreover, Canada’s bilateral commitments and domestic approach to those specific substances listed in the draft treaty are completely consistent with elimination.

It is submitted that it is inconsistent and inappropriate for Canada to commit to virtual elimination bilaterally and domestically and then advocate for only reduction on a global basis. Canada should support an elimination objective.

DDT elimination

We agree with the view put forward in the Consultation Paper that the issue of DDT should not be one to divide north and south. Amidst uncertainties about the adequacy of alternatives and about the availability of the financial and technical assistance necessary to effect a transition away from DDT in developing nations, the provisions of the future treaty pertaining to DDT must be drafted with great care. Negotiators must ensure that human health is not compromised as reliance on DDT is reduced. To accomplish this, the convention must stimulate the essential flow of technical and financial assistance to increase national capacity for implementing the introduction of effective alternatives for malaria control.

It is our view that the POPs treaty should:

- 1 Facilitate the accelerated, reduced production and use of DDT, as long as human health is not compromised, with the ultimate objective of a complete ban.
- 2 Provide financial and technical assistance from the developed world to developing nations for the development of National Implementation Plans, so the burden of a DDT phase out does not fall unfairly on developing nations.
- 3 Allow nationally-focussed "specific exemptions."
- 4 Require routine and timely review of the availability, affordability, sustainability and effectiveness of alternatives to DDT for disease control.
- 5 Create mechanisms to track production and use of DDT and to link production to true need and use.

We recommend that DDT be listed on Annex A - "elimination." Within Annex A, periodic review periods and other provisions can address the uncertainties associated with alternatives to DDT and financing available for them. The treaty could specify a target date for elimination, subject to reconsideration at a later date. Regardless of whether a particular target date is established, the treaty could provide for routine assessment of alternatives to DDT and funding for them no less frequently than every three years following entry into force of the treaty.

Financial and Technical Assistance: Any language on DDT elimination in a future treaty will be empty without early and increased commitments in research and field assistance. *Canada should make a substantially increased commitment to malaria control well before the treaty comes into force.* This could be made through a special fund of the POPs treaty, and/or by specially earmarking contributions to the World Health Organization's Roll Back Malaria Campaign, to fund national planning for DDT elimination.

Exemption and National Implementation Plans: Article E sets out the requirement for Parties to develop National Implementation Plans (NIPs) addressing the treaty's

provisions. Countries that still use DDT for public health purposes will likely stipulate exemptions under Article D (Control Measures). *We recommend that Canada support language requiring countries to include, in NIPs, a plan for reduced reliance on DDT subject to their capacities and available technical and financial assistance.*

Exemptions may also be required for countries that do not currently use DDT, but may want to retain the option of using it in the event of a malaria epidemic or the catastrophic failure of DDT alternatives. It is our opinion that a narrowly drawn public health exemption could be made under Annex Z (General Exemptions) or that a related DDT-specific exemption be included in Annex A.

Objective 4 – Stockpiles and Clean-up Contaminate Sites

It is recognized that the destruction of stockpiles and the clean up of contaminated sites are important components of the treaty. However, it is essential that these problems do not create new and additional problems. Hence, this objective emphasizes that one of the key functions of the treaty is to work toward the development of new and innovative technologies that would provide an appropriate, clean and cost effective means (and not through incineration) to destroy stockpiles and remediate sites.

Objective 5 – Meaningful incorporation of the Precautionary Principle

As discussed above, specific reference to the Precautionary Principle should appear first, but not solely, in the Preamble to the treaty (article A). In addition, operationalizing the Precautionary Principle should, in and of itself, be cited as a stand-alone objective of the treaty.

Recent developments, agreed to by Canada, at the Biosafety Protocol (now known as the Cartagena Protocol) negotiations in Montreal, Canada, have the potential to be the best example to date to demonstrate how to meaningfully incorporate this principle into decision-making at the international level. The inclusion, in article 10(6) of the Precautionary Principle as justification for a decision with regard to the import of a genetically modified organism (GMO), is, in our opinion, a precedent-setting example of how the principle can be applied. Its recognition by a diverse array of countries (including Canada) makes it, in our opinion, all the more notable.

In Canada, for example, the Precautionary Principle has been incorporated into the new CEPA (in both the Preamble and Administrative Duties sections), the *Canada Oceans Act*, and provincial legislation such as the *Nova Scotia Environment Act*. We also expect that the Precautionary Principle will be given prominent mention in upcoming amendments to the federal *Pest Control Products Act*.

With specific regard to POPs, the future treaty on POPs should, indeed, be a “concrete application of the precautionary approach” (Consultation Paper, section F). In order to ensure this, however, the Canadian delegation should support the inclusion of presently bracketed language under draft article F(3). The rationale put forward in the Consultation Paper, however, is questionable. If the precautionary approach is taken in this treaty, and specifically when considering the addition of new chemicals, why would the delegation not support such language? In our opinion, the Cartagena Protocol represents a significant step

forward in operationalizing the principle – beyond merely being mentioned in a Preamble or Objectives section. Canada has agreed to this approach on biosafety. In the case of POPs, where the science and general knowledge is more concrete than with GMOs, but yet significant uncertainties still remain, this approach should be all the more appropriate.

Objective 6 – Public Participation

There are a whole array of important decisions within the treaty that may affect the public. It is an important principle to pursue that those affected should be given the right to have their views expressed. The principle of public participation should be seen as an integral part of the decision-making process for the treaty and recognized as such. NGOs, at INC3, sought and received agreement from some delegations to put forward appropriate language on public participation under draft article H(a). The wording reads:

Parties are encouraged to support and/or facilitate the role of public interest NGOs in raising public awareness and in education processes.

Such wording would complement other wording presently in the text that acknowledges the role of industry and professional users in providing POPs information. The delegation should support this wording at INC4.

Objective 7 - Financial Mechanism

We submit that the shape of this mechanism will either ensure or deny the success of the treaty. The clearinghouse proposal made by Canada at INC3 should be applauded as a significant step that can assist in the success of any future mechanism. We understand that there is a similar structure to that proposed by Canada under the UN Convention on Desertification. While this mechanism is not yet fully in place, we hope that Parties to a future POPs treaty will continue to take lessons from the desertification experience as it is implemented.

Canada's lack of support for a new POPs financial mechanism, however, adds to the polarization between north and south on this issue (we recognize, however, that this is the position of all donor countries at present).

If the GEF is chosen as the main financial mechanism, however, significant reform to the GEF's mandate, and/or to its Operational Programs must occur. Such reform can take place in a manner that is timely vis-a-vis the POPs treaty negotiations. An amendment to the GEF instrument is possible in either 2001 or 2004 when the GEF Assembly meets.

Several critical elements essential to the effective functioning of any multilateral financial mechanism – no matter what its future shape may be. These include:

- equitable governance;
- streamlined and efficient project cycle;
- full public participation;

- the choice of implementing agencies based on their comparative advantage;
- built-in flexibility to respond to changing convention requirements;
- independent and effective monitoring and evaluation;
- commitments by all agencies to the mainstreaming of POPs objectives throughout their programs.

Canada should advocate for these principles at INC4.

An additional and related matter is the question of the immediate commitment of resources for POPs at INC4. One major sticking point in the Implementation Aspects Group discussions at INC3 was the fact that donor countries were exceedingly vague about the commitments they were prepared to make. Canada's closing remarks at INC3 on this matter were, in our opinion, very helpful. Canada committed, by our interpretation, to come back to the table at INC4 with a firmer mandate and firmer commitments on financial resources than what was given at INC3. In addition, the Chair of the INC has sent this message with equal clarity to all delegations in his recent Scenario Note. We look forward to hearing what commitments Canada is prepared to make.

On a related note, many of our member organizations look forward to working closely (and even in partnership) with relevant federal departments (such as CIDA) on bilateral and multilateral POPs project. WWF, for example, has been involved with and showcased projects on DDT alternatives. Public interest NGOs are also very active in two GEF PDF-B processes through UNEP Chemicals - one on a Regional Assessment of Persistent Toxic Substances (which was just approved as a full project at last December's GEF Council Meeting), and on the Steering Group of a PDF-B on "Assessing National Management Needs of Persistent Toxic Substances." We look forward to Canada's further participation in these undertakings.

Article D - Control Measures

Prohibition of the Production and Use of Certain Persistent Organic Pollutants

Article D is one of the most important provisions of the proposed global treaty. It is submitted that the chapeau should include elimination as an obligation aim. As noted above, it is consistent with both domestic policy and bilateral agreements with the U.S. Unless Canada supports language of elimination, Canada will not be taking a leadership role and promoting language internationally that is weaker than its own domestic legislation.

It is submitted, therefore, that the chapeau for article D does include elimination language.

It is suggested that the delegation support language for article D(1) as follows:

1. Subject to the accessibility of financial and technical assistance, each Party should prohibit or taken other legal measures to eliminate the production, import, export and use of the chemicals listed in Annex A (Elimination), in accordance with the provisions of that Annex.

1 bis. Each Party shall ensure that that chemicals lists in Annex A, once their production and use have been banned, shall not be exported or imported except for the purpose of environmentally appropriate storage or destruction.

The language for this section is derived from the draft treaty. It simply reflects that the substances in Annex should be eliminated within the provisions of that Annex.

With respect to the 1 bis, the present wording is consistent with the Basel Convention. However, one of the issues of concern is the term “environmentally sound” destruction, a term that has been the subject of a long debate within the context of the Basel Convention. As such it is proposed herein to insert another term that makes it clear that the destruction technologies used must not in themselves generate new or additional POPs. Similarly, it should be made clear, pending the availability of such technologies, appropriate storage is acceptable so long it is undertaken in a safe and prescribed manner.

Restrictions on the Production and Use of Certain Persistent Organic Pollutants

For article D(2), the delegation should support the following language:

2. Subject to the accessibility of financial and technical assistance, each Party shall prohibit or take other legal measures necessary to eliminate the production and use of the chemicals listed in Annex B (Restriction), except for the purposes specified therein, in accordance with the provisions in that Annex.

Again, this section is derived from the present draft treaty and reflects a consistent approach as that provided and described above.

New Chemicals

For new chemicals, the delegation should support the following language:

1 bis. With the aim of preventing the introduction of new persistent organic pollutants, Parties shall take measures to regulate new or newly developed chemicals to address properties such as persistence, bioaccumulation, toxicity and potential for long range transport.

Again, this section is derived from the present draft treaty and reflects a consistent approach as that provided and described above.

Reduction in the Release of Persistent Organic Pollutants that are By-Products with the Aim of Elimination

For article D(3), the delegation should support the following language:

3. *Each Party shall take all necessary measures to reduce its total release derived from anthropogenic sources of each of the persistent organic pollutants that are by-products that are listed in Annex C with the aim of their continuing minimization and ultimate elimination consistent with its capacity and subject to the availability of needed technical and financial assistance. To this end, each Party shall:*
 - (a) *Promote the application of available measures that can expeditiously achieve a realistic and meaningful level of release reduction and/or source elimination by means that are feasible and practical;*
 - (b) *Give priority to the use of techniques, processes, products, materials to prevent their formation and release;*
 - (c) *Use best available techniques or other prevention strategies for new sources with major source categories taking into consideration guidelines on best available techniques developed by the Conference of the Parties;*
 - (d) *Promote the use of best available techniques or other prevention strategies for existing sources within major source categories taking into consideration guidelines to be developed by the Conference of the Parties;*
- [Subsection (e) to be included in its entirety]*

3 bis. The Conference of the Parties will establish appropriate mechanisms, and will assure their adequate financing in order to provide necessary technical and financial assistance to Parties with developing economies and with economies in transition that otherwise would lack the capacity to implement the provisions of this section.

Rationale

This section makes it clear that the goal of by-products is elimination. Interim reduction targets are, however, established. The reduction targets are set by the Conference of the Parties. Reduction targets, with the aim of elimination, are the only feasible way to ensure that efforts are made to actually address total releases in an accountable manner.

The language that requires the "use," rather than "promotes the use of best available techniques" should be supported. However, other language should be used to give priority to pollution prevention in support of the objectives to the treaty.

With respect to 3 bis, this is consistent with arrangements within article J.

Management and Disposal of Wastes Containing Certain Persistent Organic Pollutants

For this article, the delegation should support the following language:

4. *For the chemicals listed in Annexes A, B or C, each Party shall:*
 - (a) *develop appropriate strategies for identifying products and articles still in use and wastes containing such chemicals; and*
 - (b) *Take appropriate measures to ensure that such wastes and such products and articles, upon becoming wastes, are stored and destroyed in an environmentally appropriate manner.*
 - (c) *Parties that have advanced capacity shall assist Parties that have no or lesser capacity in the implementation of appropriate measures to reduce and/or eliminate releases of persistent organic pollutants into the environment.*

The above mentioned undertakings shall take into account relevant subregional, regional and global regimes governing the management of hazardous wastes, in particular the Basel Convention on the Control of Transboundary Movements of Hazardous wastes and their Disposal.

Destruction of Stockpiles and Wastes

For article D(5), the delegation should support the following language:

5. *Destruction domestically, or transboundary movements of wastes for destruction shall be undertaken in accordance with the basic principles and provisions in the Basel Convention. This same shall apply to the destruction of substances listed in Annex A, for which production and use are banned according to paragraph 1 above.*

Rationale

As mentioned above, real concern is expressed with respect to the support for the term “environmentally sound disposal.” This term could support the incineration of wastes of the disposal option, which is not acceptable. Wording should be used that expresses the view that new and innovative destruction technologies should be used and that these technologies do not generate POPs.

Treaty Measures

It is our view that article N bis be removed. There is a real concern that the international trade regimes would subordinate the POPs treaty to organizations like the WTO. It is submitted that the WTO is the wrong forum for resolving disputes between the POPs treaty and trade rules.

Instead, the approach taken in the Cartagena Protocol should be considered.