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INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR AN  
INTERNATIONAL LEGALLY BINDING INSTRUMENT  
FOR IMPLEMENTING INTERNATIONAL ACTION ON  
CERTAIN PERSISTENT ORGANIC POLLUTANTS

Fifth session

Johannesburg, 4-9 December 2000

Item 3 of the provisional agenda\*

REVIEW OF ONGOING INTERNATIONAL ACTIVITIES RELATING  
TO THE WORK OF THE COMMITTEE

Related work on persistent organic pollutants under the Basel Convention  
on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

Note by the secretariat

At its seventeenth session held in Geneva, from 9 to 11 October 2000, the Technical Working Group of the Basel Convention agreed on the text of an explanatory note on the relationship between the Basel Convention and the proposed convention on persistent organic pollutants, and further agreed to submit the note to the Chair of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants, through the relevant secretariats (document UNEP/CHW/TWG/17/15, para. 119). The explanatory note is included in annex IV to UNEP/CHW/TWG/17/15 and is annexed to the present note. It is provided by the secretariat of the Basel Convention for the information of the Intergovernmental Negotiating Committee. This information is circulated as received and has not been formally edited.

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Annex

RELATIONSHIP BETWEEN THE BASEL CONVENTION  
AND THE POPS CONVENTION

I. PURPOSE

1. The purpose of this note is to provide elements that are considered important in clarifying the relationship between the Basel Convention and the POPs convention. This document is divided in three parts. The first part describes the way the Basel Convention addresses the environmentally sound management of POPs as wastes. The second part elaborates on the issue of the disposal of POPs wastes and the third part provides suggestions on how to strengthen synergies between the Basel Convention and the POPs Convention.

1 bis Article D4 of the proposed POPs convention concerns the management and disposal of wastes containing certain persistent organic pollutants. The full text of the draft Article D4 as contained in the report of INC-4 is at appendix 1 to the present note.

II. THE ENVIRONMENTALLY SOUND MANAGEMENT OF POPs AS WASTES

2. All of the current POPs listed in the draft POPs convention are classified as hazardous wastes in Annex VIII of the Basel Convention (under A1180, A3180, A4030, A4110 and A4140). Article 2, paragraph 8 of the Convention defines "environmentally sound management" as taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes. The prior written informed notification procedure of the Convention requires that any transboundary movement (export/import/transit) is only permitted when the movement itself and the ultimate disposal of the concerned hazardous wastes is environmentally sound. In addition, Articles 4.2(c), 4.2(g), and 4.8 in particular provide obligations regarding the environmentally sound management of wastes subject to the Basel Convention.

3. The criteria referred to in Article 4.2(e) have been developed by the Technical Working Group and adopted by the Conference of the Parties together with technical guidelines on the environmentally sound management of waste streams and disposal operations. Because the definition of environmentally sound management in the Convention is of general character, the environmentally sound management criteria and the technical guidelines are the key and necessary sources under the Convention for providing an elaboration and clarification of the provisions of the Convention referring to environmentally sound management obligations.

4. Annex IV to the Convention contains the list of disposal operations; it identifies a list of operations which occur in practice that should trigger the prior written informed notification procedure. Annex IV does neither provide for a qualification of the environmental soundness of the disposal operations nor constitute a list of suitable disposal operations appropriate to every waste. Once a notification is received by the competent authority, the obligations in Article 4 require that the transboundary movement of hazardous wastes be "managed" in an environmentally sound manner. "Management" is defined in the Convention as "the collection, transport and disposal of hazardous wastes or other wastes, including after-care of disposal sites" (Art.2.2).

### III. DISPOSAL OF POPs AS WASTES

5. The Conference of the Parties to the Basel Convention has adopted several sets of technical guidelines prepared by its Technical Working Group that concern or are related to POPs as wastes. These are:

(a) Technical guidelines on Annex IV Disposal Operations:

- Specially engineered landfill (D5)
- Biological treatment (D8)
- Physico-chemical treatment (D9)
- Incineration on land (D10)
- Used oil re-refining or other reuses of previously used oil (R9)

(b) Technical guidelines on Annex I Waste Streams:

- Waste mineral oils unfit for their originally intended use (Y8)
- Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polybrominated biphenyls (PBBs) (Y10)

In this regard, it should be emphasized that, for instance, the technical guidelines on Specially Engineered Landfill states that there are a number of hazardous wastes for which landfill disposal is not appropriate and cannot be recommended; these are:

- Hazardous liquid wastes and hazardous materials containing free liquids
- Highly volatile and flammable liquid wastes
- Wastes containing appreciable quantities of mineral oils
- Spontaneously flammable or pyrophoric solids
- Clinical wastes (such as infectious wastes; sharps; etc.)
- Strongly oxidizing/reducing wastes
- Shock sensitive explosives
- Compressed gases
- Highly reactive wastes
- Water soluble non-convertible materials
- Persistent organo-halogen compounds
- Volatile materials of significant toxicity

The obligations in the Basel Convention as well as the supportive technical guidelines adopted by the Conference of the Parties provide a set of internationally accepted criteria for the environmentally sound management of POPs as wastes.

6. While preparing technical guidelines, the Parties have given due consideration to the specific situation of developing countries, in particular to those countries that do not have the technical capacity, the necessary facilities or suitable disposal sites to dispose of these wastes in an environmentally sound manner or for which local affordable and sound solutions exist for certain waste streams (eg: used oils; contaminated soil). In addition, because new technologies are being developed to dispose of POPs as wastes, the Parties retain the possibility to adjust to technology changes through the preparation of new or expanded technical guidelines for the environmentally sound management of these wastes as required under the Basel Convention (see paragraph 9b).

7. The Technical Working Group has the view that operations D9 and D10 are the preferred options for the disposal of hazardous wastes which consists of, contain, or are contaminated with POPs. (In the case of PCBs, this means that wastes with a concentration level of PCBs lower than 50 mg/kg are not hazardous wastes; see the references on page 33 of present report). The Technical Working Group notes, however, that annual reports submitted by Parties for the year 1997 on import/export contain information in regard to other disposal options for the Basel Convention Annex I waste streams, in particular for Y10 (PCBs, PCT, PBBs) as shown in the graphs described in appendix 2 to the present note.

#### IV. SYNERGIES

8. At its fifth meeting in December 1999, the Conference of the Parties adopted decision V/8 on Cooperation with the United Nations Environment Programme (UNEP) on the activities undertaken at the global level on persistent organic pollutants. In this decision, the Conference requested the secretariat, under the guidance of the Technical Working Group, to continue its cooperation with the UNEP Chemicals and the Food and Agriculture Organization of the United Nations, and also with other relevant intergovernmental organizations (eg: WHO, OECD), on the issue of persistent organic pollutants, in particular, with a view, first, to building the capacities of developing countries and other countries in need of such assistance to manage waste persistent organic pollutants in an environmentally sound manner; second, to ensuring efficient use of resources and identifying areas of common interest and opportunities for synergy; third, to providing technical and other guidance to the Intergovernmental Negotiating Committee on persistent organic pollutants, as appropriate; and, fourth, to identifying overlaps and gaps and the means to overcome them.

9. The work programme of the Technical Working Group, adopted by the Conference of the Parties at its fifth meeting in December 1999, contains tasks that concern or are related to POPs as wastes. These are:

- (a) Initiation of work on the implementation of a work programme on dioxins and dibenzofurans;
- (b) Consideration of the further preparation of technical guidelines on the environmentally sound management of persistent organic pollutants;
- (c) Consideration of the issue of the stockpiling of hazardous wastes for the purpose of disposal/destruction, or for recycling.

At its sixteenth session in April 2000, the Technical Working Group assigned priorities to tasks (b) and (c). Currently, work on dioxins and dibenzofurans is being carried out by UNEP Chemicals. Any technical work to be further developed in the Basel Convention and initiated as part of the POPs convention should be harmonized; taking into account the fact that the Basel Convention already provides elements to manage POPs as wastes in an environmentally sound manner. In this regard, it should be noted that the Basel Convention controls or prohibits transboundary movements of hazardous wastes for which environmentally sound management is a legal obligation. However, the environmentally sound management of hazardous wastes generated locally and not exported would be subject to general requirements in the context of the Basel Convention.

10. As part of implementing the Basel Declaration on Environmentally Sound Management, the secretariat is organizing a continental conference for Africa on the environmentally sound management of unwanted stocks of hazardous wastes, including stocks containing POPs, in 2001.

11. At the 17<sup>th</sup> session of the Technical Working Group it was agreed to initiate the preparation of technical guidelines for the environmentally sound management of POPs as wastes taking into account the discussions and outcome of the POPs negotiations. In addition, the Technical Working Group invited any appropriate body of the POPs convention to contribute to the preparation of these guidelines.

**References:**

Article 4.2 Each Party shall take the appropriate measures to:

- (c) Ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment;
- (e) Not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting;
- (g) Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner.

Article 4.8 Each Party shall require that hazardous wastes or other wastes, to be exported are managed in an environmentally sound manner in the State of import or elsewhere. Technical guidelines for the environmentally sound management of wastes subject to this Convention shall be decided by the Parties at their first meeting.

- A1180 Waste electrical and electronic assemblies or scrap<sup>1</sup> containing components such as accumulators and other batteries included on list A, mercury-switches, glass from cathode-ray tubes and other activated glass and PCB-capacitors, or contaminated with Annex I constituents (e.g., cadmium, mercury, lead, polychlorinated biphenyl) to an extent that they possess any of the characteristics contained in Annex III (note the related entry on list B B1110)<sup>2</sup>
- A3180 Wastes, substances and articles containing, consisting of or contaminated with polychlorinated biphenyl (PCB), polychlorinated terphenyl (PCT), polychlorinated naphthalene (PCN) or polybrominated biphenyl (PBB), or any other polybrominated analogues of these compounds, at a concentration level of 50 mg/kg or more<sup>3</sup>
- A4030 Wastes from the production, formulation and use of biocides and phytopharmaceuticals, including waste pesticides and herbicides which are off-specification, outdated,<sup>4</sup> or unfit for their originally intended use
- A4110 Wastes that contain, consist of or are contaminated with any of the following:
- Any congener of polychlorinated dibenzo-furan
  - Any congener of polychlorinated dibenzo-dioxin
- A4140 Waste consisting of or containing off specification or outdated<sup>4</sup> chemicals corresponding to Annex I categories and exhibiting Annex III hazard characteristics

<sup>1</sup> This entry does not include scrap assemblies from electric power generation.

<sup>2</sup> PCBs are at a concentration level of 50 mg/kg or more.

<sup>3</sup> The 50 mg/kg level is considered to be an internationally practical level for all wastes. However, many individual countries have established lower regulatory levels (e.g., 20 mg/kg) for specific wastes.

<sup>4</sup> "Outdated" means unused within the period recommended by the manufacturer.

## Appendix I

### Current formulation of Article D4 in the INC 4-report (pp. 29-31)

(as elaborated by legal drafting group in Bonn and not yet discussed again in plenary):

#### Article D4:

#### **Management and disposal of wastes containing certain persistent organic pollutants**

4. In order to ensure that stockpiles, wastes, as well as products and articles upon becoming wastes, consisting of or containing a substance listed in Annex A, B [or C] are managed in a manner protective of human health and the environment against the adverse effects that may result from that substance, each Party shall [, consistent with its capabilities and subject to the availability of technical and financial assistance]:

(a) Develop, for the substances listed in Annexes A and/or B, appropriate strategies for identifying products and articles still in use and wastes consisting of or containing those substances and, in particular, for identifying stockpiles of those substances;

(b) Manage, as appropriate, existing stockpiles of substances listed in Annexes A and/or B in a careful and efficient manner and, upon becoming wastes, treat them in accordance with subparagraph (c) below; [and]

[(c) Take measures to ensure that wastes, as well as stockpiles, products and articles upon becoming wastes, are:

(i) handled, transported and stored in an environmentally sound manner; and

(ii) managed so that the persistent organic pollutant content is destroyed or otherwise transformed into substances that do not possess the properties of persistent organic pollutants as specified in Annex D or, when appropriate, otherwise disposed of in an environmentally sound manner consistent with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal ;] [and]

(d) [Endeavour to] [D][d]evelop appropriate strategies for identifying sites contaminated by substances listed in Annexes A, B [and/or C] and, if remediation of those sites is considered to be feasible and practical, to ensure that such remediation is performed in an environmentally sound manner.

**Appendix II**

**Y4, Y10, Y43 & Y44: D & R operations (1997)**

Based on the data reported by Parties to the Basel Convention for the year 1997 in accordance with articles 13 & 16 of the Convention, the Secretariat has made the following analysis of various D & R operations that took place for four selected Y categories, namely, Y4, Y10, Y43 and Y44 when subjected to the transboundary movement. (Note: Due to some variations in national reporting, these figures are not directly comparable and hence should be used with caution)

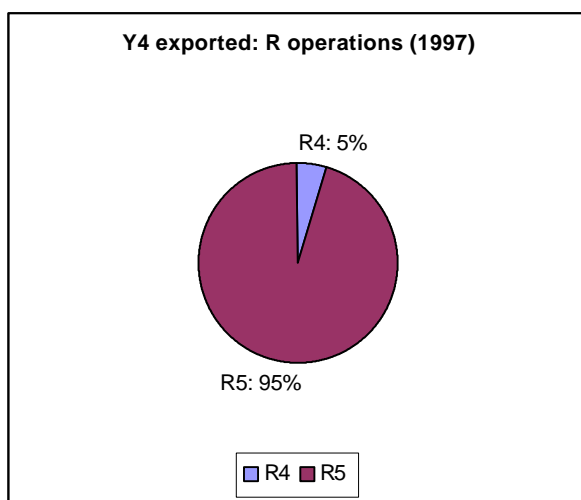
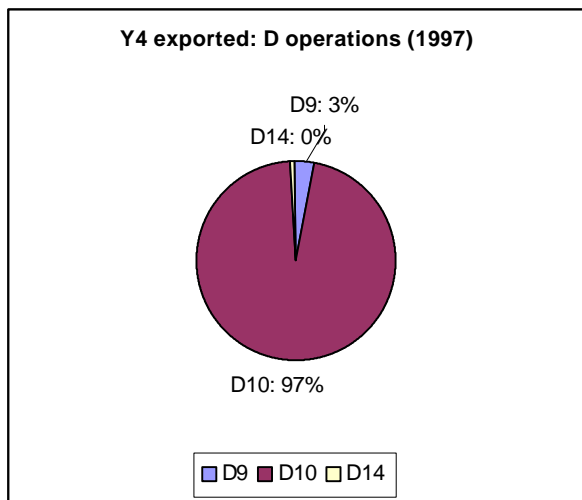
**Export (1997)**

**Y4**

A total amount of 1327.4mt of Y4 was exported in 1997.

A total amount of 1183.4mt of Y4 went to D operations (D9: 41mt; D10: 1137mt and D14: 5.4mt).

A total amount of 144mt of Y4 went to R operations (R4: 7mt and R5: 137mt).

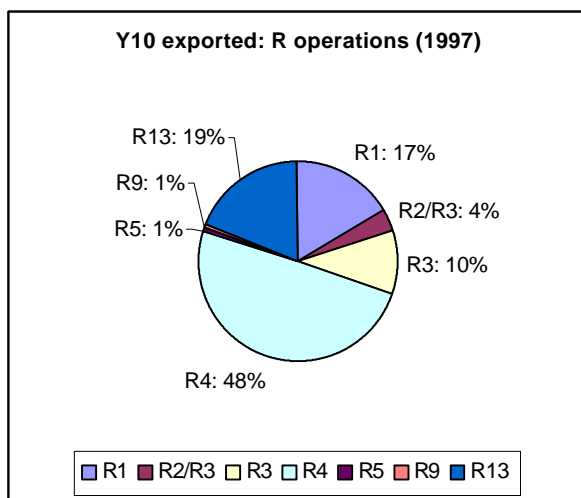
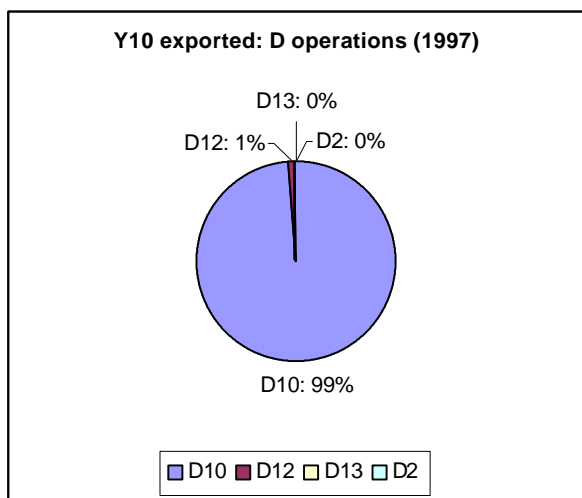


**Y10**

A total amount of 33030.548mt of Y10 was exported in 1997.

A total amount of 30572.67mt of Y10 went to D operations (D2: 15mt, D10: 30354.27mt; D12: 198.4mt and D13: 5mt).

A total amount of 3067.985mt of Y10 went to R operations (R1: 522mt; R2/R3: 110mt; R3: 304mt; R4: 1504.675mt; R5: 22mt; R9: 21.39mt and R13: 583.92mt).



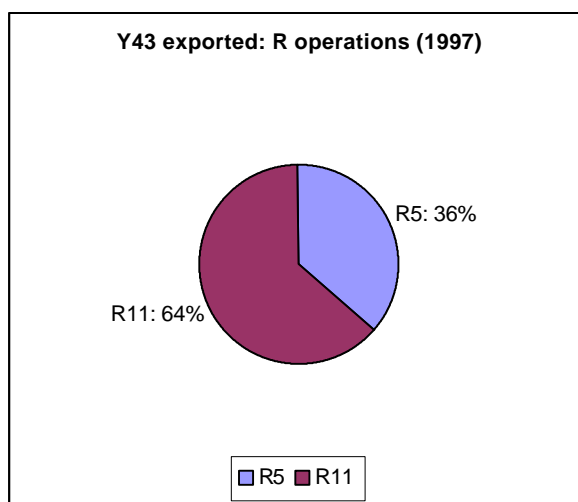


**Y43**

A total amount of 1395mt of Y43 was exported in 1997.

A total amount of 56mt of Y43 went to D10 operation.

A total amount of 1339mt of Y43 went to R operations (R5: 487mt and R11: 852mt).



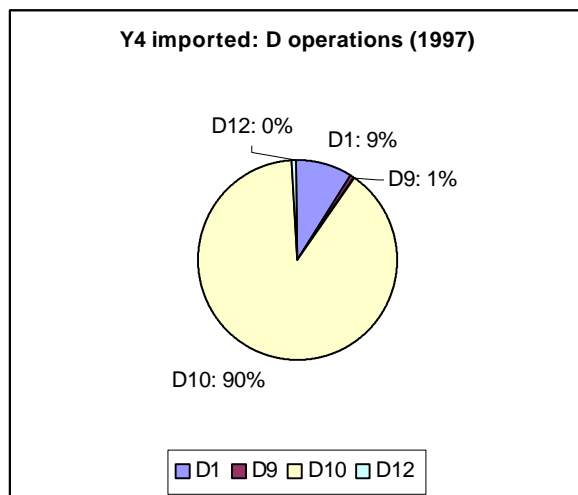
**Y44**

A total amount of 43mt of Y44 was exported in 1997 and all of which went to R5 operation.

**Import (1997)**

**Y4**

A total amount of 1644.970mt of Y4 was imported in 1997 and all of it went to D operations (D1: 149mt; D9: 17.6mt; D10:1471.37mt and D12: 7mt).

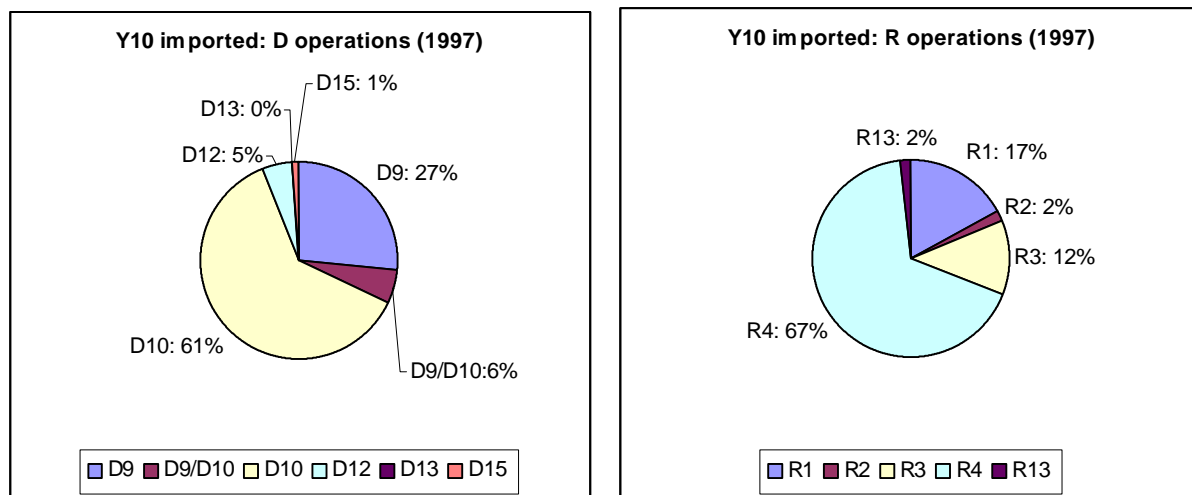


**Y10**

A total amount of 8049.220mt of Y10 was imported in 1997.

A total amount of 4972.6mt of Y10 went to D operations (D9: 1328.68mt; D9/D10: 278.02mt; D10: 3069.9mt; D12: 239mt; D13: 5mt and D15: 52mt).

A total amount of 3076.62mt of Y10 went to R operations (R1: 529mt; R2: 56mt; R3: 373.72mt; R4: 2069.9mt and R13: 48mt)



**Y43**

A total amount of 1321.110mt of Y43 was imported in 1997.

A total amount of 562.19mt of Y43 went to D10 operation.

A total amount of 758.92mt of Y3 went to R11 operation.

**Y44**

A total amount of 82.5mt of Y44 was imported in 1997 and all of it went to D10 operation.

References:

- Y4** Wastes from the production, formulation and use of biocides and phytopharmaceuticals
- Y10** Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polychlorinated biphenyls (PBBs)
- Y43** Any congener of polychlorinated dibenzo-furan
- Y44** Any congener of polychlorinated dibenzo-p-dioxin

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