

Guidance for the control of the import and export of POPs under the Stockholm Convention

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Aim of the Guidance Document

This document aims to assist Parties and other stakeholders to understand which POPs, under the Stockholm Convention, can be traded internationally, whether as substances or contained in mixtures or articles.

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Abbreviations and acronyms

CAS	Chemical Abstract Service
DGD	Decision Guidance Document
GHS	Globally Harmonized System of Classification and Labelling of Chemicals
HS	Harmonized Commodity Description and Coding System (Harmonized System)
IUPAC	International Union of Pure and Applied Chemistry
MEA	multilateral environmental agreement
PCP	Pentachlorophenol and its salts and esters
PCN	Polychlorinated naphthalenes
PFOS	perfluorooctane sulfonic acid
PFOSF	perfluorooctane sulfonyl fluoride
PIC	Prior Informed Consent
POPs	persistent organic pollutants
UNRTGD	United Nations Recommendations on the Transport of Dangerous Goods (orange book)
WCO	World Customs Organization

1 Overview of this guidance document

1.1 Introduction

The Stockholm Convention prohibits or restricts the production and use of the persistent organic pollutants (POPs) that are listed in the Annexes to the Convention and regulates the export and import of intentionally produced chemicals listed in Annexes A and B of the Convention. The Convention also contains specific mandates for certain POPs when produced or used in specific applications by Parties that have registered for such activities of production or use, through a regime of “specific exemptions” or “acceptable purposes”. This adds complexity to understanding which POPs can be imported or exported internationally.

Among the measures to reduce or eliminate releases from intentional production and use provided by article 3, is the obligation of Parties to ensure that any import and export of the chemicals listed in Annex A and B of the Convention complies with strict requirements.

With respect to the import:

- These chemicals can only be imported for the purpose of environmentally sound disposal as set forth in article 6 paragraph 1(d); or
- For a use or purpose which is permitted for a Party under Annex A or Annex B¹.

With respect to the export: chemicals for which safer alternatives are not readily available to all countries for which there is a specific exemption or acceptable purpose, can only be exported. Although this regulates the import and export of covered POPs, there is no specific procedure under the Stockholm Convention for the international trade of POPs. In the event the POPs fall within the scope of the Basel or Rotterdam Conventions, then the control procedures provided by these Conventions apply to the import, transit and export, as appropriate, of POPs falling within the scope of those Conventions for the purpose of environmentally sound disposal as set forth in article 6 paragraph 1(d).

The specific exemptions for the 12 initially listed POPs, other than DDT, have expired because there were no longer any Parties registered for a particular type of specific exemptions (pursuant to paragraph 9, Article 4). Therefore, guidance is not required for these substances as import/export of these POPs is only allowed for environmentally sound disposal.

1.2 Objective

The objective of this guidance document is more specifically to facilitate the control of import and exports, which is mandatory for each Party to the Convention, in particular of the 14 POPs banned or restricted between 2009 and 2015 and DDT (initially listed POP), taken as substances per se or contained in mixtures and/or in articles.

The document outlines a guidance for the import and export control of these chemicals, which also addresses the prevention of illegal trade in POPs. Such a process involves:

- The identification of chemicals as substances per se or contained in mixtures or in articles (section 1.2).
- The legal basis for control (section 2.1).

¹ Annexes A and B to the Convention describe specific exemptions, as well as acceptable purposes, that are available with respect to the relevant POPs.

See <http://chm.pops.int/Implementation/Exemptions/SpecificExemptions/tabid/1133/Default.aspx>
<http://chm.pops.int/Implementation/Exemptions/AcceptablePurposes/tabid/793/Default.aspx>

- The application of customs control (section 2.2).
- The use of supporting documents and a database for the import control of POPs by four major stakeholder groups – customs authorities, local control authorities, national government authorities, and companies (chapter 3).

An effective control mechanism requires a strong coordination effort involving all relevant stakeholders, and should be considered a high priority for successful implementation of the Convention. This involves a clear understanding of which POPs can be traded internationally and the ability to enforce regulations on such trade.

Further, in response to decision SC-7/10 with the request made by the Parties to continue updating of the guidance including on the basis of the comments received from Parties and others, thanks to the generous financial support from the European Union, the current guidance document was revised and updated incorporating such inputs.

1.3 Identification of chemicals as substances or contained in mixtures or in articles

The terms used in this document are listed in the supporting document entitled *Terminology*. Key terms include:

- **Chemical substance/chemical/substance:** characterized by following an agreed system of nomenclature such as a standardized International Union of Pure and Applied Chemistry (IUPAC) name, and/or a unique Registry Number and a Chemical Abstract Service (CAS) Index Name.
- **Chemical product:** a substance and/or a mixture/preparation of chemical substances with certain percentages or percentage ranges of the chemical substances.
- **Article²:** an object that during production is given a special shape, surface or design, which determines its function to a greater degree than does its chemical composition. Examples of articles are a car, battery, computer, telephone, printer, clothes, and refrigerator. Articles can contain liquids (e.g. car: brake fluid) and gases (e.g. refrigerator: compressed cooling gas).

Chemicals can be identified by using an agreed system of nomenclature or systematic naming (e.g. IUPAC, CAS) or a generic name; a trade name; and/or a proprietary brand name, a common name, or a company name usually designated by a trademark[®], (since long and complicated systematic names are difficult to use for marketing purposes):

- **Generic name:** This name is not specific to a chemical substance, but describes a class of chemicals. It is used by industry, for example, to protect confidential business information when the identity of the chemical should not be revealed through the systematic chemical name.
- **Common name:** This name is given to a chemical with a complicated systematic chemical name so as to communicate more easily, especially with the public.
- **Trade name:** This name is given to a chemical, mixture, or article by the company that markets/supplies it. It normally specifically identifies the chemical, mixture, or article and sometimes gives information on the company.

Examples involving a common name and/or trade name, CAS number, and systematic name include:³

- Aspirin, an analgesic, aspro, (50-78-2), 2-(Acetyloxy)benzoic acid
- Chloroform, an anaesthetic, (67-66-3), 1,1,1,-trichloromethane

² The text of the Stockholm Convention does not include a definition for “article” per se. However it makes reference to quantities of a chemical occurring as constituents of articles. See note (ii) to annex A and B of the Convention

³ While not addressing POPs chemicals, UNEP’s *Inventory of Trade Names of Chemical Products Containing Ozone Depletion Substances and their Alternatives* also provides useful examples: <http://www.unep.fr/ozonaction/information/mmcfiles/3328-e.pdf>

- DDT, a contact insecticide, (50-29-3), 1,1'-(2,2,2-trichloroethylidene)-bis[4-chlorobenzene]

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2 Introduction to the legal obligations for listed POPs

2.1 Legal basis for control

The legal and administrative measures necessary for the control of import and exports of the chemicals listed in Annex A and Annex B of the Stockholm Convention as substances, in mixtures, and, as appropriate, in articles during import and in the country are described in article 3 of the Convention (see below), and are mandatory for all Parties⁴,

Article 3 *Measures to reduce or eliminate releases from intentional production and use*

1. Each Party shall:

(a) Prohibit and/or take the legal and administrative measures necessary to eliminate:

(i) Its production and use of the chemicals listed in Annex A subject to the provisions of that Annex; and

(ii) Its import and export of the chemicals listed in Annex A in accordance

(b) Restrict its production and use of the chemicals listed in Annex B in accordance with the provisions of that Annex.

2. Each Party shall take measures to ensure:

(a) That a chemical listed in Annex A or Annex B is imported only:

(i) For the purpose of environmentally sound disposal as set forth in paragraph 1 (d) of Article 6; or

(ii) For a use or purpose which is permitted for that Party under Annex A or Annex B;

(b) That a chemical listed in Annex A for which any production or use specific exemption is in effect or a chemical listed in Annex B for which any production or use specific exemption or acceptable purpose is in effect, taking into account any relevant provisions in existing international prior informed consent instruments, is exported only:

(i) For the purpose of environmentally sound disposal as set forth in paragraph 1 (d) of Article 6;

(ii) To a Party which is permitted to use that chemical under Annex A or Annex B; or

(iii) To a State not Party to this Convention which has provided an annual certification to the exporting Party. Such certification shall specify the intended use of the chemical and include a statement that, with respect to that chemical, the importing State is committed to:

a. Protect human health and the environment by taking the necessary measures to minimize or prevent releases;

b. Comply with the provisions of paragraph 1 of Article 6; and

c. Comply, where appropriate, with the provisions of paragraph 2 of Part II of Annex B.

⁴ Amendments shall not enter into force for those Parties that have submitted a notification pursuant to the provisions of paragraph 3(b) of Article 22 of the Stockholm Convention. Also, in accordance with paragraph 4 of article 22, the amendment will not enter into force with respect to any Party that has made a declaration regarding the amendment to the Annexes in accordance with paragraph 4 of Article 25. Such Parties shall deposit their instruments of ratification regarding the amendment, in which case the amendment shall enter into force for the Party on the ninetieth (90) day after the date of deposit with the Depository.

The certification shall also include any appropriate supporting documentation, such as legislation, regulatory instruments, or administrative or policy guidelines. The exporting Party shall transmit the certification to the Secretariat within sixty days of receipt.

(c) That a chemical listed in Annex A, for which production and use specific exemptions are no longer in effect for any Party, is not exported from it except for the purpose of environmentally sound disposal as set forth in paragraph 1 (d) of Article 6;

(d) For the purposes of this paragraph, the term “State not Party to this Convention” shall include, with respect to a particular chemical, a State or regional economic integration organization that has not agreed to be bound by the Convention with respect to that chemical.

3. Each Party that has one or more regulatory and assessment schemes for new pesticides or new industrial chemicals shall take measures to regulate with the aim of preventing the production and use of new pesticides or new industrial chemicals which, taking into consideration the criteria in paragraph 1 of Annex D, exhibit the characteristics of persistent organic pollutants.

4. Each Party that has one or more regulatory and assessment schemes for pesticides or industrial chemicals shall, where appropriate, take into consideration within these schemes the criteria in paragraph 1 of Annex D when conducting assessments of pesticides or industrial chemicals currently in use.

5. Except as otherwise provided in this Convention, paragraphs 1 and 2 shall not apply to quantities of a chemical to be used for laboratory-scale research or as a reference standard.

6. Any Party that has a specific exemption in accordance with Annex A or a specific exemption or an acceptable purpose in accordance with Annex B shall take appropriate measures to ensure that any production or use under such exemption or purpose is carried out in a manner that prevents or minimizes human exposure and release into the environment. For exempted uses or acceptable purposes that involve intentional release into the environment under conditions of normal use, such release shall be to the minimum extent necessary, taking into account any applicable standards and guidelines.

In addition, chemical products and articles that contain the unintentionally produced POPs listed in Annex A or Annex B, in a concentration higher than a trace contaminant, are also regulated (see text box 2-1).

Text Box 2-1

Chemicals that may be banned or restricted globally by the Convention include:

- A listed POP as a chemical substance.
- A mixture produced by intentionally adding a listed POP.
- An article produced by intentionally adding a listed POP.
- A non-POP chemical that due to its industrial production contains a listed POP unintentionally as a contaminant in a concentration higher than a trace contaminant.
- A mixture produced by intentionally adding a non-POP chemical that, due to its industrial production, contains a listed POP unintentionally as a contaminant in a concentration higher than a trace.
- An article produced by intentionally adding a non-POP chemical that, due to its industrial production, contains a listed POP unintentionally as a contaminant in a concentration higher than a trace.

Different stakeholders within a country need to identify POPs for different purposes:

- **Companies:** to avoid illegal import, export, production and use of POPs banned or severely restricted, and to identify stockpiles of these POPs.
- **Local control authorities:** to identify illegally imported POPs and stockpiles of POPs, and to prevent banned POPs production and/or use by companies.
- **National government authorities:** to take the adequate measures as prescribed under the Convention, including identifying national stockpiles of POPs banned or severely restricted as part of the update of national implementation plans for newly listed POPs. For example, customs authorities should adopt relevant legislation and prevent illegal import and export of POPs banned or severely restricted under the Convention.

2.1.1 POPs legally on the national market

According to the decisions taken by the Conference of the Parties between 2009 and 2015 to list new POPs in Annex A and Annex B to the Stockholm Convention, the following substances can be legally on the market, subject to specific national laws, (either produced, used and/or traded within the territory of a Party, in accordance with the respective provisions) **provided that the Party has [registered for the relevant specific exemptions or acceptable purposes](#)**⁵ :

- **Lindane:** No production allowed; use is allowed as a specific exemption for human health pharmaceutical for control of head lice and scabies as second line treatment. This provision is available to Parties for five years from August 26, 2010⁽⁷⁾, the date of entry into force of this decision.
- **Endosulfan:** Production is allowed only for the purposes of its allowed uses; uses are allowed on certain crop-pest complexes as provided under specific exemptions in part VI of Annex A. This provision is available to Parties for five years from 27 October 2012⁶ the date of entry into force of this decision.
- **DDT:** Production is allowed only for the purposes of its allowed uses; use is allowed for disease vector control in accordance with the World Health Organization recommendations and guidelines on the use of DDT as provided in part II of Annex B. The acceptable purpose has no expiry date unless the Annex is amended.
- **Hexabromocyclododecane:** Production is allowed for the purposes of its allowed use. This is for expanded polystyrene and extruded polystyrene in buildings in accordance with the provisions of Part VII of Annex A.
- **Pentachlorophenol and its salts and esters:** Production is allowed for the purposes of its allowed use. This is for pentachlorophenol for utility poles and cross-arms in accordance with the provisions of part VIII of Annex A.
- **Polychlorinated naphthalenes:** Production is allowed for the purposes of its allowed use. This is as intermediates in the production of polyfluorinated naphthalenes, including octafluoronaphthalene.

⁵ From article 4, paragraph 4: “unless an earlier date is indicated in the Register by a Party, or an extension is granted pursuant to paragraph 7 of the same article, all registrations of specific exemptions shall expire five years after the date of entry into force of the Convention with respect to a particular chemical”. In addition, paragraph 9 of the same article states that “when there are no longer any Parties registered for a particular type of specific exemption, no new registrations may be made with respect to it.

⁶ The amendment shall not enter into force on that date for those Parties that have submitted a **notification** pursuant to the provisions of paragraph 3(b) of Article 22 of the Stockholm Convention. Also, in accordance with paragraph 4 of article 22, the amendment will not enter into force with respect to any Party that has made a **declaration** regarding the amendment to the Annexes in accordance with paragraph 4 of article 25. Such Parties shall deposit their instruments of ratification regarding the amendment, in which case the amendment shall enter into force for the Party on the ninetieth (90) day after the date of deposit with the Depositary.

- **Tetrabromodiphenyl ether and pentabromodiphenyl ether or hexabromodiphenyl ether and heptabromodiphenyl ether**⁷: Recycling of articles containing these chemicals, and the use and final disposal of articles produced from these recycled materials containing commercial PentaBDE or OctaBDE, are allowed where the Party has notified the Secretariat of its intention to make use of this specific exemption and in accordance with the provisions in Annex A, Parts IV and V. The specific exemption will expire in 2030 for all Parties.

PFOS, its salts, PFOF (and PFOS-related chemicals originating from PFOS, its salts and PFOF) as substances, in mixtures, and in articles containing these chemicals: Production allowed for the uses identified as: substances, in mixtures and in articles containing these chemicals as specific exemptions or acceptable purposes listed in part I of Annex B. Parties that produce and/or use these chemicals shall take into account, as appropriate, guidance such as that given in the relevant parts of the general guidance on best available techniques and best environmental practices given in Part V of Annex C of the Convention. PFOS-related chemicals are chemicals that contain the structural element of PFOS in their molecular structure as they are and were produced with perfluorooctane sulfonic acid (PFOS), its salts or perfluorooctane sulfonyl fluoride (PFOF) as an intermediate or starting material. The specific exemption⁸ is available for five years from the date of entry into force of the amendment for a Party while the acceptable purposes have no expire dates unless otherwise the COP decides.

2.1.2 POPs legally traded

According to the Stockholm Convention, only the following — as substances, in mixtures, or in articles — are allowed to be traded between Parties, involving export from one Party and import into another Party. In general, the procedure for the legal trade between Parties is the same for all chemicals: the importing and the exporting Parties need to be registered for the respective specific exemptions. Relevant provisions on import and export are described in article 3, paragraph 2 (a) and 2(b)

- **Lindane:** Trade of lindane or of a mixture containing lindane is allowed provided the importing Party and exporting Party have registered the specific exemption for lindane.
- **Endosulfan:** Trade of endosulfan as a substance is allowed provided the exporting Party has registered a specific exemption for the use of a crop-pest complex and the importing Party has registered a specific exemption for the use for the same crop-pest complex. Trade of a mixture containing endosulfan is allowed provided the exporting Party and importing Party have registered a specific exemption for the use of the same crop-pest complex.
- **DDT:** Trade of DDT as a substance is allowed provided the exporting Party has notified the Secretariat of the intention to produce it for the acceptable purpose and the importing Party has notified the Secretariat of the intention to use it for the acceptable purpose. Trade of a mixture containing DDT is allowed provided the exporting Party and the importing Party have notified the Secretariat of the intention to use DDT for the acceptable purpose.
- **Tetrabromodiphenyl ether and pentabromodiphenyl ether or hexabromodiphenyl ether and heptabromodiphenyl ether:** Export and import of articles that contain these chemicals are allowed

⁷ For Stockholm Convention “Hexabromodiphenyl ether and heptabromodiphenyl ether” means 2,2',4,4',5,5'-hexabromodiphenyl ether (BDE-153, CAS No: 68631-49-2), 2,2',4,4',5,6'-hexabromodiphenyl ether (BDE-154, CAS No: 207122-15-4), 2,2',3,3',4,5',6-heptabromodiphenyl ether (BDE-175, CAS No: 446255-22-7), 2,2',3,4,4',5',6-heptabromodiphenyl ether (BDE-183, CAS No: 207122-16-5) and other hexa- and heptabromodiphenyl ethers present in commercial octabromodiphenyl ether. And “Tetrabromodiphenyl ether and pentabromodiphenyl ether” means 2,2',4,4'-tetrabromodiphenyl ether (BDE-47, CAS No: 5436-43-1) and 2,2',4,4',5-pentabromodiphenyl ether (BDE-99, CAS No: 60348-60-9) and other tetra- and pentabromodiphenyl ethers present in commercial pentabromodiphenyl ether.

⁸ No new registrations may be made with regard to specific exemptions for the production and use of PFOS, its salts and PFOF for carpets, leather and apparel, textiles and upholstery, paper and packaging, coating additives and rubber and plastics (decision SC-7/1).

for recycling, provided the exporting Party and the importing Party have notified the specific exemption for recycling to the Secretariat. The exporting Party should take steps to prevent exports of such articles that contain levels/concentrations of commercial PentaBDE or commercial OctaBDE exceeding those permitted for the sale, use, import, or manufacture of those articles within the territory of the Party.

- **PFOS, its salts, PFOSE and PFOS-related chemicals as substances, in mixtures, and in articles containing these chemicals:**
 - Trade of PFOS, its salts, PFOSE or PFOS-related chemicals as a substance is allowed provided the exporting Party has registered the production/use for a certain specific exemption or notified its intention to produce/use the substance for a certain acceptable purpose, and the importing Party has registered the same specific exemption for use or the importing Party has notified the intention to use the substance for the same acceptable purpose.
 - Trade is allowed for PFOS, its salts, PFOSE or PFOS-related chemicals contained in a mixture or in an article provided the exporting Party has registered the mixture or the article for a certain specific exemption or notified its intention to use the mixture or the article for a certain acceptable purpose and the importing Party has registered the use of the mixture or the article for the same specific exemption or the importing Party has notified the intention to use the mixture or the article for the same acceptable purpose.

POPs can also be legally traded between Parties and non-Parties (exported or imported), in accordance with the procedures given in the Convention. Non-Parties are not bound to the Convention.

Paragraph 2 (b) of Article 3 of the Stockholm Convention states that each Party to the Convention shall take measures to ensure that a chemical listed in Annex A for which any production or use specific exemption is in effect or a chemical listed in Annex B for which any production or use specific exemption or acceptable purpose is in effect, taking into account any relevant provisions in existing international prior informed consent instruments, is exported only:

1. For the purpose of environmentally sound disposal as set forth in paragraph 1 (d) of Article 6;
2. To a Party which is permitted to use that chemical under Annex A or Annex B; or
3. To a State not Party to this Convention which has provided an annual certification to the exporting Party. Such certification shall specify the intended use of the chemical and include a statement that, with respect to that chemical, the importing State is committed to:
 - a. Protect human health and the environment by taking the necessary measures to minimize or prevent releases;
 - b. Comply with the provisions of paragraph 1 of Article 6; and
 - c. Comply, where appropriate, with the provisions of paragraph 2 of Part II of Annex B.

The certification shall also include any appropriate supporting documentation, such as legislation, regulatory instruments, or administrative or policy guidelines. The exporting Party shall transmit the certification to the Secretariat within sixty days of receipt.” At its sixth meeting, the Conference of the Parties adopted the template for the certification of non-party imports, pursuant to paragraph 2 (b) (iii) of Article 3⁹

Additional information on the regulation of POPs under the Stockholm Convention can be found, for example, in the document [Examples and decisions on the control of legal international trade of lindane](#), which describes the activities required by the different stakeholders involved in the control of the legal trade of lindane between Parties (and between a non-Party and a Party).

⁹ <http://chm.pops.int/Procedures/ExporttoanonPartyState/tabid/3349/Default.aspx>

[General provisions](#) for POPs in Annex A or Annex B and information on notifications and the register of specific exemptions¹⁰ or acceptable purposes¹¹ can be consulted on the Convention's website.

Wastes originating from an allowed use of the listed POPs in question (lindane; DDT; endosulfan; tetrabromodiphenyl ether and pentabromodiphenyl ether or hexabromodiphenyl ether and heptabromodiphenyl ether; PFOS, its salts, PFOSF) as substances, in mixtures, and in articles are subject to Article 6 of the Convention. Tables that summarize the obligations related to these POPs under the Convention are contained in *Summary tables of legal obligations for Lindane, Endosulfan, DDT, and PFOS, its salts, PFOSF and PFOS related chemicals*¹².

2.1.3 Obligations for POPs from other international multilateral environmental agreements (MEA): Rotterdam Convention and Basel Convention

The Rotterdam Convention¹³ covers pesticides and industrial chemicals that have been banned or severely restricted for health or environmental reasons by at least two Parties from different PIC regions who report these regulatory actions to the Secretariat. Developing country Parties or countries with economies in transition can nominate "severely hazardous pesticide formulations" to the Secretariat for consideration. The Secretariat and a scientific body (Chemicals Review Committee) review the regulatory actions, or the nominations as the case may be, and supporting scientific documentation against pre-defined criteria and determine whether the substances should be recommended for inclusion in the Prior Informed Consent (PIC) procedure. Where the Conference of the Parties agrees by consensus that a chemical or pesticide should be included in the PIC procedure, it is listed in Annex III to the Convention. Once a chemical or pesticide is included in Annex III, a Decision Guidance Document (DGD), containing information about the chemical and the regulatory decisions to ban or severely restrict it for health or environmental reasons, is circulated to all Parties. Parties must then provide an import response which may consist of either a final decision (to allow import of the chemical, not to allow import, or to allow import subject to specified conditions) or an interim response. The import responses are circulated and Parties are obligated under the Rotterdam Convention to take appropriate measures to ensure that exporters within their jurisdiction comply with these decisions. Some chemicals in Annex III of the Rotterdam Convention are also POPs listed in the Annexes of the Stockholm Convention. When these POPs are exported and imported, the obligations, as set out under both the Stockholm and Rotterdam Conventions, apply.

The main provisions of the Basel Convention¹⁴ provide for a control system for the transboundary movement of hazardous wastes, whereby no transboundary movements are to occur without the prior written informed consent of the Party of import and approved movements must be accompanied by a movement document until the disposal facility is reached. No transboundary movements are to occur unless the receiving jurisdiction can manage them in an environmentally sound manner. Technical guidelines for the environmentally sound management of waste containing POPs have been developed and are being updated by the Basel Convention. Transboundary movements of POPs under the Stockholm Convention defer to the Basel Convention in this regard (BC article 6.1 (d)(iv)). The Stockholm Convention (article 6.2) requires that its Conference of the Parties cooperate closely with the appropriate bodies of the Basel Convention.

Additional guidance on synergies among these MEA's is available in the "Manual for customs officers on hazardous chemicals and wastes under the Basel, Rotterdam and Stockholm Conventions"¹⁵, which describes

¹⁰ <http://chm.pops.int/Implementation/Exemptions/RegisterofSpecificExemptions/tabid/1133/Default.aspx>

¹¹ <http://chm.pops.int/Implementation/Exemptions/AcceptablePurposes/tabid/793/Default.aspx>

¹² <http://chm.pops.int/Implementation/NationalImplementationPlans/Guidance/NIPGuidanceSupportingDocuments/tabid/2941/Default.aspx>

¹³ <http://www.pic.int/TheConvention/Overview/tabid/1044/language/en-US/Default.aspx>

¹⁴ <http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx>

¹⁵ <http://www.brsmeas.org/Implementation/TechnicalAssistance/ToolsandMethodologies/ManualforCustomsOfficers/tabid/4457/language/en-US/Default.aspx>

in general what customs should know to facilitate the legal trade in hazardous chemicals and wastes. The manual also informs about the objectives, procedures, rights and obligations contained in these three multilateral environmental agreements as they relate to the work of customs.

2.2 Customs control recommendations

Government authorities can have an increased ability to enforce national legal frameworks pertaining to the import, transit and export of hazardous chemicals and wastes if law enforcement officers are aware of their role in enforcing MEAs. The moment chemicals and wastes cross borders provides a unique opportunity to verify that any transboundary movement is taking place with the applicable rules. Customs are among the most appropriate authorities to perform monitoring and controlling actions at that stage¹⁶.

Customs control of imported POPs as substances, mixtures, and/or articles, (hereunder referred to as goods) can be undertaken by means of several approaches or tools. The first step is to identify and apply the national legislation that is required for the import and export of POPs. The level of control and the resource requirements increase from tool to tool.

- Control of customs papers related to the imported POPs as goods
- Inspection of the imported good based on a risk analysis
- Laboratory analysis to identify the imported good

2.2.1 Control of customs papers related to the imported good

The first task of customs authorities is to identify the applicable national legislation (rule, standards, etc.) and then check the customs declarations and the customs code assigned by the importer against the Harmonized Commodity Description and Coding System (“Harmonized System” or HS) of the World Customs Organization (WCO). Chemical-specific HS code numbers exist for some listed POPs, particularly those also listed in Annex III of the Rotterdam Convention.¹⁷ The information or the description of the imported good, if it is a chemical, would then be compared with the available information in the databases that might be available concerning chemical names, CAS numbers, as well as common names/trade names/generic names of banned or restricted chemicals (especially the new POPs). Customs authorities should also request a declaration from the importer that the imported good is in conformity with the existing national POPs legislation.

2.2.2 Inspection of the imported good based on a risk analysis

Customs regulations are generally designed to ensure payment of customs duties, observance of prohibitions and restrictions, and the application of special rules and quotas, preferences, and other trade measures. For every regulation, there is a corresponding risk that traders may – intentionally or not – break it. Risk analysis in the context of customs controls is a working method that aims to concentrate controls on areas of highest risk of violation while, at the same time, leaving the majority of trade to flow relatively free through customs.

Risk analysis techniques attempt to identify and quantify these risks in order to develop control procedures through:

¹⁶ http://www.brsmeas.org/Portals/2/eLearningEnforcement/en/1378218889/SCO_0002/default.htm

¹⁷ <http://www.pic.int/TheConvention/Chemicals/AnnexIIIChemicals/HarmonizedSystemCodes/tabid/1159/language/en-US/Default.aspx>

- Selecting goods for documentary check or physical examination, e.g. newly listed POPs could be considered a risk and warrant inspection.
- Concentrating control effort of customs officers on those risk areas where breaches of the regulations are most likely to occur – whether deliberate or not.

Various factors within a risk area can increase or decrease the level or degree of risk to the revenue or enforcement function. These factors are called "risk indicators". Depending on the risk area, several risk indicators can be used to establish a "risk profile" for risk analysis (see text box 2-2). The risk profile identifies the risk areas in as high, medium, or low for the particular customs location and expresses the risk areas. If the risk analysis indicates a high or medium risk of violation, the documentation would be more thoroughly checked or the goods inspected. Customs officers would review the risk profiles at regular intervals.¹⁸

Another approach for risk analysis involves customs officers checking the labelling of the packaging of the container and goods being imported (and in temporary storage) should the need arise to undertake laboratory analysis of the goods (see section 2.2.3). Recommendations for labelling include the following:

- **Major transported containers:** in accordance with the UN Recommendations on the Transport of Dangerous Goods (UN TGD, 19th revised edition)¹⁹.
- **Packages of a chemical substance:** in accordance with the UN Globally Harmonized System of Classification and Labelling of Chemicals (GHS, 6th revised edition)²⁰ including a product identifier (CAS Registry Number and name, and/or IUPAC name) for the POPs chemicals and supplier identification (name, address, telephone number). For a mixture, the same information would be provided as well as the concentration or concentration ranges of all hazardous ingredients above their cut-off levels.

Approaches to assist Parties in the labelling of POPs, based on a range of voluntary and legally binding instruments, are outlined in the Draft Guidance for *Labelling of Products or Articles that Contain POPs – Initial Considerations*²¹.

Text Box 2-2

Chemicals that may be banned or restricted globally by the Convention include:

Some risk indicators for establishing a risk profile for customs freight

- Commodity code
- Country of origin and where consigned
- Trader compliance from own experience or other countries warning, name of POPs supplier (see *Possible producers/suppliers of all listed POPs*)
- Value, financial consequences, and financial situation of the trader
- Means of transport

¹⁸ EU Chemicals/Customs Group, Doc 1/96/Rev.2/05.09.996.

¹⁹ https://www.unece.org/trans/danger/publi/unrec/rev19/19files_e.html

²⁰ https://www.unece.org/trans/danger/publi/ghs/ghs_rev06/06files_e.html

²¹ <http://chm.pops.int/Implementation/NIPs/Guidance/Labellingofproductsorarticles/tabid/3174/Default.aspx>

2.2.3 Laboratory analysis to identify the imported good

Customs authorities with access to laboratories mainly analyse samples taken to verify the customs tariff based on the HS code chosen by the person who declares the good. As the HS code is often not chemical specific, the normal customs analysis in these cases reveals only the chemical class but not the chemical identity. (See, however, note above on POPs chemicals listed within the Rotterdam Convention.)

For import control and possible monitoring at customs or at consumer protection level, and based on relevant national legislation, customs authorities may need to check for specific POPs in some materials where the designation is uncertain, unclear, or close to a threshold. They can do this through the use of certified laboratories, following the *Guidance on sampling, screening and analysis of POPs in Articles and Products*²² that can identify and quantify POPs as a substance, in mixtures, and in an article. More guidance on customs procedures to control import of chemicals can be found in the *E-learning module for law enforcement officers*.²³

2.2.4 Limitations of controls

The controls and customs tools described above may only be of limited value in certain circumstances, for example, when controlling regulated POPs that are:

- A non-POP chemical that, due to its industrial production, contains a POP listed in Annex A or Annex B unintentionally as a contaminant in a concentration higher than a trace contaminant.
- A mixture produced by intentionally adding a non-POP chemical that, due to its industrial production, contains a listed POP unintentionally as a contaminant in a concentration higher than a trace.
- An article produced by intentionally adding a non-POP chemical that, due to its industrial production, contains a listed POP unintentionally as a contaminant in a concentration higher than a trace.

For the control of these unintentionally produced POPs or polluted products or articles, information needs to be available on which substances, mixtures, and articles are expected from past analysis to contain more than a trace component of newly listed POPs or DDT (see *Chemicals contaminated with POPs*).

The United Nations Environment Programme's (UNEP) *Inventory of Trade Names of Chemical Products Containing Ozone Depletion Substances and Their Alternatives*²⁴ is one model of how to use trade names in the control of banned chemicals. The example of the Montreal Protocol shows that import control can be facilitated with an inventory containing the trade name of substance or mixture, the chemical name of substance or of components of the mixture, and the name of the company that produces the substance or mixture.

2.2.5 Import permit/license by relevant ministries before actual import

The border control procedure for chemicals (import/export) should be applied based on national legislation and in compliance with relevant obligations under MEAs. The procedure may vary depending on actual national laws and the controls and tools applied in the process. For example, some countries require that an import permit/license be requested from the relevant ministry/agency before the actual import of the chemical good can take place. In doing so, the importer has to identify the chemical good such that it can be controlled by the ministry/agency with existing lists of banned and restricted chemicals in the country. The relevant ministry/agency for import permits could consider having an agreement with customs that specifies

²² <http://chm.pops.int/Implementation/NIPs/Guidance/guidanceonsampling,screeningetcofPOPs/tabid/5333/Default.aspx>

²³ <http://www.brsmeas.org/Implementation/TechnicalAssistance/ToolsandMethodologies/Elearningmoduleforlawenforcement/tabid/3534/language/en-US/Default.aspx>

²⁴ <http://www.unep.fr/ozonaction/information/mmcfiles/3328-e.pdf>

their respective roles and tasks. Some practical examples are described in the Basel Convention's "Export and Import Control Tool"²⁵.

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²⁵<http://www.basel.int/Implementation/Controllingtransboundarymovements/ExportandImportControlTool/tabid/4284/Default.asp>
x

3 Use of supporting documents in the enforcement of national law implementing the Stockholm Convention

3.1 Supporting documents and database for the import control of POPs

A set of supporting documents and searchable database have been developed by the Secretariat of the Stockholm Convention and they are expected to facilitate control of the POPs:

- Information on chemicals, mixtures, and articles containing POPs listed in Annexes A and B of the Stockholm Convention
- Information on to what extent production, use, and international trade remains legal for the listed POPs — lindane, endosulfan, DDT, PFOS, its salts and PFOSF — as well as recycled material from articles in use containing commercial PentaBDE and OctaBDE.
- Examples and decisions trees on the control of legal international trade of lindane.
- Summary tables of legal obligations for Lindane, Endosulfan, DDT, and PFOS, its salts, PFOSF and PFOS related chemicals.
- Possible producers/suppliers of POPs.
- Analytical POPs standard producers/suppliers
- A database comprising of the following:
 - Information on POPs listed in from 2009 to 2015 and DDT: common name, chemical name, CAS number, HS code chemical, HS code mixture, UN transport number, trade names, company names, classification and labeling details, GHS cut-off values, Stockholm Convention control measures, and legal status within Party (to be filled in by Parties).
 - Identity of PFOS and PFOS-related chemicals: chemical name and CAS number for PFOS, its salts, PFOSF and PFOS-related chemicals as well as trade names and company names.
 - Chemicals contaminated with POPs: chemical name, CAS number, common names, name of POPs contaminant, and relevant Stockholm Convention Annex, for chemicals that may contain a POP listed in Annex A, B, or C.
- List of Parties and associated amendments that have entered into force (available in the SC website).

3.2 Legal trade

The control measures of banned or severely restricted POPs as substances, in mixtures, and as appropriate in articles during import and in the country is mandatory for all Parties and essential for the success of the Stockholm Convention. The provisions for elimination (Annex A chemicals) and restrictions (Annex B chemicals) for POPs, however, do not apply to laboratory-scale research and to POPs reference standards. For chemicals with registered exemptions/acceptable purposes — such as lindane, endosulfan, hexabromocyclododecane, pentachlorophenol and its salts and esters, polychlorinated naphthalenes, or PFOS, its salts, PFOSF and PFOS-related chemicals — the CAS number, chemical name, and trade names will support the control of legal trade for exempted use(s) and acceptable purposes.

For chemicals that are contained in articles — like tetrabromodiphenyl ether and pentabromodiphenyl ether or hexabromodiphenyl ether and heptabromodiphenyl ether, hexabromocyclododecane, polychlorinated naphthalenes — and for articles containing PFOS, its salts, PFOSF and PFOS-related chemicals for exempted uses or acceptable purposes, trade names for these articles are also expected to be helpful in their control. The database therefore presents information on HS codes, chemical names, CAS numbers as well as common names/trade names/generic names – for lindane, DDT, endosulfan, commercial PentaBDE and commercial OctaBDE, as well as PFOS, its salts, PFOSF and PFOS-related chemicals as substances, in mixtures,

and in articles. DDT, an initial POP, is included because it is still legally produced and traded for an acceptable purpose.

3.3 Potential for illegal trade

The document *Information on chemicals, mixtures, and articles containing POPs listed in Annexes A and B of the Stockholm Convention* describes to what extent production, use, and international trade remain legal for the listed POPs —lindane, endosulfan, DDT, PFOS, its salts and PFOSF — as well as recycled material from articles in use containing commercial PentaBDE and OctaBDE.

Specific attention needs to be given to PFOS. For this POP, Annex B of the Stockholm Convention explicitly lists the PFOS acid, its salts and PFOSF. These chemicals, as well as the PFOS-related chemicals, are regulated through Annex B as they are expected to degrade in the environment to PFOS. A list of PFOS, its salts, PFOSF and PFOS-related chemicals with chemical names and CAS numbers, together with trade names and company names, can be found in the database.

Trade names of chemicals and mixtures for newly listed POPs that are totally banned for production and use, such as α - and β -hexachlorocyclohexane or hexabromobiphenyl, are expected to be of limited value to control of the illegal trade of these chemicals. Although it is expected that importers would not use the chemical name or a common/trade name when illegally importing a banned POP, they cannot be excluded.

The document *Possible producers/suppliers of POPs*²⁶ contains the names of producers/suppliers of POPs, which customs could use in a risk analysis to identify possible illegal trade. For the control of chemicals containing POPs unintentionally, customs could use “*Chemicals contaminated with POPs*”²⁷.

3.4 Use of the database for import and export control

As mentioned in section 2.1, customs authorities, local control authorities, national government authorities, and companies – need to collect the necessary information (see text box 3-1) to identify the POPs as a substance, in mixtures, or in articles in the country.

Text Box 3-1

Data that facilitate identification of POPs

- Chemical name and CAS number (for POPs as a substance or in mixtures)
- HS code for POPs as a substance (specific or generic HS code) or in mixtures
- Trade names/common names/generic names (for POPs as a substance or in mixtures or articles)
- UN number of transported goods
- Classification and labelling according to the GHS with name of POPs as a substance or in mixtures and name of producer/supplier
- Use of the chemical and supplier

Comparison of the collected information with information available in the database is expected to facilitate the control of trade of POPs as substances, in mixtures, and in articles. This procedure is one element of a

²⁶<http://chm.pops.int/Implementation/NationalImplementationPlans/Guidance/NIPGuidanceSupportingDocuments/tabid/2941/Default.aspx>

²⁷<http://chm.pops.int/Implementation/NationalImplementationPlans/Guidance/NIPGuidanceSupportingDocuments/tabid/2941/Default.aspx>

monitoring system to control the import and export of POPs. Different national stakeholders could have different ways to access information that allows them to identify a POP, including those outlined below.

3.4.1 Customs authorities

Customs papers and databases related to the imported good as chemicals, mixtures, or articles (chemical goods) provide helpful information for control of the import of POPs.

- The chemical identity, if in doubt, can be verified by contacting the supplier directly and, if the supplier does not respond, by contacting the Stockholm Convention national focal point of the exporting Party. The chemical good should remain under customs control until the situation is clarified.
- The UN transport number can also be used to search for the identity of the good *in the database Information on POPs listed in 2009 and 2011 and DDT*²⁸ (not yet updated for POPs listed in 2013 and 2015). This number is generally not chemical specific but covers large groups of chemicals.
- The HS code needs to be given in the customs papers together with other information that facilitates the identification of the imported goods, e.g. the use of the goods and the supplier. The HS code can be checked in *Information on POPs listed in 2009 and 2011 and DDT* and can, if the HS code is chemical specific, be used to identify the imported chemical. If the HS code relates to a group of chemicals, also including a POP, this information can be used for the customs risk analysis (as described in section 2.2.2) to identify possible illegal trade. Some risk indicators are described in the text box 2-2). If one or more of the risk indicators were positive, the imported chemical goods would be inspected.
- The POPs chemical name and CAS number together with supplier information would appear on the label of the imported chemical goods if the POP is imported as such or in a mixture. This information, if found during an inspection of the imported good, would be used to search the chemical names in databases. If a country has a relevant authority for import permits, this authority could consider having an agreement with customs their respective roles and tasks. For example:
 - Who would be responsible for conducting a risk analysis to identify potential violations based on the information of the identity, supplier, exporting country, and the use of the chemical good?
 - If the risk analysis is performed by the relevant authority for import, customs could be obliged to inspect the chemical good and check whether the information (such as trade, chemical name, label, use and the physical appearance) is consistent with the identity provided by the importer.

If a POP has been identified in the imported good, it should be checked using the information of the legal status of the POP within the Party to determine whether the import was legal or illegal. Information on the legal import of a POP could be given to the national authority responsible for the management of POPs.

If a chemical has been identified that might contain a POP in Annex A or Annex B, the importer may be requested to contact the exporter to confirm whether the chemical contains no more than an unintentional trace contaminant of that POP. If this confirmation is given, the import could be allowed. In case of doubt and if there are resources available, the POPs content could be identified by a chemical analysis. If the confirmation of the content is not provided, import would not be allowed.

If the import is not legal, the management options in the Party for that situation should be applied. Requesting that the importer transport the good back to the exporting Party would also be considered.

²⁸://chm.pops.int/Implementation/NationalImplementationPlans/Guidance/NIPGuidanceSupportingDocuments/tabid/2941/Default.aspx

3.4.2 Companies

Companies that import chemicals, mixtures, and/or articles should endeavour to identify POPs in the imported chemical goods and to avoid illegal trade. The information that is available to companies is normally the chemical name, or for mixtures the chemical names of the hazardous components, trade name, use, and supplier of the chemical goods. Also the HS code has to be known for customs purposes. This information can be used as described under customs authorities to identify POPs. Companies that purchase or handle chemicals could request from the exporter a declaration that no POPs are contained in the imported goods.

3.4.3 Local control authorities and national government authorities

Local control authorities could request that companies supply them with a list of all POPs that are used as substances, in mixtures, or in articles used by the company or produced and marketed. Under some circumstances, a list of all hazardous chemicals could be required. During inspection, the list of all POPs would be verified with the information found during inspection, as described under customs authorities, to identify POPs. National government authorities responsible for establishing an inventory of newly listed POPs could also use the instruments to identify POPs. Local control authorities would cooperate with these national government authorities.

Elements to be considered for customs control

- ✓ Are the officers familiar with the legal basis in national law for control of POPs chemicals?
- ✓ Do they recognize the hazardous chemical designations and characteristics of the new POPs chemicals following training or participation in information awareness-raising programmes?
- ✓ Are officers familiar with obligations pertaining to import and exports of POPs under MEAs?
- ✓ Have they been provided with access to the range of databases that list, for example, POPs chemical data, suppliers, and trade names?
- ✓ Have the data and information provided been transferred in a suitable format, to local and national government authorities and chemical importers?
- ✓ Have the data and information provided been relayed to the National POPs focal point?
- ✓ Are they familiar with the new Harmonized Customs codes being applied to the same specific chemicals that are also subject to the Rotterdam Convention and aware of the ongoing cooperation between the two organizations?
- ✓ Are they familiar with the hazard warning signs and pictograms associated with hazardous chemicals designated by the UN's Recommendations on the Transport of Dangerous Goods and the GHS?
- ✓ Have they successfully applied the risk analysis approach to goods that may assist with the identification of risks associated with the import of specific POPs chemicals, especially as mixtures and/or in articles?