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

2019

Secretariat of the Basel, Rotterdam and Stockholm Conventions

Acknowledgement:

The European Union is gratefully acknowledged for providing the necessary funding that made the production of this publication possible.

The feedback from Parties and observers to the Stockholm Convention on Persistent Organic Pollutants would be highly appreciated. This publication was prepared on the bais of the draft referenced in UNEP/POPS/COP.7/16.

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Recommended citation: UNEP (2019). Guidance for the control of the import and export of POPs under the Stockholm Convention. Secretariat of the Basel, Rotterdam and Stockholm Conventions, United Nations Environment Programme.

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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 on Persistent Organic Pollutants is a global treaty to protect human health and the environment from chemicals that remain intact in the environment for long periods, become widely distributed geographically, accumulate in the fatty tissue of humans and wildlife, and have harmful impacts on human health or on the environment.

The Stockholm Convention prohibits or restricts the production and use of the persistent organic pollutants (POPs) listed in its Annexes A, B and/or C and regulates the export and import of intentionally produced chemicals listed in Annexes A and B to the Convention. The Convention also makes specific provision to give Parties the time that may be needed to adapt and take the necessary measures required by the Convention, in order to reduce or eliminate releases of POPs. To enable Parties to take such measures to reduce or eliminate releases of POPs from intentional production and use, for which alternatives do not yet exist or are not readily available, the Convention allows for "specific exemptions" and "acceptable purposes". This adds flexibility but also complexity to the regime controlling the international trade and management of POPs.

Parties have an obligation to take various measures to reduce or eliminate releases from intentional production and use under article 3.[1] These measures include an obligation 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 B[2].

With respect to the export: chemicals for which any production or use specific exemption or acceptable purpose is in effect, can only be exported under the following circumstances:

- For the purpose of environmentally sound disposal as set out in paragraph 1(d) of Article 6;
- To a Party permitted to use that chemical under Annex A or Annex B (meaning a Party that is able to make use of a specific exemption or acceptable purpose); or
- To a non-Party State that has provided annual certification to the exporting Party as specified in Article 3(2)(b)(iii).

In exporting, Parties also have to take into account any relevant provisions in existing international prior informed consent instruments, such as the Basel and/or Rotterdam Conventions.

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).

Certain specific exemptions have expired because there were no longer any Parties registered for a particular type of specific exemption (pursuant to paragraph 9, Article 4). Consequently, this guidance does not include these chemicals as import/export would only allowed for environmentally sound disposal.

The Conference of the Parties, by decision SC-8/8 adopted in 2017, requested the Secretariat to continue to update the guidance documents, on the basis of the comments received from Parties and others including from Basel Convention bodies. Consequently, thanks to the generous financial support from the European Union, the current document has been revised and updated.

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1 Obligations relating to unintentional release are covered under Article 5 of the Convention

2 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

1.2 Objective

The objective of this guidance document is more specifically to help Parties understand and implement their obligations to control of import and exports. The document aims in particular to address the chemicals initially listed in Annexes A, B and C to the Convention, whether as chemicals or contained in mixtures and/or in articles.

Effective import and export control of these chemicals also contributes to prevent the illegal trade in POPs. This document provides guidance as to steps Parties can take to ensure in their jurisdiction they have established:

- A legal basis for control (section 2.1);
- Effective customs control, that is being applied on the ground (section 2.2);
- A framework aimed at four major stakeholder groups – customs authorities, local control authorities, national government authorities, and companies – to disseminate and encourage use of supporting documents developed under the Convention; and to establish and provide access to a database for the import control of POPs by (chapter 3).

Coordination among all stakeholders involved in chemicals management is another key element of an effective control mechanism addressed in this guidance document. Parties are encouraged to make coordination a high priority for successful implementation of the Convention. This requires a clear understanding of which POPs can be traded internationally and the ability to enforce regulations on such trade.

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.
- **Article**[3]: 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.

[3] Although the text of the Stockholm Convention refers to “article” at various points, it does not provide a definition for “article” per se e,g, note (ii) to annex A and B of the Convention. The definition used in this guidance document is for the purpose of this document only and is not intended as an interpretation of the Convention. Parties retain the authority to interpret or define the provisions of the Convention.

Examples involving a common name and/or trade name, CAS number:[4]

- Aspirin, an analgesic, aspro, (50-78-2), 2-(Acetyloxy)benzoic acid
- Chloroform, an anaesthetic, (67-66-3), 1,1,1,-trichloromethane
- DDT, a contact insecticide, (50-29-3), 1,1'-(2,2,2-trichloroethylidene)-bis[4-chlorobenzene]

2. Introduction to the obligations for listed POPs

2.1 Legal basis for control

The main provisions in the Convention about the measures Parties need to take to control the import and export of chemicals listed in Annex A and Annex B are contained in article 3 of the Convention (see below). These create binding obligations on all Parties[5],

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.

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[4] 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

[5] Amendments do not enter into force for those Parties that have submitted a notification of non-acceptance pursuant to the provisions of paragraph 3(b) of Article 22 of the Stockholm Convention. Also, in accordance with paragraph 4 of article 22, amendments will not enter into force with respect to any Party that has made a declaration regarding amendment to the Annexes in accordance with paragraph 4 of Article 25. Such Parties shall deposit their instruments of ratification, acceptance, approval or accession 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 of the instrument.

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.

In addition, quantities of chemicals occurring as unintentional trace contaminants in products and articles are not considered chemicals listed in Annexes A or B to the Convention (see text box 2-1).

Text Box 2-1

Chemicals that may be controlled (elimination or restriction) through the Convention include:

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

Different stakeholders need to identify POPs for different purposes, such as:

- **National government authorities**: to take the adequate measures to implement 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 measures and prevent illegal import and export of POPs banned or severely restricted under the Convention.
- **Local control authorities**: to identify illegally imported POPs and stockpiles of POPs, and to prevent banned POPs production and/or use by companies.
- **Companies:** to avoid illegal import, export, production and use of POPs banned or severely restricted, and to identify stockpiles of these POPs in order to take action for regulatory, financial, health or other reasons.

2.1.1 POPs legally on the national market

According to the decisions taken by the Conference of the Parties to list new POPs in Annex A and Annex B to the Stockholm Convention, in certain circumstances there can be trade in, production and/or use of the following chemicals, subject to specific national laws or other measures and provided that the Party has registered for the available specific exemptions or acceptable purposes[6]

[6] 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, 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: "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." See for example decision SC-7/1 in relation to certain specific exemptions for the production and use of perfluorooctane sulfonic acid, its salts and

- **Decabromodiphenyl ether[7]:** Use is permitted in accordance with Part IX of Annex A for: Parts for use in vehicles specified in paragraph 2 of Part IX; Aircraft for which type approval has been applied for before December 2018 and received before December 2022 and spare parts for those aircraft; Textile products that require anti-flammable characteristics, excluding clothing and toys; Additives in plastic housings and parts used for heating home appliances, irons, fans, immersion heaters that contain or are in direct contact with electrical parts or are required to comply with fire retardancy standards, at concentrations lower than 10 per cent by weight of the part; Polyurethane foam for building insulation. Production is allowed for Parties listed in the Register for these permitted uses.
- **Technical Endosulfan and its related isomers**: Use is permitted for certain crop-pest complexes as provided under specific exemptions in part VI of Annex A. Production is allowed for Parties listed in the Register for this permitted use. This provision was available to most Parties until 27 October 2017.[8]
- **DDT**: Use is permitted only 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. This is an acceptable purpose, which has no expiry date unlike specific exemptions.
- **Hexabromocyclododecane**: Use is permitted for the Parties listed in the Register for use 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 Parties listed in the Register for use 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 as intermediates in the production of polyfluorinated naphthalenes, including octafluoronaphthalene. Use is therefore allowed for the production of polyfluorinated naphthalenes, including octafluoronaphthalene.
- **Tetrabromodiphenyl ether and pentabromodiphenyl ether or hexabromodiphenyl ether and heptabromodiphenyl ether[9]**: There is an exemption for use in articles in accordance with the provisions of Parts V and VI of Annex A. 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, PFOSF (and PFOS-related chemicals originating from PFOS, its salts and PFOSF):** There are acceptable purposes for production and use as. listed in part I of Annex B and in accordance with Part III 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.

2.1.2 POPs legally traded

According to the Stockholm Convention, export from one Party and import into another State of the persistent organic pollutants listed in section 2.1.1. above — whether as chemicals, in mixtures, or in articles — may be allowed under

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perfluorooctane sulfonyl fluoride. There is no such time limitation on acceptable purposes although for certain chemicals, the Conference of the Parties reviews the continued need for both the specific exemptions and the acceptable purposes.

[7] Decabromodiphenyl ether (BDE-209) present in commercial decabromodiphenyl ether (CAS No: 1163-19-5)

[8] 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.

[9] 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.

certain circumstances. In general, the procedure for the legal trade involving Parties is the same for all POPs under the Convention: the importing and the exporting Parties registered for the respective specific exemptions or acceptable purpose can make use of these provisions. [10]

For specific exemptions that are no longer available under the Convention, such as some for PFOS, its salts, PFOSF or PFOSF[11], there would no longer be a use or purpose permitted. Parties as a result have an obligation to take measures to ensure that import or export is only for the purpose of environmentally sound disposal, in accordance with Article 3 of the Convention.

Paragraph 2 (b) of Article 3 of the Stockholm Convention sets out the legal basis and conditions under which export may take place (see above)

POPs can also be exported or imported between Parties and non-Parties, in accordance with the procedures given in the Convention, even though non-Parties are not bound by the Convention or amendments to its Annexes.[12] The certification to be provided in those cases needs to include any appropriate supporting documentation, such as legislation, regulatory instruments, or administrative or policy guidelines. The exporting Party also needs to transmit the certification to the Secretariat within sixty days of receipt. At its sixth meeting, the Conference of the Parties adopted a template for the certification of non-party imports, pursuant to paragraph 2 (b) (iii) of Article 3, which was subsequently revised at its eighth meeting. [13]

The Convention website provides further information, including on:

- Register of Specific Exemptions; [14]
- Register of Acceptable Purposes;[15]
- Notifications of Articles in use / Closed-system site-limited intermediates; [16]
- Certifications of export to a non-Party State. [17]

Parties also have obligations to take measures to reduce or eliminate releases of POPs from stockpiles and wastes under Article 6 of the Convention.

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

Rotterdam Convention:

The Rotterdam Convention[18] covers banned or severely restricted chemicals[19] and severely hazardous pesticide formulations. Pesticides and industrial chemicals that have been banned or severely restricted for health or environmental reasons, as well as severely hazardous pesticide formulations (SHPF) that may cause problems under the conditions of use in developing country Parties or countries with economies in transition, may be eligible for listing

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[10] The notable exception to this relates to polychlorinated biphenyls (see note (iv) and Part II of Annex A)

[11] See paragraph 2, decision SC-7/1: "*Notes*, pursuant to paragraph 9 of Article 4, that as there are no longer any Parties registered for specific exemptions for the production and use of perfluorooctane sulfonic acid, its salts and perfluorooctane sulfonyl fluoride for carpets, leather and apparel, textiles and upholstery, paper and packaging, coatings and coating additives and rubber and plastics, no new registrations may be made with respect to them"

[12] Article 3(d) specifies that for the purposes of that paragraph, the term "State not Party to this Convention" includes with respect to a particular chemical, a State or regional economic integration organisation that has not agreed to be bound by the Convention with respect to that chemical. Information on which Parties are bound by which amendments to the Annexes listing chemicals in the Stockholm Convention is available at http://chm.pops.int/Countries/StatusofRatifications/Amendmentstoannexes/tabid/3486/Default.aspx

[13] http://chm.pops.int/Procedures/ExporttoanonPartyState/tabid/3349/Default.aspx

[14] http://chm.pops.int/Implementation/Exemptions/SpecificExemptions/tabid/1133/Default.aspx

[15] http://chm.pops.int/Implementation/Exemptions/AcceptablePurposes/tabid/793/Default.aspx

[16] http://chm.pops.int/Implementation/Exemptions/Closedsystemsitelimited/tabid/453/Default.aspx and http://chm.pops.int/Implementation/Exemptions/Articlesinuse/tabid/452/Default.aspx

[17] http://chm.pops.int/Countries/ExporttoanonPartyState/tabid/6101/Default.aspx

[18] http://www.pic.int/TheConvention/Overview/tabid/1044/language/en-US/Default.aspx

[19] Article 2 " "Chemical" means a substance whether by itself or in a mixture or preparation and whether manufactured or obtained from nature, but does not include any living organism. It consists of the following categories: pesticide (including severely hazardous pesticide formulations) and industrial…"

in Annex III to this Convention and inclusion in the prior informed consent procedure. The process for inclusion of a chemical in the PIC procedure starts when the Secretariat receives at least one notification of a final regulatory action from at least two of the PIC regions; or when a developing country Party or Party with an economy in transition submits a proposal for inclusion in Annex III of an SHPF. The scientific subsidiary body of the Convention (Chemical Review Committee) reviews information about the chemical against the criteria set out in the Convention and makes a recommendation to the Conference of the Parties about whether the chemical should be made subject to the PIC procedure and accordingly listed in Annex III. The Conference of the Parties takes the final decision about listing.

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 and made available on the Convention website.[20] Parties then have an obligation to transmit a response concerning the future import of the chemical concerned. This 'import response' may consist of either a **final decision** (to consent to import; not to consent to import; or to consent to import only subject to specified conditions) or an **interim response**.[21] Every six months the Secretariat informs Parties of the responses it has received and Rotterdam Convention Parties are obliged 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 to the Stockholm Convention. When these chemicals are exported and imported, the obligations under both the Stockholm and Rotterdam Conventions may apply.

Basel Convention:

The Basel Convention covers hazardous wastes and other wastes as set out in Article 1 and Article 2. The Basel Convention[22] regulates the transboundary movement of hazardous and other wastes, applying the "Prior Informed Consent" (PIC) procedure. Parties are under an obligation to take appropriate measures to ensure that transboundary movements are only allowed if one of the three conditions in Article 4 (9) is met and transboundary movements can only occur with notification to and the prior written informed consent of the States concerned.[23] The PIC procedure forms the heart of the Basel Convention control system and is based on four key stages: (1) notification; (2) consent and issuance of movement document; (3) transboundary movement; and (4) confirmation of disposal.

In addition, the Stockholm Convention makes explicit reference to the need for the Conference of the Parties to the Stockholm Convention to cooperate closely with the appropriate bodies of the Basel Convention in relation to wastes and stockpiles.[24] Technical guidelines for the environmentally sound management of waste containing POPs have been developed and are regularly updated under the auspices of the Basel Convention.[25] This includes updates to take into account decisions by the Conference of the Parties to the Stockholm Convention to list additional chemicals in its Annexes A or B.

2.2 Customs control recommendations

It is important that enforcement officers are aware of their roles and responsibilities in enforcing MEAs, in order to ensure effective implementation and enforcement of the Stockholm Convention as well as other related international agreements. 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 play a key role in facilitating the legal trade of hazardous chemicals and wastes, and in detecting possible cases of illegal traffic – especially in ports and along borders[26].

Customs control of 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 applicable legislation or other measures in place to control the import and export of POPs. The level of control and the resource requirements vary according to the tool chosen. In order to overcome limited human and technical resources, smart

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[20] http://www.pic.int/TheConvention/Chemicals/DecisionGuidanceDocuments/tabid/2413/language/en-US/Default.aspx

[21] http://www.pic.int/Procedures/ImportResponses/tabid/1162/language/en-US/Default.aspx

[22] http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx

[23] Parties which are States of export or import or transit States, whether or not Parties (Article 2, paragraph 13)

[24] Article 6, paragraph 2 Stockholm Convention

[25] http://www.basel.int/Implementation/Publications/LatestTechnicalGuidelines/tabid/5875/Default.aspx

[26] http://www.brsmeas.org/Portals/2/eLearningEnforcement/en/1378218889/SCO_0002/default.htm

and efficient ways of targeting possible suspicious loads may be implemented. The following elements of possible effective approaches are examined in more detail below:

- Control of documentation related to the trade or movement of the goods;
- Inspection of the goods e.g. based on a risk assessment;
- Laboratory analysis to identify the goods.

Detailed guidance addressing the practical aspects and common issues for customs is also available within:

- Interactive Manual for Customs on hazardous chemicals and wastes under the Basel, Rotterdam and Stockholm conventions;
- E-learning module for law enforcement officers on hazardous chemicals and wastes under the Basel, Rotterdam and Stockholm Conventions;
- Green Customs Guide to Multilateral Environmental Agreements.

2.2.1 Control of documents related to the goods

The customs authorities need to at all times to be aware of the applicable legislation or other measures (administrative regulation, rule, standards, etc.) that provide them with their mandate and authority. It is equally important when checking the documentation related to the import or export of POPs that the enforcement officer checks 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 to the Rotterdam Convention.[27] 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 chemicals legislation.

When monitoring the trade in and trafficking of chemicals and wastes, technical or legal support by the authorities having the primary responsibility for the implementation of the conventions may be required. Effective communication channels and mutual support between Customs and these authorities is thus very important.

2.2.2 Inspection of the goods e.g. based on a risk assessment

Customs rules and 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. Customs control activities aim at verifying whether trade in hazardous chemicals and wastes is legal, and conversely, at detecting and stopping illegal traffic without unduly disrupting legal trade.

Detailed guidance on profiling, risk assessment and indicators for customs is available within the Interactive Manual for Customs on hazardous chemicals and wastes under the Basel, Rotterdam and Stockholm conventions.

A first step is to perform a risk assessment, the outcomes of which could for example be a reason for Customs to focus on certain waste streams, chemicals, routes, countries, stakeholders or descriptions used in paperwork. Risk analysis techniques attempt to identify and quantify risks in order to develop adequate control procedures through:

- Selecting shipments for document check or physical examination, e.g. newly listed POPs could be considered a risk and warrant a higher rate of inspection than shipments of other chemicals;
- Concentrating control effort of customs officers on those risk areas where breaches of the regulations are most likely to occur – whether deliberate or not;
- Identifying potential candidates who may be at a higher risk of behaviour in contradiction of the applicable rules and regulations, e.g. repeat offenders.

[27] http://www.pic.int/TheConvention/Chemicals/AnnexIIIChemicals/HarmonizedSystemCodes/tabid/1159/language/en-US/Default.aspx

2.2.3 Laboratory analysis to identify the goods

Customs authorities with access to laboratories (either directly or through cooperation with other authorities) may analyse samples taken to verify the identification of the goods e.g. customs tariff based on the HS code chosen by the person who making the customs declaration. As the HS code is often not chemical specific, the normal 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 trade controls and possible monitoring at customs or consumer protection level, and based on relevant national legislation or other measures, 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* [28]that can identify and quantify POPs in a substance, in mixtures, or in an article.

As mentioned above, more detailed guidance on procedures to control trade in chemicals can be found in the *E-learning module for law enforcement officers*.[29]

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 chemical not listed in the Annexes A or B to the Convention that contains POPs 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 chemical not listed in the Annexes A or B to the Convention that contains listed POPs unintentionally as a contaminant in a concentration higher than a trace; or
- An article produced by intentionally adding a chemical not listed in the Annexes A or B to the Convention that contains listed POPs 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.

The United Nations Environment Programme's (UNEP) *Inventory of Trade Names of Chemical Products Containing Ozone Depletion Substances and Their Alternatives*[30] is one model of how to use trade names in the control of banned or restricted 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 Permitting/license scheme by relevant ministries before actual export or import

The border control procedure for chemicals (import/export) should be applied based on national legislation or other applicable national / regional measures and in compliance with relevant obligations at the international level. The procedure may vary depending on actual national framework and the controls and tools chosen to implement necessary measures in this regard. For example, some countries have put in place a licensing or permitting scheme to regulate and record stakeholders involved in trade of hazardous chemicals. The scheme can impose an obligation on importers, exporters, carriers, shipping lines or others to clearly and correctly identify the chemicals involved, which in turn facilitates and enables the implementing authorities to track, control and manage the banned and restricted chemicals moving in, through and out of the country. There could also be various inter-agency cooperation and coordination mechanisms in place to clarify the various roles and responsibilities, as well as facilitate information exchange and cooperation.

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[28] http://chm.pops.int/Implementation/NIPs/Guidance/guidanceonsampling,screeningetcofPOPs/tabid/5333/Default.aspx

[29]http://www.brsmeas.org/Implementation/TechnicalAssistance/ToolsandMethodologies/EleaningmoduleforlawenforcementTabid/3534/language/en-US/Default.aspx

[30] http://www.unep.fr/ozonaction/information/mmcfiles/3328-e.pdf

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

3.1 Supporting documents and database for the control of imports and exports 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

All Parties need to take appropriate measures to control the trade of chemicals, whether as substances, mixtures or articles, listed in the Annexes A and B to the Convention in order to ensure its effective implementation. There is an exception in relation to quantities of a chemical to be used for laboratory-scale research or as a reference standard. Except as otherwise provided in the Convention, paragraphs 1 and 2of Article 3 on trade control measures do not apply to quantities of a chemical to be used for these purposes.

Use of information such as the CAS number, chemical name, and trade names is a valuable tool to support and facilitate legal trade in chemicals for which a use of purpose is still permitted under the Convention. This includes chemicals for which specific exemptions may still be registered or acceptable purposes notified — such as hexabromocyclododecane, pentachlorophenol and its salts and esters, polychlorinated naphthalenes, or PFOS, its salts, PFOSF and PFOS-related chemicals. Trade names also facilitate the control of trade in chemicals 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.

3.3 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 facilitates the 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 for 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 national database, if established/available, is expected to facilitate the control of trade of POPs as substances, in mixtures, and in articles. This procedure is one element of a 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.

3.3.1 Customs authorities

Customs documents and databases related to the imports and exports of chemicals, mixtures, or articles 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 official contact point of the exporting Party. The shipment should remain under customs control until the situation is clarified.
- The HS code needs to be given in the customs papers together with other information that facilitates the identification of the POPs, e.g. the intended use and the supplier. If the HS code relates to a group of chemicals, also including a POP, this information can be used for the customs risk analysis and assessment (as described in section 2.2.2) to possibly help identify illegal trade.
- The POPs chemical name and CAS number together with supplier information should appear on the label of the shipment if the POP is imported as such or in a mixture. This information, if found during an inspection of the shipment, could be used to search the chemical names in databases. It could facilitate and expedite investigations if there is a standing cooperation and coordination arrangement between customs and any authority for permitting and licenses setting out roles and responsibilities. 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 a different authority for import, customs could be obliged to inspect the shipment 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, exporter or carrier.

If a POP has been identified in the shipment and accompanying documents, it could be checked using the information of the legal status of the POP within the Party to determine whether the import was legal or illegal. In this respect, communication and cooperation between different agencies would be essential to ensure compliance with all relevant obligations e.g. obligations under the Basel Convention may need to be confirmed with a different entity if the Party has designated different contacts for each Convention. A regular communication of information on the control and national measures in relation to POPS is important for effective trade control in accordance with the Stockholm Convention, as well as other international agreements.

If a chemical has been identified that might contain a POP in Annex A or Annex B, the importer may be required to undertake additional steps before the trade is permitted. These could include, for example, contacting the exporter to confirm whether the chemical contains no more than an unintentional trace contaminant of that POP.

If a proposed import or export of POPS is found to constitute illegal trade, there should be management options in place within the Party that should then be applied. Requiring take back of the illegally traded chemical is one option

and in some instances may even be a requirement e.g. illegal traffic of POPs wastes in contravention of the Basel Convention.

3.3.2 Companies

Awareness amongst industry stakeholders is a key element to ensure compliance with the requirements of the national legal framework to control trade in POPs. Information should be made easily and regularly available to stakeholders and the Party may also wish to consider putting in place mechanisms to collect information from industry e.g. to facilitate and enable reporting in accordance with requirements under the Convention, to supplement information databases.

Companies that import chemicals, mixtures, and/or articles should be obliged to cooperate to identify POPs involved in the legal trade, thereby supporting efforts to prevent and combat 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. Companies that purchase or handle chemicals could request from the exporter a declaration that no POPs are contained in the imported goods.

3.3.3 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. This obligation could be set out in an administrative or other measure rather than legislation so as to allow flexibility to regulate update the information to be transmitted.

Government authorities responsible for establishing an inventory of POPs in the national jurisdiction could also use the lists prepared in this manner to identify POPs being trade in the country concerned. There should be a mechanism to enable and support cooperation between local control authorities and national government authorities

Text Box 3-2

Elements to be considered for trade control

- Are the enforcement officers familiar with the national legal basis for control of POPs chemicals, as well as their mandate or responsibilities in this regard?
- Do they recognize the hazardous chemical designations and characteristics of the new POPs chemicals following training or participation in information awareness-raising programmes?
- Are enforcement officers familiar with obligations of various stakeholders 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 relevant stakeholders involved in trading POPs chemicals?
- Have the data and information provided been relayed to the designated contacts for the Stockholm Convention (national focal point and official contact 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 Conventions, their bodies and possibly also the designated national contacts?
- 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 assessment and analysis to assist with the identification of risks associated with the trade of specific POPs chemicals, especially as mixtures and/or in articles?