

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

February 4-5, 2002

RESOLVED, That the American Bar Association supports prompt ratification and implementation by the United States of the Stockholm Convention on Persistent Organic Pollutants.

REPORT

The proposed resolution expresses the support of the American Bar Association (ABA) for the ratification and implementation of the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention), and reflects ABA's support for this global effort to reduce and eliminate the use and production of persistent organic pollutants.

BACKGROUND

Persistent organic pollutants (POPs) are extremely stable chemicals, generally resistant to degradation, semi-volatile and capable of long-distance transport through the air and water. POPs bioaccumulate in fatty tissue and bioconcentrate up the food chain.¹ POPs can be harmful to humans and other living organisms and have been linked to adverse effects on reproduction, development, and immune and neurological functions.² POPs can have industrial, pesticidal and other uses, and can also be produced as by-products of industrial processes.

In 1997, governments began efforts under the auspices of the United Nations Environment Programme (UNEP) to negotiate a legally binding, global agreement to address the risks associated with the use and release of POPs. These negotiations concluded with the adoption on May 22, 2001 of the Stockholm Convention on Persistent Organic Pollutants.³ The Convention will enter into force following ratification by fifty governments.⁴

TERMS OF THE CONVENTION⁵

The Stockholm Convention commits participating (Party) governments to move toward the elimination of production and use of POPs. It addresses both intentionally produced POPs (pesticides and industrial chemicals) and unintentionally produced, *e.g.*, by-product, POPs.

The Convention calls for Parties to prohibit production and use of certain intentionally produced POPs listed in an Annex A to the agreement.⁶ It provides for the restricted use of

¹ See Fourth Round of Global Negotiations on Toxic Chemicals, Fact Sheet released by the Office of the Spokesman, U.S. Department of States, Mar. 15, 2000 *available at* http://www.state.gov/www/global/oes/fs-pops-inc4_000315.html.

² See U.S. EPA, Pesticides Industry Sales and Usage: 1996 and 1997 Market Estimates. Office of Prevention, Pesticides and Toxic Substances, November 1999.

³ The Stockholm Convention on Persistent Organic Pollutants, UNEP/POPS/CONF/4, *opened for signature* May 23, 2001 [hereinafter Stockholm Convention].

⁴ See The Stockholm Convention on Implementing International Action on Persistent Organic Pollutants, UNEP/POPS/CONF/4, *opened for signature* May 23, 2001, art. Art. 26.

⁵ This summary of the terms of the Convention is intended to provide a general overview, and does not reflect the full detail of the rights, obligations and procedures established under the instrument.

⁶ These chemicals are: aldrin, endrin, dieldrin, chlordane, heptachlor, hexachlorobenzene, mirex, and toxaphene.

certain other intentionally produced POPs. These are listed in an Annex B.⁷ In addition, Parties are to prohibit the import and export of substances listed in either Annex A or B, except for environmentally sound disposal or a use permitted under the Convention.⁸ The Convention also calls for Parties, under their existing regulatory regimes, to take measures to prevent the production and use of new POPs, and to take into consideration whether substances have POPs characteristics as part of their domestic, regulatory assessments of pesticides and industrial chemicals currently in use.⁹

The Convention permits Parties to produce and use listed POPs for specific purposes specified in Annexes A and B, requiring Parties to ensure that any such production and use is carried out in a manner that prevents or minimizes human exposure and release to the environment.¹⁰

Regarding unintentionally produced POPs, the Convention calls upon each Party to take, at a minimum, specified measures to reduce the release of such POPs listed in an Annex C, with the goal of their continuing minimization and, where feasible, ultimate elimination.¹¹ These measures include: development of action plans to identify, characterize and address these releases; promotion of available, feasible and practical measures; promotion of the use of substitute or modified materials, products and processes, and the use of best available techniques; and requiring the use of best available techniques by new sources within categories the Party deems to warrant such action.¹²

Additionally, the Convention requires Parties to take appropriate measures to establish environmentally sound management techniques for the handling of stockpiles of chemicals listed under the Convention and wastes consisting of, containing or contaminated with these chemicals. Parties must develop strategies for identifying such stockpiles, wastes, and products and articles in use that could become or create such wastes in the future. Parties must manage such stockpiles in a safe, efficient and environmentally sound manner. Parties must take appropriate measures so that such wastes are: handled, collected and transported in an environmentally sound manner; disposed of in a way that destroys or irreversibly transforms POPs content (unless such destruction or transformation is not the environmentally preferable option or the POPs content is sufficiently low); not subjected to disposal operations that could lead to recovery, recycling, reclamation or use of POPs; and not transported across international boundaries except in light of relevant international rules and guidance. In addition, Parties must attempt to develop strategies

⁷ Currently, Annex B includes only DDT, permitting its use for malaria vector control.

⁸ Parties are permitted to export to non-parties to the Convention that provide annual certification to the exporting Party concerning the use and management of the chemical, so long as specific use exemptions remain in effect for the chemical under the Convention. *See* Stockholm Convention, art. 3.

⁹ *See id.* at art. 3.

¹⁰ *See id.* at arts. 3, 4.

¹¹ *See id.* at art. 5. The Annex currently lists dioxins, furans, hexachlorobenzene, and PCBs.

¹² *See* Stockholm Convention, art. 5.

to identify contaminated sites, and if they remediate any such sites, they must do so in an environmentally sound manner.¹³

Initially, the Convention will address twelve substances.¹⁴ The Parties may agree to add additional substances. The Convention establishes a Persistent Organic Pollutants Review Committee to assess the merits of listing new chemicals or heightening restrictions on listed chemicals.¹⁵ This Committee is charged with reviewing chemicals, through a multi-staged, transparent process allowing for input from interested stakeholders, to determine whether to recommend listing of the chemical by the Conference of the Parties.¹⁶ The Committee's review focuses on factors including evidence of toxicity, persistence, bioaccumulation, long-range transport, and adverse effects, evaluated in accordance with criteria stipulated under the Convention.

Additional obligations established under the Convention call for Parties to: facilitate and pursue the exchange of non-confidential information relevant to the reduction and elimination of POPs; promote and facilitate public awareness, access to information and education concerning POPs; undertake and promote appropriate research, development, monitoring and cooperation; provide technical assistance, with a particular focus on assistance by developed countries; and, with respect to developed countries, provide financial resources to enable developing country Parties and Parties with economies in transition (former non-market economies) to implement Convention obligations.¹⁷

The Convention requires Parties to develop and submit plans for implementing their obligations under the treaty and to report on implementation measures and their effectiveness.¹⁸

DOMESTIC STATUS OF THE CONVENTION

The Administration has not yet presented the Convention to the Senate for advice and consent to ratification, but has expressed its intent to do so expeditiously.¹⁹ Draft implementing legislation is currently being prepared through an interagency process. Although much of the Convention can be implemented under existing U.S. law, it is expected that some changes will be needed, including to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA). This ABA resolution is intended to convey the ABA's

¹³ *See id.* at art. 6.

¹⁴ These chemicals are: aldrin, chlordane, dieldrin, DDT, endrin, heptachlor, hexachlorobenzane, mirex, toxaphene, PCBs, dioxins and furans.

¹⁵ *See* Stockholm Convention, art. 8.

¹⁶ *See id.* at art. 8, Annexes D-F.

¹⁷ *See* Stockholm Convention, arts. 9-14.

¹⁸ *See id.* at arts. 7, 15.

¹⁹ *See e.g.* P. Phibbs, "POPs Treaty to be Submitted to Senate, No Decisions on Other Environmental Parties," Daily Environment Reporter at A-4 (July 17, 2001).

support for narrowly drawn implementing measures to effect implementation of the Convention without major changes in the fundamental structure of existing U.S. environmental laws, including FIFRA and TSCA. The Administration and stakeholders also appear to favor such an approach.

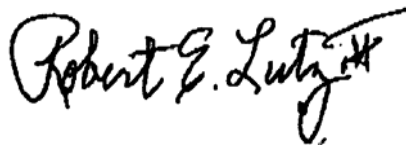
CONCLUSION

United States ratification of the Stockholm Convention can be expected to encourage the participation of other countries. Ratification will also indicate United States support for this regime and its important objectives. More generally, it will reflect the continued leadership of the United States in the development of international chemicals policy, and help demonstrate the commitment of the United States to play a leadership role in the development of international environmental law as a whole. The Administration has expressed support for the Convention, as have relevant stakeholders. The proposed ABA resolution in support of ratification and implementation would encourage and could assist this worthwhile effort.

ADDITIONAL INFORMATION ABOUT THE POPS TREATY

Date U.S. Signed:	May 23, 2001
Treaty Citation:	The Stockholm Convention on Implementing International Action on Persistent Organic Pollutants, UNEP/POPS/CONF/4, <i>opened for signature</i> May 23, 2001.
Date Submitted to Senate:	Treaty not yet submitted to the U.S. Senate.
Date Treaty Entered Into Force:	Treaty not yet in force.
Number of Parties to Treaty:	Two ratifications (as of June 29, 2001).

Respectfully submitted,



Robert E. Lutz
Chair
Section of International Law and Practice
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