

Amendments to the Stockholm Convention on Persistent Organic Pollutants

Introduction

- 4.1 The *Amendments adopted at Punta Del Este on 6 May 2005 to add a new Annex G to the Stockholm Convention on Persistent Organic Pollutants* involves the addition of a seventh annex, Annex G, to the Stockholm Convention. Annex G provides procedures to settle disputes relating to the Stockholm Convention.

Background

- 4.2 The Stockholm Convention on Persistent Organic Pollutants (the Stockholm Convention) is designed to protect human health and the environment from persistent organic pollutants (POPs).¹ POPs are toxic chemical substances that persist in the environment, accumulate in the fatty tissue of living organisms and become widely distributed

¹ National Interest Analysis (NIA), para. 3.

geographically.² POPs are used for industrial and agricultural processes or are by-products from industrial processes.³

4.3 The central obligations of the Stockholm Convention are:

To ban or phase out the production and use of intentionally produced POPs, to manage stockpiles of POPs wastes in an environmentally sound manner and to reduce or, where feasible, eliminate releases of unintentionally produced POPs.⁴

4.4 The Stockholm Convention entered into force for Australia on 18 August 2004.⁵ The Joint Standing Committee on Treaties recommended binding treaty action be taken in relation to the Stockholm Convention in Report 55.

Annex G

4.5 Annex G provides procedures to settle disputes relating to the Stockholm Convention. Annex G Part I provides the arbitration procedures and Annex G Part II provides the conciliation procedures.

4.6 Under Article 18 of the Stockholm Convention, Parties are obliged to settle disputes through negotiation or other peaceful means.

4.7 Article 18(2) of the Stockholm Convention sets out two options for dispute settlement:

1. arbitration
2. submission to the International Court of Justice (ICJ).

4.8 Article 18(6) provides a third means of dispute settlement:

3. conciliation.

4.9 Parties may make a declaration accepting either or both arbitration or the ICJ under Article 18(2). At present Australia is considering whether to make a declaration.⁶ Where a Party has not made a

2 The Stockholm Convention on Persistent Organic Pollutants website. Accessed 2 February 2006 <<http://www.pops.int/>>

3 NIA, para. 3.

4 Mary Harwood, *Transcript of Evidence*, 5 December 2005, p. 23; NIA, para. 3.

5 NIA, para. 5; Mary Harwood, *Transcript of Evidence*, 5 December 2005, p. 23.

6 NIA, para. 10.

declaration or where parties to a dispute have not accepted the same means of dispute settlement, the default dispute settlement is conciliation.⁷

- 4.10 Annex G Part I provides that an arbitration tribunal, consisting of three members, will be established to hear a dispute. The arbitration tribunal renders a binding decision within 5 months of being established in accordance with the Stockholm Convention and international law. No appeals are allowed unless agreed to in advance by the Parties to the dispute.
- 4.11 Annex G Part II provides that a conciliation commission will be established, consisting of three members, to hear the dispute. The conciliation commission renders a report with recommendations for the resolution of the dispute within 12 months of being established which the Parties to the dispute must consider in good faith.

Consultation

- 4.12 The Department of Environment and Heritage (DEH) invited relevant government departments and stakeholders, including State and Territory governments, industry and community groups, to comment on the draft rules of arbitration and conciliation.⁸ No issues were raised but a representative from the National Environment Consultative Forum accepted DEH's invitation to stakeholders to join the Australian delegation.⁹

Entry into force

- 4.13 Annex G will enter into force one year from the date of communication by the Depositary (the United Nations Secretary-General) of its adoption.
- 4.14 The Stockholm Convention provides for an 'opt out' provision, whereby Parties may notify the Depositary within one year that they

7 Article 18(6) of the Stockholm Convention; NIA, para. 9.

8 NIA, Consultation Annex.

9 NIA, Consultation Annex, para. 2.

are unable to accept an additional annex. If they do not opt out, Parties will be bound by the new annex.

- 4.15 Unless Australia opts out, it will be bound by the conciliation procedures set out in Annex G, Part II. If Australia makes a declaration accepting arbitration as a means of dispute settlement, it will be bound by the Arbitration procedure set out in Annex G, Part I.

Conclusion and recommendation

- 4.16 The Committee agrees that dispute settlement provisions are important for providing Parties with finality and an agreed mechanism for dealing with disputes.¹⁰

Recommendation 3

The Committee supports the Amendments, adopted at Punta Del Este on 6 May 2005, to add a new Annex G to the Stockholm Convention on Persistent Organic Pollutants (POPs) and recommends that binding treaty action be taken.

¹⁰ NIA, para. 7.