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Stockholm Convention on Persistent Organic Pollutants
Persistent Organic Pollutants Review Committee
Geneva, 6–10 November 2006
Item 4 (a) of the provisional agenda*
Operational issues: confidentiality arrangements

Analysis and comments relating to confidentiality arrangements

Note by the Secretariat

1. At its first meeting, the Committee adopted decision POPRC-1/1 on provisional confidentiality arrangements, set forth in annex I of the report of the Committee on the work of its first meeting, document UNEP/POPS/POPRC.1/10. In paragraph 1 of the decision, the Secretariat was requested to develop draft confidentiality arrangements for consideration by the Committee at its second meeting. In response, the Secretariat prepared the draft code of practice for the treatment of confidential information in the Persistent Organic Pollutants Review Committee set forth in document UNEP/POPS/POPRC.2/2.
2. The Committee agreed to establish an intersessional working group to discuss the matter of confidentiality further (paragraph 35 of the report of the meeting). That intersessional working group was also tasked with consideration of submission of Annex F information on socio-economic considerations.
3. Annex I to the present note contains an analysis to identify information in Annex F that cannot be considered confidential which was prepared by the intersessional working group.
4. Annex II to the present note contains a listing of comments received relating to the issue of confidentiality, also prepared by the intersessional working group.

* UNEP/POPS/POPRC.2/1.

Annex I

Analysis to identify information in Annex F that cannot be considered confidential

Paragraph 5 of Article 9 of the Stockholm Convention states that “information on health and safety of humans and the environment shall not be regarded as confidential,” and that the “Parties that exchange other information pursuant to this Convention shall protect any confidential information as mutually agreed.”

At its first meeting, the Conference of the Parties of the Convention adopted decision SC-1/7, establishing the Persistent Organic Pollutants Review Committee. According to paragraph 19 of the Annex to decision SC-1/7, “The Committee shall establish confidentiality arrangements as a matter of priority. In handling confidential information and in establishing such arrangements, the Committee shall ensure that paragraph 5 of Article 9 of the Convention is respected.”

Consequently, during its first meeting, the Committee adopted decision POPRC-1/1 on provisional confidentiality arrangements. This decision:

“... ”

1. *Requests* the Secretariat to develop draft confidentiality arrangements for consideration by the Committee at its next meeting;

2. *Decides* to apply the following provisional arrangements to confidential information until final arrangements are established by the Committee:

(a) Any Party or any observer, when submitting information to the Committee, through the Secretariat, may identify and clearly label specific items of information submitted as confidential and requiring application of the provisional procedures for treatment of confidential information;

(b) When receiving information labelled as confidential, the Secretariat or the Committee shall consider with the Party or the observer referred to in paragraph 2 (a) above the need for such labelling and mutually agree on the applicability of the provisional confidentiality arrangements to the information item in question;

(c) In addition to the information on health and safety of humans and the environment, the following types of information shall not be deemed confidential for the purposes of the work of the Committee:

(i) Information submitted pursuant to paragraphs (b)–(g) of Annex E to the Convention;

(ii) [Information submitted pursuant to Annex F to the Convention;]

(iii) Information which is otherwise publicly available;

(i) Information which cannot be labelled as confidential according to the domestic legislation of the State or regional economic integration organization of the origin of the information;

...”

Having analysed decision POPRC-1/1 (and its Annexes I and II contained in the POPRC-1 meeting report), and the nature of information requested in Annex F to the Convention, the Working Group on Annex F and Confidentiality recommends the Committee to delete brackets on Paragraph c (ii), under Number 2 of decision POPRC-1/1. Consequently, if this recommendation is adopted, none of the information in Annex F should be considered as confidential.

The rationale for this recommendation is that all the information items requested under Annex F represent information on health and safety of humans and the environment,” which shall not be regarded as confidential,” according to Paragraph 5 of Article 9 of the Stockholm Convention.

Annex II

Listing of comments on confidentiality arrangements

Party, Observer	Comments
ICCA-WCC-CLI	<p><i>Regarding decision POPRC-1/1, para 2 (c) ii</i>, the Committee should “delete Paragraph c (ii) entirely or clarify that “non-confidential information submitted pursuant to Annex F of the Convention.”</p> <p>“Many elements of Annex F are not directly related to health and safety of humans or the environment and significant elements of Annex F could represent legitimate confidential business information the release of which could have serious commercial repercussions. In such cases, the submitter must clearly identify which information should be protected as confidential.</p> <p>While the elements of Annex F are critical for evaluating the effectiveness of potential risk management options, some of the information is the intellectual property of the originator and must be protected from commercial use by third parties. The focus of the confidentiality arrangements should be on ensuring the submission of all relevant information to effectively evaluate potential risk management options while also protecting legitimate confidential business information/data.</p> <p>ICCA, CLI and WCC member companies are committed to provide the POPRC with the most up-to-date information that utilizes the best science. In return, companies expect POPRC and all associated Working Groups to respect and protect data as intellectual property using established procedures. Failure to protect confidential business information would risk excluding critical information that is essential to assessing risk management options for a candidate chemical.”</p>
U.S.A.	<p>“The U.S. disagrees with the general assessment that “all information items requested under Annex F” represent “information on health and safety of humans and the environment” for purposes of Paragraph 5 of Article 9. We would therefore disagree with the underlying basis for the position that all Annex F information shall not be deemed not confidential. Further, recognizing the costs and complexities of handling confidential business information, discouraging the submission of information otherwise eligible for treatment as confidential information may have the concurrent, undesirable effect of discouraging the submission of information critical to the work of the POPRC and therefore the COP. We do believe that information of the types described in paragraphs b(iv), c(i), c(iii), (e), (f), and (g) of the Convention should not be deemed confidential for purposes of the work of the Committee”</p> <p>Proposes the following text for <i>decision POPRC-1/1, para 2 (c)</i>:</p> <p>“(c) Information on health and safety of humans and the environment is not considered/deemed confidential pursuant to Article 9, para 5, and includes:</p> <ul style="list-style-type: none"> (i) Information submitted pursuant to paragraphs (b)–(g) of Annex E to the Convention; (ii) Information submitted of the types described in paragraphs b(iv), c(i), and c(iii) of pursuant to Annex F to the Convention; ; <p>(d) Information that will not be given confidential treatment for the purposes of the work of the Committee [because it is not generally considered confidential information] includes:</p> <ul style="list-style-type: none"> (i) Information which is otherwise publicly available; (ii) Information which cannot be labelled as confidential according to the domestic legislation of the State or regional economic integration organization of the origin of the information;

Party, Observer	Comments
	<p>(iii) Information submitted of the types described in paragraphs (e), (f), and (g) of Annex F to the Convention;</p> <p>...”</p>
Germany	<p>Sent the following proposal for some changes of the confidentiality arrangements.</p> <p>“Recognizing that information is identified as confidential under the laws of the nation of the submitter unless, pursuant to Article 9, paragraph 5 of confidential, the information is on the health and safety of humans and the environment, the Committee applies the following concept to submitted information :</p> <p>(a) Certain information submitted under the Convention can generally be considered information on the health and safety of humans and the environment, such as</p> <p>(i) information submitted pursuant to paragraphs (b)-(g) of Annex E to the Convention [; and</p> <p>(ii) Information submitted of the types described in paragraphs b(iv), c(i), and c(iii) of Annex F to the Convention;]</p> <p>(a) Certain information submitted under the Convention would not normally be regarded as confidential because it is either</p> <p>(i) information which is otherwise publicly available[, such as information submitted of the types described in paragraphs (e), (f), and (g) of Annex F to the Convention] or</p> <p>(ii) information which cannot be labelled as confidential according to the laws of the nation of the submitter.</p> <p>(a) Certain information to be submitted under the Convention and necessary for review of proposed chemicals can be submitted in a non-confidential form and still be fully useful for the Committee’s deliberations. To this end, the Committee encourages Parties and Observers to strive to submit information in a non-confidential form as mutually agreed between the submitter and the secretariat in consultation with the chair/vice-chair of the POPRC.”</p>
EC	<p>Not all data requested under Annex F can be regarded to ‘represent information on health and safety of humans and the environment’. Especially data on technical feasibility and costs of alternatives ((b) (i) - (iii) is quite far from health and safety considerations and could in some cases involve confidential business information. This kind of data could thus not be submitted to the POPRC as it would not be treated as confidential.”</p>