



MERCURY INC5 HIGHLIGHTS: WEDNESDAY, 16 JANUARY 2013

On Wednesday, INC5 delegates met in plenary in the morning to hear reports from contact and other small groups, and in the afternoon to hear high-level remarks. Contact groups met throughout the day on: selected technical articles; finance, technical assistance and technology transfer; emissions and releases; and articles of a legal nature. Another “Swiss Break” was held in the evening.

MORNING PLENARY

Co-Chair Roberts reported on the contact group on emissions and releases, including: agreement to retain two separate articles on emissions and on releases, and to ensure flexibility with regard to measures on releases; consideration of open burning of waste as a source of air emissions; and need for further work on the need for a list of specified sources for releases and on control measures for emissions.

Co-Chairs Katerina Sebkova (Czech Republic) and Luis Espinosa (Ecuador) reported on the contact group on implementation plans and health aspects. They noted the establishment of: a drafting group focused on clarifying issues on implementation plans, as well as inputs into the final declaration to advance work in the interim period; and an informal “Friends of Health” group to identify common ground on health aspects.

Co-Chair Olanipekun reported on the contact group on selected technical articles, introducing a submission on articles 6 and 8 and annex C (UNEP(DTIE)/Hg/INC.5/CRP.14) with several brackets outstanding. She pleaded with delegates to be flexible in finalizing the work of the group. ALGERIA introduced a submission (UNEP(DTIE)/Hg/INC.5/CRP.8/Rev.1) supported by the Group of Arab States, on compensation for countries with mercury deposits if they renounce exploitation. Chair Lugris noted a link with financial assistance and capacity building, suggesting consultations with the group.

Co-Chair Guthrie reported that the Friends of the Co-Chairs group on technical assistance and technology transfer had developed a compromise proposal for a single article containing separate paragraphs on technical assistance, capacity building and technology transfer.

The US reported on agreement reached through informal discussions on Article 27, whereby a 3/4 majority vote is needed for adopting an amendment to the convention when consensus is not attainable; and at least “3/4 of the parties that were parties at the time of the amendment” have to ratify the amendment for it to enter into force.

KENYA inquired about a discussion on the title of the proposed instrument on mercury.

FINANCIAL RESOURCES: Chair Lugris asked for an update on informal consultations on financial resources. BRAZIL reported that several parties have been engaging in informal consultations on Article 15, but positions remain polarized, which was neither in the interest of the process nor of developing countries. Supported by CHINA, he requested an opportunity for a larger group of developing countries to meet. GRULAC, supported by SWITZERLAND, called for an inclusive, accessible and effective financial mechanism that enables implementation consistent with national implementation plans. SWITZERLAND then encouraged delegates to move away from a developed-developing country perspective, as finance is in the interest of all wishing for an effective treaty.

CHINA called for an innovative financial mechanism and underscored the need to address this issue before consideration of a compliance regime. COLOMBIA suggested building on existing mechanisms, and seeking complementary resources from the private sector.

AFTERNOON PLENARY

Federal Councillor and Swiss Minister of the Environment Doris Leuthard called on delegates to reach compromise on the most effective common solution to the global mercury challenge. She emphasized: effective financial, capacity and technical support to achieve the convention objectives; GEF as an essential, but not the only, element of the financial mechanism for the instrument; interim support before the instrument enters into force; significantly reducing mercury supply and ending primary mercury mining; and a combination of ambitious phase-out obligations and control measures, and an implementation and compliance mechanism to identify and resolve implementation difficulties. She pledged one million CHF for interim support.

Highlighting governments’ duty of care to their citizens, UNEP Executive Director Achim Steiner stressed that a multilateral treaty should provide for meaningful action and add value to the actions of individual states. He noted that the art of negotiation is not only to represent one’s interest, but also to assist others to meet theirs, particularly when it comes to finance.

The EU prioritized action on primary mining, emissions and products. He urged cooperation and accountability through a robust compliance regime, and donor support through financial and technical assistance and by promoting technology transfer, via GEF as the financial mechanism. URUGUAY called for flexibility and creativity to find common ground, and stressed the need for financial resources, both in the interim and after the



treaty's entry into force. Highlighting the principle of common but differentiated responsibilities, and the need for financial and technical support and sufficient time to adapt, CHINA drew attention to national measures to address mercury contamination.

JAPAN announced a contribution for interim support at a level at least equivalent to that of the contributions pledged by other countries, and a possible additional contribution relative to the level of ambition of the convention for the period prior to the diplomatic conference. NORWAY underscored commitment to concluding an ambitious treaty and supporting the interim phase by pledging 1 million USD for "measures on the ground."

CHILE reaffirmed the need for a clear definition of mercury compounds. The AFRICAN GROUP encouraged others to engage in the Global Mercury Partnership as a vehicle for ongoing action prior to early entry into force, and called for a PIC procedure for the export of mercury-added products to Africa. The RUSSIAN FEDERATION stressed the importance of flexibility for developing countries and countries with economies in transition.

CONTACT GROUPS

SELECTED TECHNICAL ARTICLES: The group continued discussion of article 3 (supply and trade). Some delegations sought to delete provisions on imports of mercury and mercury compounds, arguing that the provision regulating exports of mercury and mercury compounds made it unnecessary. The group also debated whether to delete references to prior written consent. Other issues raised included whether to allow exports for purposes of interim storage in an environmentally sound manner, and whether to have exports to non-parties be contingent on certification that the mercury will be managed in an environmentally sound manner in the importing state.

EMISSIONS AND RELEASES: While a small drafting group considered releases, the contact group continued deliberations on article 10 (emissions) and annex F (list of point sources of emissions of mercury and its compounds to the atmosphere). On the annex, following informal consultations, the contact group considered replacing references to lead, zinc, copper and industrial gold production facilities with a single reference to smelting and roasting processes used in the production of non-ferrous metals, with a note specifying that, for the purpose of the annex, non-ferrous metals refer to lead, zinc, copper and industrial gold. On article 10, the group discussed, *inter alia*: the need for flexibility in addressing existing sources; a paragraph setting the objective of the article; and whether to provide for emissions to be "controlled," "reduced," or "controlled and reduced where feasible."

ARTICLES OF A LEGAL NATURE: The group started working on definitions (article 2). On "mercury compounds," delegates discussed the Chair's text referring to any substance consisting of identical molecules of mercury and one or more other chemical elements, and Chile's submission (UNEP(DTIE)/Hg/INC.5/CRP.9) referring to any substance that contains atoms of mercury of constant chemical composition and characteristic properties that cannot be separated into components by physical separation methods. The group agreed that "mercury compounds" mean any substance consisting of atoms of mercury and one or more atoms of other chemical elements that can be separated into different components only by chemical reactions. Chile's proposal that the definition shall not be construed to include naturally occurring quantities of mercury compounds present in soil, minerals, ores and mineral products except those from primary mercury mining, pending discussions in other contact groups, remained in brackets.

In the afternoon, the group focused on the relationship with other international agreements. Delegates found common ground on language stating that: the provisions of the mercury convention shall not affect the rights and obligations of any party deriving from existing international agreements; parties recognize that the mercury convention and other international agreements in the field of the environment and trade are mutually supportive; and nothing in the mercury convention prevents a party from taking additional domestic measures consistent with the provisions of the mercury convention in an effort to protect human health and the environment from mercury exposure in accordance with the party's other obligations under applicable international law. Delegates did not reach a conclusion on the placement of the provisions in the preamble or in any of the operative articles.

FINANCE, TECHNICAL ASSISTANCE AND TECHNOLOGY TRANSFER: The contact group started off discussing interim financial arrangements, focusing on possible enabling activities, including for ratification, and possible early action, taking into account urgent issues and country-specific priorities. They also discussed currently available funding sources, including from the GEF; the need for additional funding; and examples of interim financing under other MEAs.

Co-Chair Guthrie then introduced a compromise proposal on article 16 including paragraphs on technical assistance, capacity building, the tasks of the COP and technology transfer. On technology transfer, the proposal required developed country parties, and other parties within their capabilities, to promote and facilitate, supported by the private sector and other stakeholders as appropriate, the development, transfer and diffusion of, and access to, updated environmentally sound alternative technologies to developing country parties, in particular LDCs and SIDS, and economies in transition to strengthen their capacity to effectively implement the convention.

Discussion focused on whether the provision was directed at "other parties within their capabilities," alongside developed countries, and whether to "promote and facilitate" technology transfer. A number of developing countries favored a direct obligation focused on developed countries.

IN THE CORRIDORS

While delegates were increasingly reminded of the fast-approaching deadline to reach agreement, securing financial resources remained the elephant in the room. For the third plenary in a row, Chair Lugris was met with either silence or not so encouraging news when asking about the status of informal consultations on the issue. Some thought this is not too surprising given that the usual heavy-hitters on financing have been tied up in discussions on technology transfer, adding that, probably for the same reasons, opportunities to bridge the gap between those who favor GEF (or feel GEF is the only realistic option) and those who insist on a Montreal Protocol-like fund have not yet materialized.

Meanwhile, many saw the 3+ million in pledges for interim support announced in plenary as giving a much-needed impetus to the negotiations. An anxious delegate, however, exclaimed: "We will not need interim financing if we cannot agree on the financial mechanism and provisions for the treaty in the first place!" Leaving financial issues to the last minute is a well-known approach to try and strike a grand compromise at the opportune moment, another participant remarked, hoping that the right catalyst will come along sooner rather than later.