

## PIC COP5 HIGHLIGHTS: WEDNESDAY, 22 JUNE 2011

The fifth Conference of the Parties (COP5) to the Rotterdam Convention on Prior Informed Consent (PIC) convened for its third day in Geneva, Switzerland on Wednesday, 22 June 2011.

In the morning, delegates considered synergies, non-compliance and trade. During the afternoon, delegates took decisions on synergies and financial resources. Contact groups on budget and technical assistance, candidate chemicals, and non-compliance met throughout the day.

### ORGANIZATIONAL MATTERS

President Gwayi announced that several countries have yet to submit credentials, and Masa Nagai, UNEP Legal Adviser, explained that parties failing to submit these will be excluded from decision-making.

### MATTERS RELATED TO THE IMPLEMENTATION OF THE CONVENTION

**CRC:** In the afternoon, President Gwayi introduced the draft decision on confirmation of appointments of government-designated experts as members of the CRC (UNEP/FAO/RC/COP.5/CRP.8), and delegates adopted the decision without amendment.

President Gwayi then introduced the draft decision on nomination of governments to designate experts for the CRC (UNEP/FAO/RC/COP.5/CRP.7). Noting that GRULAC has yet to determine which two countries will nominate experts, the Secretariat listed the countries chosen by the other regions to nominate new experts: DRC, the Gambia, Mali, Zambia, India, Kuwait, Republic of Korea, Saudi Arabia, Bulgaria, Austria, Germany, and Switzerland.

COP5 adopted the decision without amendment.

**NON-COMPLIANCE:** On non-compliance (UNEP/FAO/RC/COP.5/16), the AFRICAN GROUP, the EU, JAPAN, COLOMBIA and SWITZERLAND supported adopting the draft text contained in the annex on establishing a compliance mechanism. The AFRICAN GROUP supported a majority vote option if consensus cannot be reached. The EU and SWITZERLAND highlighted the importance of the mechanism for implementation. COLOMBIA proposed establishing a contact group.

CUBA, IRAN, and BOLIVIA opposed, stating that the issue is conditional on establishing a mechanism on technical and financial assistance that works jointly between the chemicals and wastes conventions.

President Gwayi said a contact group should address the draft text and, in the case of no agreement, also make recommendations for the work of COP6.

President Gwayi confirmed the establishment of a contact group, to be co-chaired by Abiola Olanipekun (Nigeria) and Mona Westergaard (Denmark). She suggested the group first

attempt to clear the existing text with the aim of adopting it at COP5, and in the event of failure to reach agreement, outline steps to be taken by COP6 to achieve progress.

CHILE suggested that steps should be taken intersessionally to agree on a mechanism for adoption at the next COP. CUBA questioned the validity of giving a mandate to an intersessional working group.

President Gwayi confirmed that such practice is common, emphasized that parties would be kept informed of such a group's activities, and mandated the contact group to begin work immediately.

**FINANCIAL RESOURCES:** In the afternoon, President Gwayi introduced the draft decision (UNEP/FAO/RC/COP.5/CRP.2), and the delegates adopted the decision without amendment.

**TRADE:** The Secretariat introduced the issue (UNEP/FAO/RC/COP.5/21) noting the Rotterdam Convention's pending request for observer status at the World Trade Organization's Committee for Trade and Environment (CTE).

The AFRICAN GROUP expressed concern at the slow pace at which the Convention is promoting the Globally Harmonized System (GHS) in developing countries, and urged the COP to take a decision on increased cooperation between the Convention and UNITAR. The Secretariat confirmed that this matter is addressed in the decision on financial resources.

COLOMBIA proposed that the decision include an invitation to parties to promote domestic coordination to ensure that the Rotterdam Convention is granted observer status in the CTE. COP5 agreed to take note of progress made and requested the Secretariat to draft a decision on this matter.

### ENHANCING COOPERATION AND COORDINATION AMONG THE BASEL, ROTTERDAM AND STOCKHOLM CONVENTIONS

COSTA RICA, on behalf of GRULAC and supported by URUGUAY and the DOMINICAN REPUBLIC, expressed support for the draft decision outlined by the Secretariat.

The AFRICAN GROUP suggested adding text referencing technical assistance to the decision.

CHILE, supported by COLOMBIA, CUBA, and URUGUAY, emphasized that the decision text needs to be substantively identical to Stockholm Convention decision SC.5/27 to avoid sending the decision back to the Stockholm Convention COP for adoption. Jim Willis concurred, noting that Zambia's concerns could be addressed in discussions of technical assistance, and ZAMBIA agreed to raise its concerns in the contact group.

UKRAINE, on behalf of CENTRAL AND EASTERN EUROPE, called for adoption of the decision.

URUGUAY and the DOMINICAN REPUBLIC emphasized the importance of establishing a robust financial mechanism for the three conventions.

CHILE called for immediate adoption of the decision, and the EU said it preferred to defer adoption until the CRP was available.

In the afternoon, President Gwayi introduced the draft decision (UNEP/FAO/RC/COP.5/CRP.9), and the delegates adopted the decision without amendment.

### CONTACT GROUPS

**BUDGET AND TECHNICAL ASSISTANCE:** In the contact group, co-chaired by Kerstin Stendahl (Finland) and Mohammed Khashashneh (Jordan), delegates discussed elements related to eight technical assistance activities, including: awareness-raising and training; development of a resource kit to promote the Convention's ratification and implementation; development of elements of national action plans and other strategies for the Convention's implementation; enhancing information exchange between trade partners; support for submissions of proposals on severely hazardous pesticide formulations; strengthening capacity for industrial chemicals management; facilitating the preparation of notifications of final regulatory action; and building capacity to gain access to and use the Convention components of the joint clearinghouse mechanism.

One developed country regional group requested that the technical assistance work-plan for the biennium 2012–2013 be more detailed, particularly regarding technical assistance activities geared towards industrial chemicals, and called on developing countries to provide information on their technical assistance priorities. One developing country regional group broadly prioritized information exchange and technology transfer, with a preference for greater use of electronic media for information exchange, and another stressed that information on industrial chemicals is key.

In the afternoon, delegates discussed a revised description of activities, based on activities contained in the budget and including reference to those that could be covered under the synergies activities. One developed country regional group stressed that approval of any activity would be subject to the availability of funding, and requested that more detailed discussions on individual items occur when each item is costed. One developing country regional group requested information on the expected savings from synergistic activities. In response, Jim Willis noted that these figures would only be available after a proposal on management functions is addressed later in the year.

On the budget, delegates did a first reading of the programme budget, focusing on technical assistance activities, and basing their discussions on the nominal growth scenario with the 25% reallocation of the Swiss contribution.

The group approved the amended financial rules, including a procedure for the allocation of funding from the Voluntary Special Trust Fund for facilitating parties' participation at meetings of the COP, for adoption by plenary. The group also discussed the draft decision, and agreed to revisit text regarding the proposed reallocation of the Swiss contribution after written advice from UNEP's legal adviser.

**CANDIDATE CHEMICALS:** The contact group, co-chaired by Karel Blaha (Czech Republic) and Hala Al-Easa (Qatar), discussed concerns about listing chrysotile asbestos in Annex III. INDIA announced that they had reconsidered their opposition and would support listing. INDIA agreed to chair a small breakout group to continue discussions with opponents to listing about their specific concerns.

Regarding the contact group's mandate from plenary to explore options in case consensus is not reached on listing a chemical, Co-Chair Blaha explained that no parties favored adopting a new annex.

The group then discussed the EU proposal (CRP.5) for a temporary and voluntary application of PIC until a listing decision is taken at the next COP, with some delegates expressing concern about the precedent it might set and its possible impact on seeking consensus on future candidate chemicals. The EU stressed that the commitments under the proposal were voluntary and political, not legal.

To facilitate potential agreement on listing chrysotile asbestos, a small drafting group was formed to draft an accompanying decision to one listing chrysotile asbestos in Annex III, to request: parties and all other stakeholders to promote information exchange on measures to minimize risks and on alternative substances; the Secretariat to collect and distribute the information; and the CRC to report to a future COP on the information available.

When the small drafting group announced no consensus had been reached on listing chrysotile asbestos, Co-Chair Blaha presented the draft. Some countries previously opposed to listing expressed interest in the proposal, and requested time to consult regionally and with capitals. One exporting country which had not previously expressed its position on listing indicated that in no case could it join a consensus for listing, even with the proposed companion decision. Co-Chair Blaha deferred further discussion on this matter until Thursday, after consulting with the Bureau.

**NON-COMPLIANCE:** The contact group heard statements on parties' general concerns.

Parties highlighted concerns on, *inter alia*: facilitation; possible measures to address compliance issues; handling of information; and the nature of the mechanism. Discussion focused on how cases of non-compliance would trigger the mechanism and through what entities. Parties' preferences included: a "broader" trigger mechanism; a Secretariat trigger; both party-to-party and party-to-Secretariat triggers; a state trigger or member-party trigger; and a committee trigger. A number of parties suggested drawing on the experience of the Basel Convention.

Views diverged as to whether the proposed committee could make better decisions with more restricted information, or with as much information as possible as opposed to "artificially excluded information."

One developing country emphasized the need to address means of implementation of the mechanism and the consequences for non-compliance, and was supported by a number of parties.

Many parties expressed a preference for a non-punitive mechanism, and to use voting as a last resort if consensus cannot be reached within the group. Discussions continued into the evening.

### IN THE CORRIDORS

COP5 participants were greeted with good news on Wednesday morning, as India announced its support for listing chrysotile asbestos in Annex III. This change of heart took most delegates by surprise, and environmental NGOs lauded India for "ending the deadlock." Several participants predicted agreement on chrysotile by the close of Wednesday's negotiations. The apparent progress was bolstered by India's agreement to take the lead in small group discussions with the remaining parties opposed to listing. While many said it would be useful for India to share its decision process with others, not everyone was confident that a change in the position of one delegation would result in the listing of chrysotile. They stated that the odds were still stacked against listing the substance that has hamstrung Rotterdam for the last two COPs, and questioned the preparedness of the very silent elephant in the room to alter its position. Others wondered at what point that elephant would be forced to break its silence.

By late afternoon, all bets were off. As opponents to listing chrysotile became sparse, the elephant was left with nowhere to hide. Tempers flared as Canada confirmed it would not join any consensus on listing chrysotile. Usual allies questioned why the party would allow negotiations to progress even as it knew it could not join the consensus. Seasoned delegates whose mandates cross environmental regimes recalled the recent Climate COP16, noting that parties there were determined not to allow one party to block consensus, and moved forward with decisions by "general agreement." They recalled that this was an option flagged at the recent Stockholm COP5 (but which ultimately proved unnecessary), and wondered if parties would be prepared to take such a drastic line in this process.