

MERCURY OEWG HIGHLIGHTS: THURSDAY, 9 OCTOBER 2008

The Second Meeting of the *Ad hoc* Open-ended Working Group (OEWG) to Review and Assess Measures to Address the Global Issue of Mercury convened for its fourth day on Thursday, 9 October 2008. During the morning, delegates discussed capacity building and financing, and, during the morning and afternoon addressed common elements of a mercury framework. Delegates also exchanged initial views on the draft report to the GC.

REVIEW AND ASSESSMENT OF OPTIONS FOR ENHANCED VOLUNTARY MEASURES AND NEW OR EXISTING INTERNATIONAL LEGAL INSTRUMENTS

Achim Steiner, Executive Director, UNEP, addressed the OEWG and urged delegates to avoid sending recommendations containing “either/or” options to the GC. He highlighted the “principle of sufficient consensus” and underscored the potential to agree on a time-bound, targeted and financed global programme of action that could accommodate the possibility of a future legally-binding instrument, without prejudicing the right of any nation not to join such an instrument. Steiner urged that progress not be impacted by the exceptional circumstances of some countries. He concluded by cautioning against maintaining the default option where “voluntarism is the only defined action for addressing the challenge of mercury,” stressing that the Secretariat is interested in ensuring continued concert action on mercury.

Delegates responded, thanking the Executive Director and the Secretariat for their work on mercury, and expressed determination to ensure urgent action is taken to address the mercury issue.

CAPACITY BUILDING AND FINANCE: Drawing attention to the documents on possible funding modalities and sources (UNEP(DTIE)/Hg/OEWG.2/3 & 12) introduced on Monday, Chair Roberts invited delegates to comment on elements and actions of the mercury framework requiring support, and the appropriate support mechanism.

BRAZIL, supported by the GAMBIA, said the GEF currently cannot provide sufficient resources for the required actions, and with JAMAICA, OMAN and NIGERIA, proposed using the Montreal Protocol dedicated multilateral fund, as a model. JAMAICA added that the SAICM Quick Start Programme is inappropriate because it is time-limited and some countries may be ineligible for further funding under it. NIGERIA

highlighted implementation actions that would require capacity building, such as storage of mercury waste and remediation of contaminated sites.

INDIA said activities with direct mercury emissions, such as from chlor-alkali plants, and possibly at a later stage, the unintentional emissions such as those from thermal power plants and small boilers, should be covered under the financial mechanism. NORWAY called for using existing financing mechanisms such as the GEF. The EU outlined the benefits of using the GEF, including promoting synergies and providing long-term financial and technical support to eligible countries, and with SWITZERLAND and KYRGYZSTAN, stressed that legal obligations are concomitant with capacity building, and technical and financial assistance.

TANZANIA highlighted the need for capacity building in the areas of mercury management, regulation and law enhancement, and supported establishing a special fund under a legally-binding instrument. BRAZIL, supported by the EU and SWITZERLAND, expressed concern with the proliferation of financial mechanisms, and BRAZIL called for new and additional financial resources. SRI LANKA stressed the need for technical and financial support for environmentally sound management (ESM) of mercury. The US favored multi-source funding, including development assistance, and said a voluntary stand-alone fund was the most effective option. He also questioned the value of a legally-binding instrument, in which the US, as a major donor, could not participate. SWITZERLAND said some donors would not support voluntary initiatives not sufficiently embedded in a broader framework.

COMMON ELEMENTS OF A MERCURY FRAMEWORK: Chair Roberts invited a section-by-section consideration of the revised text (UNEP(DTIE)/Hg/OEWG.2/CRP.9), noting it is not consensus text, but one with broad support to be used as a basis for GC-25 consideration. He urged that no new issues be introduced.

Elements that frame the issue: The OEWG accepted the Secretariat’s amendment of CANADA’s proposal, with input from JAMAICA and BRAZIL, elaborating that the list of principles includes, “for example, the principles of the Rio Declaration on Environment and Development, in particular, the principle of common but differentiated responsibilities, as noted in GC decision 24/3.”

Specific actions to address the challenges posed by mercury: On reducing the supply of mercury, KYRGYZSTAN, supported by SWITZERLAND, the EU, NORWAY and SOUTH AFRICA, urged retention of the reference to phasing out

primary mining. The EU, supported by the AFRICAN GROUP and SWITZERLAND, but opposed by INDIA and CHINA, suggested also retaining the illustrative list of sources of mercury to be eliminated or reduced. The EU proposed further qualifying that reduction would be taken “where feasible,” which INDIA accepted, but CHINA objected to. The matter was deferred to a contact group comprising the EU, Switzerland, China and India. After informal discussions, Chair Roberts read out a text listing five sources of mercury supply and noting that reducing global supply could be accomplished by using goals, targets or timetables to reduce or eliminate, wherever feasible, sources of supply of mercury, recognizing the need for ongoing use where alternatives are not available. The OEWG agreed to the text.

Regarding demand for mercury in products and processes, the US suggested that BAT and BEP or equivalent measures be used for demand reduction. INDIA added that the expansion of existing production facilities should be prohibited. Delegates accepted the amendments.

On reducing international trade in mercury, CHINA, supported by INDIA and PAKISTAN, and opposed by the EU, SWITZERLAND and NORWAY, proposed deleting reference to mercury-containing products. As no consensus could be reached, Chair Roberts requested that these countries consult informally.

Regarding reducing atmospheric emissions of mercury, CHINA proposed removing reference to specified timeframes and also deleting “where feasible eliminate” atmospheric emissions. NEW ZEALAND and NORWAY, supported by CANADA, countered that this language was already agreed. INDIA proposed focusing only on intentional emissions, but SWITZERLAND, the US and the EU disagreed. There was also extensive discussion on the inclusion of reference to BAT.

After discussion and informal consultations, agreement was reached that: the aim of the actions was to reduce, minimize “and, in circumstances where it is feasible, eliminate” atmospheric emissions of mercury derived from anthropogenic sources in key sectors; and timeframes for the phase-in of BAT or equivalent measures be deleted. Concerning existing sources of mercury emissions, it was also agreed, pending EU coordination, to promote “the use of BAT and BEP practice, environmentally sound technology or equivalent measures within key sectors, in accordance with national implementation strategies, keeping in view the global scenario to the extent possible.” Regarding environmentally sound storage solutions for mercury, JAMAICA suggested text elaborating that guidance on “roles and shared responsibilities of different stakeholders, including producers and consumers,” should be developed and promoted. Delegates accepted these amendments.

On achieving ESM of mercury-containing wastes, BAN said trade in waste for the purpose of environmentally sound disposal, recovery and recycling should not be exempted from the restriction on, or phase-out of, trade in waste. Supported by SOUTH AFRICA, he proposed substituting this with exempting trade in waste for the purpose of ESM, particularly where there is no ESM facility in the exporting country. SWITZERLAND requested time to consider the amendment.

Cross-cutting issues related to implementation:

Recognizing financial resources and technology transfer needs, the EU suggested deleting “adequate” and “sufficient” from the text referring to financial resources, and adding “mutually-agreed” in reference to technology transfer, which was opposed by JAMAICA, BRAZIL, TANZANIA and NIGERIA. SWITZERLAND noted that the OEWG is discussing a broad policy framework, not negotiating a legally-binding instrument, and said therefore such a debate is unnecessary. INDONESIA

proposed adding implementation of the Bali Strategic Plan for Technical Support and Capacity Building to the text, which was accepted.

Chair Roberts noted there was broad agreement over the elements, and that on Friday outstanding issues would be addressed, including: mercury-containing compounds; sections on reducing atmospheric emissions of mercury; new and additional financial resources; and the phase-out of trade in wastes containing mercury and mercury compounds.

DRAFT REPORT OF THE OEWG TO UNEP GC: Chair Roberts introduced the draft report to the GC (UNEP(DTIE)Hg/OEWG.2/CRP.10). The EU said it was generally satisfied with the report. The US expressed dissatisfaction with the description of the POSM in the report, and with the balance the report struck between delegates’ views. Supported by SWITZERLAND, he suggested that each section on implementation modalities should have a chapeau stating that the modality has proponents and opponents.

SWITZERLAND added that the description of the option of a free-standing mercury convention does not adequately capture delegates’ views and requested the Secretariat to redraft it, using the EU proposal (UNEP(DTIE)Hg/OEWG.2/CRP.7). CANADA requested clarification regarding the status of discretionary actions under the proposal of a free-standing MEA, stating that her understanding was that an MEA would include soft, rather than discretionary, obligations.

In response to China’s observation that some of the elements cited as advantages of legally-binding agreements are, in fact, disadvantages, Chair Roberts clarified that the advantages were drawn from the proponents of an instrument, but that it was the right of opponents to highlight such an instrument’s disadvantages. NEW ZEALAND noted that in formulating its decision, the GC recognized that the OEWG would likely only be able to present the views, not consensus, of governments. Chair Roberts said discussion of the report would resume Friday morning.

REPORT ON ACTIVITIES UNDER THE UNEP MERCURY PROGRAMME

This item was reopened briefly for discussion. The US and CHINA underscored that the UNEP mercury programme should be adequately funded, with CHINA stating that the programme is more important than establishing a new legally-binding instrument.

IN THE BREEZEWAYS

Thursday’s statement by the UNEP Executive Director caused quite a stir. While many acknowledged his powerful oration and the elegance of his delivery, participants said the speech left them polarized. Those supporting legally-binding instruments felt the Executive Director was supporting voluntary measures, while those supporting voluntary measures felt pressured into accepting an eventual legal instrument. The differing interpretations point to the sensitive and finely balanced nature of the Group’s work. Most lamented the timing of the intervention and the subsequent change in the OEWG’s dynamic, with voluntary proponents digging in their heels over the policy framework. At the end of an exhausting day that ran into the evening, the prevailing spirit of congeniality and optimism was replaced by one of bewilderment and questions over what Friday might hold.

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin* summary and analysis of the OEWG-2 will be available on Monday, 13 October 2008, online at: <http://www.iisd.ca/chemical/merc2/>