



MERCURY INC5 HIGHLIGHTS: TUESDAY, 15 JANUARY 2013

On Tuesday, INC5 delegates met in plenary in the morning and afternoon. The contact group on selected technical articles and a Friends of the Co-Chairs group on technical assistance and technology transfer met throughout the day. A technical group on emissions thresholds met in the morning, and the contact group on emissions and releases reconvened in the afternoon and evening. Following a “Swiss Break,” a new contact group on health aspects and implementation plans convened in the evening.

PLENARY

AWARENESS-RAISING, RESEARCH AND MONITORING, AND COMMUNICATION OF INFORMATION:

Article 18. Information exchange: Chair Lugris explained that the Chair’s text lifted brackets around a provision that information on the health and safety of humans shall not be regarded as confidential, subject to national laws. CANADA noted that confidentiality should never apply to public health information under multilateral environmental agreements (MEAs). Delegates agreed to delete the reference to national laws.

Article 20. Research, development and monitoring: Chair Lugris indicated that the provision had been modified so that parties “shall,” rather than “should,” cooperate in research, development and monitoring. The US, opposed by BRAZIL, COLOMBIA and MADAGASCAR, preferred the earlier formulation. CHINA proposed that parties “shall endeavor to cooperate,” with BRAZIL adding “taking into account respective national circumstances and capabilities.” Following consultations, the EU accepted these amendments.

Delegates could not agree to remove brackets around text on cooperation in developing and improving “information on commerce and trade in mercury, mercury compounds and mercury-added products,” pending discussions on the issue in the contact group on selected technical articles.

Article 22. Reporting: CANADA, opposed by BRAZIL, suggested deleting reference to taking into account the contents of implementation plans in relation to parties’ obligation to report on their implementation measures and their effectiveness. CHINA requested reference to possible challenges in meeting the treaty objectives. CANADA and COLOMBIA proposed to delete a list of the treaty articles containing reporting obligations.

Article 23. Effectiveness evaluations: The EU proposed that the first evaluation take place no later than COP 3, rather than six years after the convention’s entry into force as in the Chair’s draft. The US noted the Chair’s proposal represents a compromise after lengthy discussions in the past.

On COP 1 initiating the establishment of arrangements for obtaining comparable monitoring data, CHINA, opposed by CANADA and MOROCCO, suggested reference to “sound methodologies, such as” monitoring data. The US suggested reference to baseline conditions and trends. The EU, supported by JAPAN and opposed by CHINA, BRAZIL and CANADA, requested removing reference to financial and technology transfer-related information as the basis of the evaluation. Following consultations, the EU accepted retaining the Chair’s text. JAPAN requested that the legal group clarify duplications with articles 15 and 16.

Article 20 bis. Health aspects: The Secretariat presented the analysis of the extent to which the content of article 20 bis is reflected in the other provisions of the draft mercury instrument (UNEP(DTIE)/Hg/INC.5/5). CANADA, supported by AUSTRALIA and NEW ZEALAND, opposed a dedicated article on health. The EU considered article 20 bis inappropriate for an MEA, cautioning against duplication of work by other international organizations. SWITZERLAND expressed concern with the practical feasibility and regulatory burden deriving from the provision. JAPAN requested deleting references to financial and technical assistance.

GRULAC, the AFRICAN GROUP, MARSHALL ISLANDS, JORDAN, COOK ISLANDS, the PHILIPPINES, the GLOBAL INDIGENOUS PEOPLES CAUCUS, IPEN and HUMAN RIGHTS WATCH supported keeping a separate article on health aspects. EGYPT supported preventive measures in article 20 bis, but cautioned against overlap with WHO and International Labour Organization (ILO) mandates. GRULAC introduced a submission (UNEP(DTIE)/Hg/INC.5/CRP.11): clarifying the respective competence of the mercury COP, WHO and ILO; increasing flexibility in binding requirements; and retaining provisions on access to health care and on scientific, technical and analytical capacities. ARGENTINA requested focus on national implementation plans and, with HONDURAS, protection of health workers.

Pointing to exposure of indigenous peoples to mercury including through traditional foods, the GLOBAL INDIGENOUS PEOPLES CAUCUS called for specific references to indigenous peoples in the text. The ZMWG called for language on programmes to protect vulnerable populations, and IPEN on assessment of cumulative impacts and financial support for fighting mercury exposure. HUMAN RIGHTS WATCH requested provision for research, surveillance and monitoring, and cooperation with WHO and other UN agencies. Chair Lugris established a contact group on article 20 bis.

Article 21. Implementation plans: GRULAC favored option 2 providing more flexibility for implementation. The EU underscored the distinction between discretionary



general implementation plans and parties' obligations, such as inventories. Discussions on the issue will continue in the contact group on article 20 *bis*.

INTRODUCTION: Article 1. Objective: The EU expressed readiness to accept the Chair's draft, which defines the objective as the protection of human health and the environment from anthropogenic releases of mercury and mercury compounds. BRAZIL requested reference to emissions, in addition to releases. CHILE required defining anthropogenic releases in article 2 on definitions.

Article 1 bis. Relationships with other agreements: GRULAC and IRAN suggested moving this article to Section N (Final Provisions). GRULAC proposed adding to a provision allowing a party to impose additional requirements to protect human health and the environment from mercury exposure "in accordance with that party's other obligations under applicable international law," with IRAN suggesting reference to "national" additional requirements.

The EU proposed deleting operative text on not affecting parties' rights and obligations deriving from any existing international agreement and on implementing the mercury instrument in a mutually supportive manner with other relevant international agreements that do not conflict with its objective; and inserting reference to mutual supportiveness in the preamble. The US proposed: retaining language on not affecting parties' rights and obligations deriving from any existing international agreement; relying on the Stockholm Convention language on mutual supportiveness with other international agreements in the field of trade and the environment; and deleting text on allowing a party to impose additional requirements.

Chair Lugris created a contact group on articles of a legal nature co-chaired by Anne Daniels (Canada) and Jimena Nieto (Colombia).

Article 2. Definitions: Definitions for "mercury compound," "mercury-added product" and "use allowed," among others, were referred to the contact group on articles of a legal nature. CHILE introduced two submissions: one aimed to modify the definition of "mercury compound" (UNEP(DTIE)/Hg/INC.5/CRP.9), urging its application to the whole convention; and the other suggesting a definition for "anthropogenic releases" as all emissions and releases originated or derived from human activities. IRAN recommended that "use allowed to the party under this convention" take into consideration not only the availability, but also the accessibility, of alternative products and processes.

INSTITUTIONAL ARRANGEMENTS: Delegates provisionally approved articles 26 (settlement of disputes), 29 (right to vote), 35 (depository), 36 (authentic texts) and Annex J (arbitration and conciliation procedures).

Article 24. COP: Among the list of tasks for the COP, the US and the EU requested deletion of bracketed language on review of national implementation plans. The US, opposed by the EU, also requested eliminating review of annexes C (mercury-added products) and D (manufacturing processes in which mercury compounds are used), which was bracketed.

FURTHER DEVELOPMENT OF THE CONVENTION:
Article 27. Amendments to the convention: SWITZERLAND, supported by the EU and SENEGAL, recommended: a 2/3 majority vote to adopt an amendment in case consensus cannot be reached; and ratification by 2/3, instead of 3/4, of parties for an amendment to enter into force. The US and CHINA supported the former proposal, but opposed the latter.

Article 28. Adoption and amendment of annexes: CANADA, AUSTRALIA and the US suggested lifting brackets around text whereby an amendment to an annex shall not enter into force for a party that has made a declaration regarding the amendment, in which case it will only enter into force 90 days after such a party has deposited an instrument of ratification for such amendment.

FINAL PROVISIONS: Article 31. Ratification, acceptance or accession: The EU, supported by JAPAN and the US, proposed to simplify language that upon ratification parties shall submit a declaration "identifying legislative or other measures taken to implement this convention." The US and CANADA suggested lifting brackets around text on declarations regarding amendments.

Article 32: Entry into force: SWITZERLAND proposed amending the number of required ratifications from 50 in the Chair's text to 30. Following concerns expressed by COLOMBIA, CHINA and the EU, the Swiss proposal was withdrawn. MOROCCO proposed adding language on provisional application pending entry into force.

ARTICLE 17. [IMPLEMENTATION/COMPLIANCE] COMMITTEE: The EU supported option 2 in the Chair's text, which includes terms on the composition and mandate of a compliance committee. EGYPT expressed flexibility, but preference for option 2. Chair Lugris proposed to discuss the article in the contact group on articles of a legal nature.

CONTACT GROUP ON SELECTED TECHNICAL ARTICLES

Under the leadership of Co-Chairs Olanipekun and Donald Hannah (New Zealand) sitting in for Bláha, participants discussed the annex on mercury-added products, including the outcome of small group consultations on lighting, the list of exclusions in the chapeau of CRP.1, and a suggested provision that parties may implement measures to reduce the manufacture, import and export of mercury-added products to a *de minimis* level. The group then considered the article and annex on manufacturing processes, and continued its work into the night.

CONTACT GROUP ON EMISSIONS AND RELEASES

Participants heard a report from the Friends of the Co-Chairs group, who had explored means of reconciling options 1 and 2 in Article 10 (emissions), and from the technical group that met on Tuesday morning to discuss thresholds. On thresholds, it was reported that despite lack of consensus on an approach to setting thresholds, the group agreed on the importance of limiting the scope of the article on emissions to focus initially on largest-emitting sources and that the COP might develop guidelines on establishing thresholds.

On the annex listing emission sources, the group agreed to specify in the title that these are point sources, and to remove references to: oil and gas production and processing facilities; manganese production facilities; and facilities related to products and processes. The group then addressed releases, and many participants supported treating emissions and releases in separate articles and using option 2 as a starting point for their discussions.

IN THE CORRIDORS

As the first reading of the Chair's draft was concluded, delegates left the afternoon plenary for an anticipated "Swiss Break" to the sound of the rock anthem "Under Pressure." Many were still humming "pressure pushing down on me" on their way to the various evening group meetings. "It's the terror of knowing what this world is about," one indigenous representative quoted from the lyrics. "We are no longer able to eat our traditional foods," she explained, emphasizing that indigenous peoples are the most exposed to mercury pollution. Impacts on public health and accountability to affected communities were recognized by several delegates as key drivers of the negotiating process, both in meeting rooms and in the corridors.