



MERCURY INC5 HIGHLIGHTS: THURSDAY, 17 JANUARY 2013

On Thursday, INC5 delegates met in plenary in the morning, evening and night. Contact groups met throughout the day on: selected technical articles; finance; health aspects and implementation plans; emissions and releases; and articles of a legal nature.

PLENARY

In the morning, Chair Lugris announced that negotiations should be concluded by the end of the day, to allow finalization of the text of the instrument on Friday. He reported on informal consultations on finance, mandating the contact group on financial resources, technical assistance and technology transfer to start a conceptual discussion and then textual negotiations of article 15.

BRAZIL reported on a non-paper developed on Wednesday with Bolivia, China, Cuba, Egypt, India, Jordan, Nigeria and Tanzania, and outlining as conceptual elements on finance: a role for GEF; an additional independent fund as a matter of urgency; national entities to strengthen developing countries' capacities to implement the convention; and participation of the private sector and possibly other entities. IRAQ, the BAHAMAS, IRAN, PERU, ECUADOR, MALAYSIA, the PHILIPPINES, VENEZUELA and INDONESIA supported the non-paper.

Co-Chair Nieto reported on the contact group on articles of a legal nature, highlighting general agreement on: text on the relationship with other agreements, but lack of consensus on its placement within the convention; and the establishment of a compliance committee of a facilitative nature, with a mandate for the Co-Chairs to prepare language on specific elements of its operation. Chair Lugris reported on informal consultations, and requested further work on the definition of "mercury compound" and its implications for articles 3 (mercury supply sources and trade), 11 (releases), 12 (environmentally sound interim storage of mercury) and 13 (mercury wastes).

Co-Chair Hannah reported on the contact group on selected technical articles, highlighting a package on dental amalgam (UNEP(DTIE)/Hg/INC.5/CRP.22) and another package (UNEP(DTIE)/Hg/INC.5/CRP.21) including a complete phase-out of primary mercury mining within 15 years from ratification for each party. He noted that not all concerned countries had yet had an opportunity to discuss it. INDIA and BRAZIL expressed reservations about the 2018 and 2020 phase-out dates for mercury-added products. SWITZERLAND and NORWAY

proposed that the legal group address the package, while the contact group consider phase-out dates. SAUDI ARABIA, INDIA and IRAQ underscored the importance of reaching consensus.

Legal Group Co-Chair Biniiaz introduced: a submission on consistent use of the terms "emissions," "releases" and "emissions and releases" (UNEP(DTIE)/Hg/INC.5/CRP.20), recommending using both terms in article 2 (objective); and draft articles (UNEP(DTIE)/Hg/INC.5/CRP.15). Delegates provisionally adopted articles 18 (information exchange), 22 (reporting), 28 (adoption and amendment of annexes), and 34 (withdrawal).

In the afternoon, Co-Chair Daniels reported that agreement was reached to place an exclusion from the definition of "mercury compound" in the article on mercury wastes (article 13). Co-Chair Espinosa reported on agreement on an article on health aspects (article 20 bis) to, *inter alia*, encourage parties to promote the development and implementation of strategies and programmes on populations at risk and occupational exposure, and promote appropriate health-care services, while the COP should consult and collaborate with the WHO, ILO and other relevant organizations (UNEP(DTIE)/Hg/INC.5/CRP.24). BRAZIL suggested Chair Lugris prepare a Chair's text on the preamble, and delegates agreed.

Naoko Ishii, GEF CEO and Chairperson, reported that the 43rd GEF Governing Council adopted a decision expressing willingness, if so requested by the INC, for GEF to become a financial mechanism of the future mercury instrument. She committed to securing new and additional financial resources.

In the evening, Co-Chair Olanipekun announced finalized text on interim storage and wastes, but reported that some delegations were still unable to agree on a revised package on primary mining, with INDIA inquiring about the procedure for the package development and SWITZERLAND noting that the original package had been presented on a "take-it-or-leave-it" basis. CHILE inquired about the inclusion of the definition of "mercury compounds" in relevant technical articles.

Co-Chair Nieto announced finalization of the text on relationship with other agreements, and underscored the need for further work on compliance. Co-Chair Sebkova reported on progress on national implementation plans. Chair Lugris introduced a submission from the contact group on emissions and releases on annex F, which contains a list of point sources of emissions of mercury and its compounds to the atmosphere (UNEP(DTIE)/Hg/INC.5/CRP.28). Negotiations continued into the night.



CONTACT GROUPS

SELECTED TECHNICAL ARTICLES: The group finalized articles on interim storage and mercury wastes, with changes regarding the application of definitions and provisions to non-parties, and agreed that the COP “may” adopt requirements on interim storage and “shall” adopt requirements on wastes. The group also worked on articles and annexes on products and processes, deciding to: set phase-out dates for products listed in the mercury-added products annex to 2020; require phase-out of acetaldehyde production in which mercury or mercury compounds are used as a catalyst; and restrict production of sodium or potassium methylete or ethylete and of polyurethane.

EMISSIONS AND RELEASES: Participants considered text from the drafting group on releases, agreeing to eliminate the annex on releases. The group debated whether provisions from article 11 should be adapted from the text developed by the group on article 10 (emissions) in the early hours of Thursday, and the extent to which the two articles should mirror each other. The group finalized annex F listing point sources of emissions to air, agreeing to delete references to iron and steel production facilities and to open burning of waste.

Delegates engaged in extensive deliberations to finalize article 10. Participants agreed on language clarifying that the article is controlling, and where feasible reducing, emissions of mercury and mercury compounds, expressed as “total mercury” to the atmosphere through measures to control emissions from the point sources in annex F. On control measures, they worked on developing a package relating to, *inter alia*: parties requiring BAT and BEP for new sources and implementing one or more of a range of measures for existing sources; timescale for these requirements; and a definition of new sources.

FINANCE, TECHNICAL ASSISTANCE AND

TECHNOLOGY TRANSFER: On recognizing assistance-related requirements for effective implementation, delegates discussed whether such language is needed, and its placement. They were also presented with alternative language from the non-paper on finance, which links the extent of implementation of substantive commitments by developing countries to the extent of implementation of support-related commitments by developed ones, reflecting Article 13.4 of the Stockholm Convention.

Some delegates welcomed text on resources for implementation, highlighting the need for a broad range of sources. Others expressed concern regarding the use of the term “mainstreaming” and unduly prescriptive language, drawing attention instead to language from Stockholm Convention Article 13.2 on financial resources. Several stressed the importance of establishing a mechanism to support implementation by parties, with some reserving their position on whether the mechanism would involve technology transfer. Some called for additional text on the resources needed and the outcomes the mechanism would deliver.

Opposing references to an independent fund, a number of developed countries favored the GEF to run a fund and serve as the financial mechanism generally. Several developing countries opposed, pointing to difficulties in obtaining GEF funding and restrictive procedures. Some pointed to a “GEF-plus” option, referring to the involvement of other entities as a possible solution. A developed country regional group clarified that “GEF-plus” would use existing channels. A developing country recognized a role for the GEF, but called for additional

arrangements to meet urgent needs. A number of countries pointed to a hybrid solution that would include the GEF and a new fund.

Several countries supported the COP deciding on overall policies and procedures and a possible indicative list of categories of activities for funding, as well as determining funding eligibility with a developed country proposing as a condition the reduction of mercury. Some developing countries stressed that COP guidance should be addressed to the GEF and other entities respectively.

Delegates generally agreed with text on the level of funding and effectiveness of the mechanism. A developed country regional group proposed that parties other than developed countries “should,” rather than “may,” provide funding within their capabilities and on a voluntary basis.

In the evening, delegates reviewed the Co-Chairs’ proposal on Article 15, and decided to refer it to a drafting group.

ARTICLES OF A LEGAL NATURE: Delegates reached preliminary agreement that the definition of “use allowed” refers to any use by a party of mercury or mercury compounds consistent with the convention, including but not limited to, uses consistent with articles 3, 6, 7, 8 and 9, as well as for laboratory-scale research or as a reference standard. Discussion of the Co-Chairs’ proposal on compliance was postponed following one developing country’s opposition to further discuss the issue pending negotiations on finance.

On relationship with other international agreements, the group debated and finally accepted the proposal of a developed country regional group to clarify that agreed language on rights and obligations under other agreements is not intended to create a hierarchy between this convention and other international instruments. The group then decided to place in the preamble all agreed language on mutual supportiveness, rights and obligations under other agreements and additional domestic measures.

IN THE CORRIDORS

As plenary resumed in the morning, seasoned negotiators, some of whom had only escaped the conference center a couple of hours earlier, inevitably compared the paucity of finalized articles to where the text had stood at a comparable stage in negotiating the Stockholm Convention. This prompted some to wonder how the INC will be able to resolve all the outstanding issues, as Chair Lugris reminded delegates of the need to close negotiations “today.” Rumors flew about the possible convening of a closed Friends of the Chair group to craft a total package for INC to finalize its work.

As the afternoon’s work proceeded, however, it became clear to some that for a full instrument to emerge in Geneva, consensus would have to be reached through the detailed negotiations of the technical content of the convention in contact and drafting groups.

During the evening, these groups made steady progress on long-standing bracketed text. Some veterans started thinking more positively about the odds of a new treaty joining the chemicals and wastes family, though one remarked, “it still remains to be seen whether we’ll be toasting the new arrival by Friday night or early Saturday morning.”

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin* summary and analysis of the mercury negotiations will be available on Monday, 21 January 2013 online at: <http://www.iisd.ca/mercury/inc5/>