

PIC COP5 HIGHLIGHTS: THURSDAY, 23 JUNE 2011

The fifth Conference of the Parties (COP5) to the Rotterdam Convention on Prior Informed Consent (PIC) convened for its fourth day in Geneva, Switzerland on Thursday, 23 June 2011.

In the morning, delegates convened briefly in plenary and adopted a decision on trade. Work continued in contact groups on budget and technical assistance, candidate chemicals, and non-compliance. During the afternoon, delegates convened in plenary and exchanged views on chrysotile asbestos.

MATTERS RELATED TO THE IMPLEMENTATION OF THE CONVENTION

CRC: The Secretariat announced that Brazil and Mexico will nominate experts for the CRC for the GRULAC region.

CONSIDERATION OF CHEMICALS FOR INCLUSION IN ANNEX III TO THE CONVENTION: Thursday morning in plenary, candidate chemicals contact group co-chairs Karel Blaha (Czech Republic) and Hala Al-Easa (Qatar) updated delegates on progress of discussions. Citing confusion in the group over the meaning of “listing” as opposed to “banning,” they noted that consensus on listing chrysotile asbestos had not been reached. In response, the UKRAINE stated that failure to reach consensus was not related to a misunderstanding, or to imposing conditions on listing. Delegates agreed to continue discussions in the contact group.

Reporting to plenary in the afternoon, Co-Chair Blaha explained that the contact group had not made progress on listing chrysotile asbestos.

The AFRICAN GROUP requested the co-chairs to state which parties are opposed to listing the substance. Contact Group Co-Chair Blaha confirmed that the countries opposed to listing chrysotile were the Ukraine, Kazakhstan, Kyrgyzstan, Viet Nam and Canada. He noted that the Ukraine and Kazakhstan cited lack of scientific data and that Canada had not explained the reasons for its position. He said Kyrgyzstan and Viet Nam did not participate in the contact group.

KAZAKHSTAN noted no agreement was reached in the contact group on consideration of chrysotile at COP6. KYRGYZSTAN, with the RUSSIAN FEDERATION, stated that new notifications were required for chrysotile asbestos, and requested a legal opinion. President Gwayi confirmed that the DGD for chrysotile asbestos was not in question.

NORWAY thanked India for its flexibility on listing and urged parties to move forward. The UKRAINE underscored the need for considering additional information on chrysotile at the CRC and requested legal clarification on the matter.

AUSTRALIA expressed disappointment at the outcome, but expressed hope that some progress could be made in understanding the difficulties faced by opposing countries. Supported by MEXICO and the EU, he suggested convening an informal apolitical discussion to connect those requesting additional information with those possessing information.

Emphasizing the high costs for developing countries attending COPs, the AFRICAN GROUP said Canada had not allowed the group to understand their issues and called on the country to put forward its reasons for opposition. KENYA pleaded with opposing countries to give developing countries the opportunity to safeguard their populations’ health and environment.

The EU expressed severe disappointment at the outcome, underscored the need to move forward, as opposed to backward, and thanked India for its courage and solidarity.

CANADA stressed that it was present during the contact group discussions and asserted its right to state its position at the time it thought best. He said “for over 30 years Canada has actively promoted the safe and controlled use of chrysotile” and requested his country’s position be respected. Expressing preparedness to work on elaborating a voluntary PIC mechanism, he cautioned against concluding that the Convention is not functioning properly.

In response, the EU questioned why Canada does not view the PIC procedure as contributing to the safe management of chemicals. She also questioned Canada’s wish to work within the rules of the COP, which require parties to avoid bringing forward matters unrelated to the Convention. KENYA requested that Canada provide a reason for its position.

President Gwayi repeated that Canada’s primary reason for opposing listing is that it has been responsible about exports and control of use, and CANADA clarified that it has actively promoted safe and controlled use of the substance domestically and internationally.

ROCA challenged the relevance of Canada’s reasons and urged parties not to allow economic and political reasons to undermine the scientific basis of the Convention.

The INTERNATIONAL ALLIANCE OF TRADE UNION ORGANIZATIONS suggested permanently withdrawing chrysotile asbestos from the agenda of the COP. The CHRYSOTILE INSTITUTE said scientific studies show that health risks from exposure to chrysotile are so low as to not be measurable.

WHO expressed disappointment that a decision has not been reached given that the criteria for listing have been met.

President Gwayi suggested convening an informal group, to be facilitated by Barry Reville (Australia), for informal discussion. CANADA reemphasized that it will not agree to listing at COP5.

TRADE: The Secretariat introduced the draft decision on cooperation with the WTO (UNEP/FAO/RC/COP.5/CRP.10). COP5 adopted the decision without amendment.

CONTACT GROUPS

BUDGET AND TECHNICAL ASSISTANCE: On Thursday morning, the contact group discussed the revised programme budget for 2012-2013. Co-Chair Stendahl requested the group to finalize their work by the end of the day in order to have time to readdress, and accordingly adjust, the budget in case of "any disconcerting news that may come from Italy."

One developed party regional group noted that the proposed partial reallocation of the Swiss contribution implies a 20% increase in assessed contributions across the board, with individual party contributions increasing by over 160% in some cases. She highlighted that this estimate was based on the assumption that the Italian host contribution would be available. Many delegates stressed that any savings made were not to be earmarked for reallocation to other activities.

One party suggested that technical assistance activities be prioritized, and proposed that some of these activities be financed under the core budget to ensure that they are addressed. Others disagreed, with one regional group noting that it is not standard practice to make developing country parties pay for technical assistance activities to be performed in other developing countries.

Delegates prioritized four technical assistance activities, including: reviewing content and components of a resource kit; developing action-oriented tools to identify and outline elements for national actions; strengthening national capacities related to severely hazardous pesticide formulations; and preparing notifications of final regulatory action.

CANDIDATE CHEMICALS: The contact group met Thursday morning and briefly in the afternoon.

Masa Nagai, UNEP Legal Affairs Adviser, explained the possible legal consequences of applying the voluntary and temporary PIC procedure to one chemical until the next COP, as proposed by the EU (CRP.5/Rev.1). He clarified that the proposed procedure was completely voluntary for both importing and exporting parties, and would have no legal consequences for any party.

In subsequent discussion, several developing country delegations expressed concerns that: a voluntary procedure might set an unfortunate precedent; information exchange is already an obligation under the Convention; and the decision may create *de facto* legal obligations.

Co-Chair Blaha suspended contact group deliberations and requested a small drafting group of interested parties to work on amending CRP.5/Rev.1. As many of the delegations with concerns had left the room, work did not proceed.

In the afternoon, some delegates suggested the group consider drafting two decisions for plenary consideration: carrying forward to COP6 the issue of listing chrysotile asbestos; and another requesting the Secretariat to prepare a paper for COP6 on options for improving the effectiveness of the Convention. Several parties opposed a decision. An international scientific conference on chrysotile asbestos to examine all scientific data prior to CRC8 was proposed. This was opposed by several parties, who noted that the CRC's recommendation is final.

Some opposing countries requested UNEP's Legal Adviser to produce a written legal opinion stating why chemicals cannot be reconsidered by the CRC based on the availability of new scientific information. Co-Chair Blaha said that drafting such a decision was beyond the group's mandate, and he closed the discussion in order to seek a revised mandate from the plenary.

NON-COMPLIANCE: Co-Chair Westergaard summarized that parties had agreed the mechanism be: facilitative, transparent, able to identify cases of non-compliance, and able to help non-compliant parties. Despite this agreement, several

parties expressed reservations that continued work would be wasteful because some countries had already indicated they did not intend to adopt a clean text.

After opening discussion on matters of consensus, negotiations stalled, with some parties emphasizing that lack of flexibility on brackets not only indicated lack of willingness to negotiate the text as a whole, but also lack of interest in creating a facilitative and effective mechanism.

Parties also reviewed new text proposed by a developing country, which provided: a preamble; additions to text on the Committee's assistance to non-compliant parties, which elaborates on assistance for access and capacity building, and calls for parties to develop action plans; and on measures to address compliance, including the enlargement of the Special Trust Fund to include an implementation fund earmarked for the compliance committee. Several countries supported the proposed text, saying it strengthened the mechanism, made it more facilitative, effectively drew on other conventions and addressed implementation. Some shared concerns that: it may negatively incentivize parties to obtain resources before complying; the uses for the funds were unclear; and as a voluntary fund it might be an "empty promise."

On the mechanism's trigger, after agreeing to accept the party-to-party trigger, the debate focused on the secretariat trigger. Many parties noted it exists under the Basel Convention, and called the Secretariat an important and "impartial" source. Others recalled that the Secretariat's role under Basel differs in that it is limited to reporting, and did not support the Secretariat taking on the ability to "judge" or "police" this process.

On measures to address compliance issues, parties debated enabling the compliance committee to undertake an inclusive or exclusive list of measures. Parties agreed to an inclusive list.

On the handling of information, parties debated language to refer to the types of information sources the committee can receive, and whether and how to limit the mandate of the committee in obtaining that information.

INFORMALS

INFORMATION ON ASBESTOS: Delegates discussed available and required information on asbestos. Summarizing the discussion, Facilitator Reville said those opposing listing: doubt there is sufficient scientific data on the hazards of chrysotile; worry that listing would negatively change the perception of chrysotile, or that it would lead to a "stealth ban"; and worry there might be hidden health dangers in its substitutes. He said those wanting listing perceive a problem in information flows about risks and safe use of chrysotile.

IN THE CORRIDORS

COP5 participants spent most of Thursday working in contact groups in the basement of the CICG, attempting to achieve progress on key issues. On budget and technical assistance, a few delegates were optimistic that light at the end of a long, dark tunnel was visible. Others were more cautious, declaring the group's continued work an "act of faith," as it is based on a hypothetical budget that assumes Italy will make its host country contribution. A facsimile from the Italian Government circulated among delegates described "stringent measures on the administrative budget of all the Italian public administrators" causing a "linear cut over all expenses...among these...the host country contribution," and delegates' interpretations of the situation differed widely.

Frustrations were addressed openly in the afternoon session of plenary, during which Canada was asked to explain its objection to listing chrysotile asbestos. Canada's tangential statement that it has "actively promoted safe and controlled use of the substance domestically and internationally" as justification for not agreeing to prior informed consent left many dumbstruck.

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin* summary and analysis of PIC COP5 will be available on Monday, 27 June 2011 online at: <http://www.iisd.ca/chemical/pic/cop5/>