

## MERCURY OEWG HIGHLIGHTS:

TUESDAY, 7 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 second day on Tuesday, 7 October 2008. Throughout the day, delegates considered common elements of a mercury framework, focusing on introductory language and the specific actions to address mercury.

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

Chair Roberts opened the morning session and explained that the issues to be decided regarding a future mercury framework include: elements to be addressed by a mercury framework; the type of framework to be used; and the capacity building, financial and technical support required to deliver on the elements.

#### COMMON ELEMENTS OF A MERCURY

**FRAMEWORK:** Chair Roberts proposed using the elements of a mercury framework document (UNEP(DTIE)/Hg/OEWG.2/8) as a basis for discussions on the issue of elements, and for recommendations to the UNEP GC. NEW ZEALAND, CHINA, the US, the AFRICAN GROUP, SWITZERLAND, NORWAY, the EU, BRAZIL, JAPAN, the CEE and others supported using the document as a starting point. NEW ZEALAND urged agreement on the objectives of the framework.

NIGERIA said negotiating the details of the document was not necessary, suggesting this could be done at GC-25. Recognizing that the document provides a good basis for discussion, the US, joined by CHINA and SENEGAL, opposed submitting the document to UNEP GC-25 without further work by the OEWG.

The Secretariat clarified that the policy framework could be implemented in different ways, including through legally-binding and voluntary measures, and confirmed that the document was independent of delivery modalities. Chair Roberts then suggested delegates consider the document section-by-section.

**Elements that frame the issue:** This section contains an introduction and objectives of the framework. NEW ZEALAND suggested framing the objectives using language taken from the SAICM. The EU, supported by NORWAY, suggested using the objective of the Mercury Partnership Programme. CHINA disagreed, arguing that the reference to the elimination of mercury in the objective was controversial.

The US stressed the need to know the nature of the outcome prior to discussing elements and, supported by SWITZERLAND, JAPAN, BRAZIL and others, said a chapeau reflecting issues not yet decided on, should be added to the recommendations to the GC. NORWAY said an explanation of the intent and status of the document should be included. BRAZIL, supported by JAMAICA, said the principle of common but differentiated responsibilities should be mentioned in the chapeau and JAPAN called for considering prioritizing elements.

Chair Roberts requested the Secretariat to draft a chapeau reflecting the views expressed by various delegations, and during the afternoon session, the Secretariat introduced the draft chapeau (UNEP(DTIE)/Hg/OEWG.2/CRP.5) for discussion. Delegates agreed that the OEWG should recommend that the GC consider adopting the policy framework to address the global challenge posed by mercury.

Regarding the special needs and situations of developing countries, JAMAICA highlighted that this does not reflect the principle of common but differentiated responsibilities. Delegates agreed the principle could be included in the elements.

Regarding the elements of the framework being independent of delivery modalities, delegates agreed that elements may vary with regard to the legally-binding or voluntary nature of the implementation modalities.

The Secretariat agreed to provide a revised draft of the chapeau containing the various agreed amendments on Wednesday.

**Specific actions to address the challenges posed by mercury:** Regarding the actions to address the challenges posed by mercury, CANADA observed that some statements are prescriptive, and thus, refer to delivery modalities. INDONESIA, BANGLADESH and CHINA suggested adding references to public awareness, research and development, and technical assistance and capacity building.

Regarding reducing the supply of mercury, the DOMINICAN REPUBLIC suggested identifying the specific activities to be restricted, reduced or eliminated. INDIA, supported by CHINA, suggested regulating, as opposed to reducing, the supply of mercury. INDIA preferred focusing on demand rather than supply. The NATURAL RESOURCES DEFENSE COUNCIL (NRDC), supported by the BASEL ACTION NETWORK (BAN), said addressing supply was a prerequisite for impacting demand.

PERU explained that his country has a large-scale gold mining industry and mercury is a by-product. He said for Peru, elimination would mean ceasing gold mining and therefore favored regulating supply. INDONESIA opposed the use of language referring to elimination or reduction of mercury produced as a by-product of mining, preferring reference to residual mercury from mining and other extractive industries. NEW ZEALAND noted that the header "reduce the supply of mercury" was language taken from GC decision 24/3 and, with VENEZUELA and NIGERIA, supported retaining it.

MEXICO, supported by JAPAN, CANADA, SWITZERLAND and CHINA, highlighted the importance of recovering mercury from industrial processes and said the supply of mercury from recycling should not be eliminated. JAPAN explained that recovery assists in pollution prevention. INDIA suggested recycling should be undertaken in an environmentally sound manner and that mercury use should be regulated.

CANADA suggested deleting the illustrative list of sources of mercury, stating a hierarchy of sources would be subject to negotiation. The US concurred and suggested the development of best practice guidelines on the capture and reuse of mercury.

Regarding reducing demand for mercury in products and processes, JAMAICA noted that accessibility and affordability of mercury substitutes would influence a mercury phase-out programme.

PAKISTAN said the reference to prohibiting construction of new production facilities should be deleted, as mercury alternatives are not always available. INDIA proposed qualifying the prohibition with words to the effect that "where alternatives are available." The US, supported by CANADA and AUSTRALIA, and opposed by TANZANIA and NIGERIA, suggested deleting all the examples listed. NIGERIA added that the chapeau should state that examples are illustrative, not exhaustive. The EU proposed a differentiated, sector-by-sector, phase-out programme for mercury.

Regarding reducing international trade in mercury, the EU, NORWAY, NIGERIA, SENEGAL, JAMAICA, TANZANIA and the GAMBIA supported reducing international trade in mercury, noting that trade is a major element in addressing mercury. The US, supported by INDONESIA, suggested deleting reference to "mercury-containing products," and to focus on elemental mercury. AUSTRALIA preferred deleting reference to trade, but supported the US proposal if the reference to trade was retained.

JAPAN opposed a total ban on mercury trade, but supported restricting mercury trade and operating a prior informed consent (PIC) procedure. While acknowledging that some ideas in the text could be considered, such as the reference to the PIC procedure, CHINA favored dealing with trade under the World Trade Organization (WTO). MAURITIUS, BURKINA FASO

and the GAMBIA said they had limited capacity to manage hazardous wastes in an environmentally sound manner, and SOUTH AFRICA noted that its contamination management technologies were becoming obsolete. Noting that mercury is a global issue, VENEZUELA urged delegates to think beyond their respective national interests. The DOMINICAN REPUBLIC said producers should be held responsible for their residues. PANAMA stressed the right to information on the impacts of mercury. NAMIBIA pointed out that small countries are unable to participate in the WTO process, but can participate in this forum.

SWITZERLAND supported the formulation of language on trade, said trade in mercury products without substitutes should be allowed, and noted that this language did not contravene WTO rules. He highlighted that trade should be part of any future framework that effectively addresses the challenges posed by mercury.

At the request of China, the EU and the Secretariat clarified that international trade is implied in paragraph 22 of decision 24/3 on options for addressing the trade in, and supply of, mercury, with the NRDC concurring that the action on international trade should be read in conjunction with the actions on reducing mercury supply and demand.

The RUSSIAN FEDERATION said trade in mercury and its regulation should be discussed as part of a future regime, noting that international trade issues would need to be considered by all states. INDIA stressed focusing on substitutes for mercury. The BAN said Article 20 of the General Agreement on Tariffs and Trade (GATT) provides for exceptions on substances with health and environmental impacts.

Chair Roberts proposed separating control of trade in elemental mercury from control of trade in mercury-containing products. The NRDC opposed this proposal. The US and SWITZERLAND supported the proposal, with the US, opposed by NORWAY, the EU and NIGERIA, suggesting that the issue of elemental mercury should be discussed as a trade issue, and mercury-containing products should be discussed as a waste issue. CANADA, opposed by JAMAICA, suggested changing the reference to reducing international trade in mercury, to a reference on regulating trade in mercury. Delegates agreed to revisit the discussion on trade on Wednesday.

### **IN THE BREEZEWAYS**

Tuesday saw the beginning of the OEWG's substantive debate, with deliberation on the common elements of a mercury framework. While some preferred to thin down the content of each action, leaving the elaboration for future negotiation, others quipped that in doing so, the OEWG may be in danger of handing back to the GC, the very list the OEWG was tasked with elaborating. Delegates were somewhat polarized over the most contentious element of trade - which some proposed removing and others asserted was an essential part of any mercury framework. More cynical participants suggested that the issue of trade was considered by some to be a proxy for a legally-binding instrument. Still, the end of the day saw delegates optimistic and speculating that with sufficient bilateral discussions, progress could be made even on the issue of international trade.