

MERCURY OEWG HIGHLIGHTS: WEDNESDAY, 8 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 third day on Wednesday, 8 October 2008. During the morning, delegates completed consideration of common elements of a mercury framework, and considered modalities for implementation in the afternoon.

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

Chair Roberts opened the morning session and the Secretariat described a proposed structure of the OEWG report and annex to be submitted to the UNEP GC-25, which, he suggested, would include: the mandate from the GC; the revised policy framework; and broad implementation options. Chair Roberts requested the Secretariat to prepare the draft report for Thursday afternoon.

COMMON ELEMENTS OF A MERCURY

FRAMEWORK: Elements that frame this issue: Chair Roberts introduced the revised chapeau (UNEP(DTIE)/Hg/OEWG.2/CRP.5/Rev.1). BRAZIL suggested a reference to the principle of common but differentiated responsibilities and this was accepted by the OEWG. The OEWG reached agreement on the chapeau.

Specific actions to address the challenges posed by mercury: Regarding reducing or eliminating atmospheric emissions of mercury, the US, supported by NEW ZEALAND and AUSTRALIA, proposed a reference emphasizing multi-pollutant approaches that have co-benefits affecting human health and environmental aspects. SWITZERLAND, supported by the EU and the US, preferred using “considering” rather than “emphasizing.” NEW ZEALAND proposed that the multi-pollutant approaches should also deal with emissions from ASM. BURKINA FASO, supported by the GAMBIA, suggested adding reference to national, sub-regional and regional strategies.

CHINA, supported by INDONESIA, said the goal should be to minimize, not eliminate, emissions from the key sectors identified, stressing that eliminating mercury emissions from coal and other fossil fuel combustion was not feasible. INDIA, PAKISTAN and INDONESIA opposed reference to elimination of unintentional atmospheric emissions of mercury from coal and other sectors. INDIA stressed that developing countries rely on the energy generated from these sources, and that these produce minimal mercury emissions.

Supported by the US and BURKINA FASO, INDIA proposed deleting the action on unintentional emissions, and focusing on the direct use of elemental mercury instead. NIGERIA, supported by NORWAY, ZIMBABWE, the EU, SIERRA CLUB, the GAMBIA and SENEGAL, opposed this proposal. NORWAY stressed reference to emissions is included in the Mercury Partnership Programme. The INTERNATIONAL CLEAN COAL INITIATIVE (ICCI) explained that there are ways to generate clean power from coal, and that control of coal mercury emissions is compatible with the expansion and growth of the power sector.

The US said removing reference to unintentional emissions would give the provision a broader scope. The EU proposed distinguishing between intentional and unintentional mercury emissions, suggesting language to the effect that where feasible, intentional emissions should be eliminated, and unintentional emissions minimized.

Regarding achieving environmentally sound management of mercury-containing wastes, JAMAICA said mercury compounds should be included. Stressing that recovering mercury from waste is essential to restricting entry of mercury into the environment, JAPAN said it was developing a guidance document under the Mercury Partnership Programme. BRAZIL reflected on the challenges faced by developing countries in implementing the Basel Guidelines and requested further assistance. Noting that medical waste is not separated in his country, TOGO suggested adding a reference to separation of medical wastes.

Regarding finding environmentally sound storage solutions for mercury, the US noted it was considering providing development assistance, including in the storage of mercury. JAMAICA highlighted challenges faced by small island developing states (SIDS), including finite land space and restricted storage capacity. JAPAN noted the need to share responsibility for storage among producers, users and other stakeholders.

INDIA asserted that long term storage is neither necessary nor feasible. The EU stressed that the need for secure storage is a consequence of mercury being withdrawn from markets. SWITZERLAND highlighted the interdependence of actions on storage and trade.

The ICCM suggested that reference to storage be replaced with “disposal,” in order to permit future disposal. NRDC disagreed, stating that “disposal” presupposes landfilling, and suggested using “manage” instead.

Regarding remediating existing contaminated sites, CHILE, supported by MEXICO, proposed amending the section to focus on management of contaminated sites, citing the prohibitive cost of remediation. The CEE, supported by the US and

NIGERIA, preferred the existing formulation. INDIA suggested including the need to rehabilitate sites, cap small sites and send contaminated waste to secure landfills.

On increasing knowledge, UGANDA and BRAZIL called attention to the need to “develop” knowledge on mercury, and BURKINA FASO suggested reference to information dissemination, as well as regular follow-up, instead of “monitoring,” of mercury levels. JAMAICA emphasized the special needs of vulnerable groups, SIERRA CLUB called for enhanced collection and sharing of data, and CHILE highlighted the exchange of information and experience.

Arrangements related to implementation: Chair Roberts recalled China’s proposal to reflect the cross-cutting nature of implementation arrangements. The EHF, supported by BRAZIL, called for new and additional financial resources. The US drew attention to its proposal for a stand-alone fund.

Policy guidance and administration: The Secretariat recalled China’s emphasis on brevity and proposed deleting the sub-points elaborating how the policy guidance or oversight process and administrative support could be undertaken. Delegates agreed to consider an EU addition on the need for cooperation and coordination with the Basel, Stockholm and Rotterdam conventions.

Chair Roberts said a revised document would be circulated on Thursday morning and discussion on the outstanding issue of international trade in mercury would resume Thursday afternoon.

MODALITIES OF IMPLEMENTATION: Chair Roberts invited delegates to state the modality favored, and the benefits and disadvantages of the alternatives. He explained legally-binding options included a new MEA, a Stockholm Convention protocol, or a protocol to the Basel, Stockholm or Rotterdam conventions. He said the voluntary measures included the proposed Programmatic Organizational Structure on Mercury (POSM), a SAICM-type agreement, or the existing UNEP mercury programme.

The EU, NORWAY, SENEGAL and MAURITANIA favored a MEA, citing the benefits of other pollution-related conventions, and an MEA’s potential to: deliver on reduction measures; generate funds for technical capacity; and accommodate both obligatory, mandatory and voluntary actions.

JAPAN called for a combined voluntary and legally-binding instrument, highlighting the shortcomings of employing either option independently. Underscoring its diversity, Japan, for the ASIA-PACIFIC region favored voluntary approaches in the short-term and said a legally-binding agreement could be considered in the long term.

The US presented its POSM proposal (UNEP(DTIE)/Hg/OEWG.2/CRP.6) underscoring its potential for immediate implementation and broad participation, and light structure.

ARGENTINA said it was not in favor of negotiating a new instrument, preferring strengthening current voluntary instruments and extending existing legally-binding instruments to deal with mercury. SWITZERLAND, supported by NIGERIA, expressed preference for a legally-binding, free-standing MEA, which it said would ensure coherence, harmony and transparency, and was the best way to addressing mercury supply.

AUSTRALIA said the need for a legally-binding instrument had not been established and that the elements of a mercury framework agreed by the group could adequately be addressed through a voluntary approach, such as SAICM or the POSM. INDIA highlighted the achievements of current voluntary actions to reduce mercury emissions and identified flexibility and speed of implementation as benefits of a voluntary approach. OMAN preferred a legally-binding approach stating this would assure financial and technological assistance to developing countries. The CEE favored a free-standing convention saying this would

ensure effectiveness and financial support for implementation. The AFRICAN GROUP said international trade in mercury could only be regulated under a legally-binding instrument and stressed the need to address the lifecycle of mercury in all its forms. CHINA said although a legally-binding instrument could be considered in the long-term, at this stage a voluntary approach was most appropriate.

Regarding voluntary approaches, NRDC noted that voluntary approaches can be developed quickly, but argued that effectiveness was more important than speed. He said the assumption that more countries would participate in voluntary, rather than legal measures, was unfounded.

The EEB, joined by URUGUAY, supported a free-standing convention, stressing that it is more effective and will increase the confidence of countries in managing mercury.

Chair Roberts summarized that there was clear preference for a free-standing legally-binding convention, over other legally-binding options. Regarding voluntary approaches, he said POSM, SAICM and a scaled-up UNEP mercury programme had received support, and requested the Secretariat to summarize these.

Chair Roberts then invited an exchange of views on which sections of the mercury framework require a legal underpinning. The Secretariat encouraged delegates to specify which actions required hard or soft approaches.

SWITZERLAND inquired from the proponents of voluntary approaches which elements could be addressed through legal means. The US highlighted that the Rotterdam, Stockholm and Basel conventions could play complementary roles to voluntary measures.

INDIA suggested that any measures to address mercury should focus on intentional releases. The RUSSIAN FEDERATION noted that many delegates favored a split regime and suggested also forwarding this option to the GC. Citing numerous references to the use of the Rotterdam Convention, NRDC observed increased congruence on the need for a legal underpinning to trade measures. The EU outlined several activities that could be covered under a legally-binding instrument, including: banning the establishment of new mining activities; phasing out production; and restricting the sale of mercury derived as a mining by-product. NORWAY explained it would take time to decide which measures should be mandatory and discretionary.

The Secretariat agreed to prepare a summary of potential measures for delegates’ consideration on Thursday afternoon.

IN THE BREEZEWAYS

The breezeways were abuzz on Wednesday afternoon after plenary, with chatter over what one delegate called “a session of surprises.” The discussion on preferred modalities saw several delegates’ previously intractable positions take on some indicative congruence with several formerly strictly voluntary camps opening the door to potential legal measures and vice versa.

However, some seasoned participants cautioned that the reluctance by delegates to elaborate their preferences of the specific actions to be placed under the binding and non-binding measures, would form the “crux of the non-consensus” in the OEWG. Others, however, reasoned that delegates required more time and would make further progress at the GC. One delegate suggested the future will be heavily influenced by the financial arrangements on offer, proffering that some developing country delegates “just want” secure finance.

Looking to Thursday, some speculated that the Secretariat’s draft recommendations to the GC, reflecting Wednesday’s discussions, are likely to generate new contentions as delegates are faced with “pen on paper” and the opportunity to negotiate.