

MERCURY INC4 HIGHLIGHTS: SUNDAY, 1 JULY 2012

INC4 met briefly in Plenary in the morning and afternoon to hear reports from contact groups. Contact groups met throughout the day and into the night seeking common ground on the most complex issues, namely, financial resources and technical assistance, supply and trade, implementation and compliance, products and processes, emissions and releases, storage and wastes, and Section J. The legal group met as well to consider text forwarded by Plenary.

PLENARY

FINANCIAL RESOURCES AND TECHNICAL ASSISTANCE: Contact group Co-Chair Peitz reported that the group had concluded a first reading of the text of Article 15 (Financial resources and mechanisms), and requested additional time to finalize a first reading of Article 16 (Technical assistance), Article 16bis (Partnerships) and the proposed new article on technology transfer.

SUPPLY AND TRADE: In the morning, Co-Chair Blaha said the group based its discussion on CRP.7 and focused on mercury supply sources, with views differing on, *inter alia*, how to categorize and tackle primary mining and other major sources. He said more time was needed to deal with trade and other linked issues, such as ASGM, storage and wastes, and products and processes. IRAQ urged the group to consider CRP.21, which outlines Iraq's concerns on trade and supply. The committee agreed the contact group would continue its deliberations.

IMPLEMENTATION AND COMPLIANCE: Contact group Co-Chair Kuokkanen indicated the contact group's progress was summarized in a non-paper drafted by the Co-Chairs. The group was asked to reconvene in the afternoon to clear text and finalize its work.

PRODUCTS AND PROCESSES: Contact group Co-Chair Reville reported that the group met Saturday afternoon to review all documentation related to Articles 6 and 7 in order to understand key issues, and in the evening began working to produce a clean text. He described the process as "fairly frustrating," but said the group would try to strike a balance between clearing as much text as possible and resolving issues.

EMISSIONS AND RELEASES: In the morning, contact group Co-Chair Roberts reported the group had discussed the potential list of emissions and releases sources, and a BAT definition text on which agreement was close. Outstanding issues included: the scope of the article(s) on emissions and releases, with one regional group calling for a joint approach to emissions and releases; and possible inclusion of references to financial

assistance, technology transfer and capacity building. He said the group had identified the need for possible intersessional technical work to define thresholds for identified sources, and for guidance on BAT between the diplomatic conference and entry into force of the treaty. In the afternoon, Co-Chair Cuna drew attention to CRP.22, developed by an informal group, which provides a definition on BAT that addresses emissions and releases of mercury to air, water and land holistically. He said the text contains three remaining brackets. The INC forwarded the CRP to the legal group for review of non-bracketed text.

LEGAL GROUP: Contact group Co-Chair Susan Biniaz presented CRP.22 consolidating the review of paragraphs analyzed by the group, noting Article 27 (Amendments to the convention) presents several options that are essentially a political decision, but also highlighting the drafting should be clear to prevent the problems faced by the Basel Convention with unclear majorities for the adoption of amendments. The INC adopted the proposed paragraphs (CRP.22), which will be appended to the INC4 report.

GENERAL COMMENTS: MEXICO underscored the need for a balanced treaty, stressing that the direction that negotiations are taking, focusing on emissions, is not incorporating the views of a large group of countries which may not find justification to ratify the final treaty.

STORAGE WASTES AND CONTAMINATED SITES: INC Chair Lugris said informal consultations had been held on this issue and the INC agreed the group would continue its deliberations.

SECTION J: Contact group Co-Chair Ziegerer reported the group had discussed the article on effectiveness evaluation, holding discussions on conceptual issues, including methodologies to use and means to implement the evaluations, and would continue discussions to produce revised text.

CONTACT GROUPS

FINANCIAL RESOURCES AND TECHNICAL ASSISTANCE: Co-Chair Ferreira led the group in discussing two proposals under Article 16 (Technical assistance): partnerships, and technology transfer. On partnerships, many delegates felt that the language could be reflected in text on technical assistance, as opposed to a separate article. Delegates agreed to this suggestion and added language noting the importance of partnerships, including with the private sector, for implementation. On technology transfer, the group considered the creation of a technology transfer mechanism. Several developing countries preferred having the proposal included as a separate article, stressing that this was a precedent that had been set in other conventions. Differing, a number of developed

countries underlined the common practice of treating technology transfer under technical assistance. The contact group also considered alternative language to this, which would call on the COP to consider the technological challenges faced by developing countries. No agreement was reached on this issue. The group agreed to prepare the non-papers on Articles 15 and 16 as conference room papers, which will form the basis of work on this issue at INC5.

STORAGE, WASTES AND CONTAMINATED SITES:

Participants discussed whether to incorporate the definition of wastes from the guidelines developed under the Basel Convention, noting these had been adopted in the intersessional period since INC3, and some called for additional clarity regarding elemental mercury, mercury-containing substances and mercury-contaminated objects within the definition of wastes. A CRP reflecting these options will be presented to plenary on Monday morning.

IMPLEMENTATION AND COMPLIANCE: The contact group met in the afternoon to complete its work. Delegates continued their consideration of a non-paper reflecting areas of agreement in their earlier discussions. The group then addressed a list of elements that might be included, but on which no agreement had been reached, including: the nature of the mechanism, membership and qualifications of the committee, triggers, procedures, decision-making, facilitation of implementation, meetings, and secretariat support. Participants debated whether to negotiate on the basis of text proposed by one delegate to reflect some of those elements.

The group agreed to forward to INC5 two options for Article 17: the first includes a paragraph, still containing brackets, that would establish, in the treaty text, a mechanism, including a committee as a subsidiary body to the conference of the parties (COP), and task the first COP meeting with developing its terms of reference; the second includes a similar paragraph establishing a mechanism and subsidiary committee, and also includes a paragraph that, unless otherwise decided by the COP, provides elements of the committee's membership, triggers, and procedures. Several sections of the text include footnotes noting that they have not been negotiated by the group.

SUPPLY AND TRADE: In the contact group discussions, views differed on, *inter alia*, whether a PIC procedure should apply to control trade; how to deal with trade with non-parties; and the extent to which trade with non-parties should be allowed. Many participants said that trade with non-parties should be exceptional and strictly controlled, while a few others stressed they could not support a general principle banning trade with non-parties even if exceptions to that principle are established. Several participants stressed that the treaty provisions must be consistent with party obligations under WTO law.

In the afternoon, delegates discussed whether ASGM may be included within the "allowable use" exemptions, and moved through the text streamlining options on the disposal of mercury upon the treaty's entry into force, the identification of industrial sources of mercury supply, and the reporting on mercury imports and exports to the secretariat. A CRP reflecting these options will be presented to Plenary on Monday.

EMISSIONS AND RELEASES: Co-Chair Roberts presented a non-paper that summarized discussions and included areas of consensus, to be refined by the Co-Chairs for consideration at INC5. Many expressed concern about references in the document to areas of consensus, agreeing to refer to areas of "convergence" and to clarify that the text does not represent negotiated text. Regarding text requesting parties to "control or reduce" emissions and releases as the treaty's "ambition," some countries expressed concern about using the word "shall," and called for

inclusion of a reference to national implementation plans (NIPs) as the main vehicle through which control measures would be implemented.

On BAT, a few countries expressed concern about references to requirements to implement BAT in new installations to reduce air mercury emissions, and text was introduced clarifying there are two approaches, namely, a "direct" approach with obligations to implement BAT, and an "indirect" approach to determine actions through NIPs. One country stressed that if a more flexible approach is used, references should be made to environmental benefits as a key outcome of NIPs.

PRODUCTS AND PROCESSES: The contact group convened in the afternoon to review and clean Article 7 text on processes, including issues associated with: restriction of use; measures for facilities; VCM; new facilities; and information exchange. On new facilities, one country suggested that countries without existing facilities using manufacturing processes listed in Annex D upon entry into force of the convention be prohibited from building such facilities. The contact group reconvened in the evening to finish its review of Article 7 text and Annex D on processes, and then returned to its review of Article 6 on products. On Article 7, Chair Reville noted that the group had not cleared any paragraphs of square brackets entirely, but pointed out that many issues could not be resolved without first considering other articles.

SECTION J: On effectiveness evaluation (Article 23), the group discussed the timing of the evaluation, and the type of information on the basis of which to conduct it. The group considered text that provides for the COP to adopt criteria and a methodology for the evaluation, and discussed the role of monitoring data.

On reporting (Article 22), delegates debated a reference to the COP recognizing, when deciding on modalities for reporting, that the ability of developing countries and countries with economies in transition to implement the provisions on reporting be dependent on the availability of capacity building and adequate financial and technical assistance. The contact group continued its work into the night.

IN THE CORRIDORS

On the penultimate day of INC4, the lack of a common view on what could be the treaty's scope had delegates asking whether the draft, as it stands, contains a wide-enough range to justify a global treaty. In Plenary, Mexico reflected ironically on the inconvenience of a limited scope, proposing that the convention title be changed to: "atmospheric controls on emissions from certain countries that affect certain other countries."

Yet, as a multitude of contact groups sought to finish their work and set up a successful INC5, even the final of the UEFA Euro 2012 football championship was not enough to distract delegates from their sustained work. Regional groups were seen deep in consultations throughout the venue, evaluating progress along different streams of the negotiations, and making sure to retain enough "bargaining chips" for the final stage of negotiations at INC5.

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin* summary and analysis of the mercury INC4 will be available on Thursday, 5 July 2012 online at: <http://www.iisd.ca/mercury/inc4/>