



To Members of the European Commission:
Mr. Stavros Dimas, Environment
Mr. Günter Verheugen, Enterprise and industry
Mr. Joaquin Almunia, Economic and monetary affairs
Mr. Peter Mandelson, Trade
Mr. Markos Kyprianou, Health and Consumer protection

Brussels, 8 September 2006

Dear Commissioner,

Environmental and Health NGOs Call for Immediate Adoption of Regulation Proposal on EU Mercury Export Ban and Storage of Surplus Mercury

The above-mentioned environmental and health NGOs welcome the Commission's preparatory work on a legislative instrument for an EU mercury export ban and the storage of surplus mercury, following the EU Strategy on Mercury (28/1/2005), and the conclusions of Environment Ministers on the strategy (24/6/2005). However, the Commission's proposed regulation has now been delayed for several months, during which time another 200 tonnes of mercury will have been exported by European suppliers to developing countries. We wish to express our deep concern over this delay and reiterate our call for a robust regulation, which must be adopted urgently.

The Commission should urgently present a proposal to ban mercury exports and regulate safe storage for several reasons:

It is well known that mercury does not respect national or regional boundaries, travelling far and wide through the atmosphere, contaminating European and global food supplies alike at levels posing a major risk to human health, wildlife and the environment. It is therefore clear that, since current measures are not adequate sufficiently to reduce contamination from mercury, further actions must be taken.

The Commission's EU Extended Impact Assessment reveals that some **3-15 million people in Europe have mercury levels around the recommended limit** and many of them have levels ten times as high, which are known to bring serious neurodevelopmental threats. Although the EU assessment does not calculate the costs of such contamination, a recent study¹ estimates that between 300,000-600,000 babies born each year in the US suffer from impaired neurological development which is due directly to methyl mercury exposure, and which costs the economy an estimated US\$8.7 billion a year in lost earnings.

We therefore urge you to take account of the following vital issues:-

1. The need for an EU export ban is immediate and clear, as confirmed respectively by the conclusions and resolution of Environment Ministers in June 2005 and the European Parliament in March 2006.

A strong and clear EU position is essential to reinforce the global actions so importantly included in this Community Strategy. It must send a clear message to the world that mercury emissions, supply and demand should be reduced to a minimum, as swiftly as possible. In the interim, measures must be introduced to protect the health of people who are most at risk, such as women of childbearing age and children.

Europe must make urgent progress with the necessary legislation, given that time will be needed to prepare for the export ban and storage requirements, and critical global meetings will occur over the next six months to discuss similar measures. The EU has a responsibility to act decisively for the following reasons:

¹ Mount Sinai study: Public health and economic consequences of Methyl Mercury Toxicity to the Developing Brain, February 28, 2005 <http://ehp.niehs.nih.gov/members/2005/7743/7743.pdf>

- The EU is the world's largest mercury exporter. Most mercury goes to developing countries where it is often haphazardly used and released, contaminating workers and their families, local communities and global food supplies. The EU's leadership in resolving global mercury problems is therefore an economic, health, environmental and moral imperative.
- Strong EU leadership will not only encourage other countries to reduce mercury consumption. It will also encourage multilateral and global trade agreements, which are clearly needed to significantly reduce the role of mercury as a global pollutant in the international economy.
- An EU export ban, coupled with other international actions specified in the EU strategy document, would significantly reduce the disproportionate impact of mercury contamination in the developing world caused by abundant mercury supplies, inadequate resources to adopt or enforce existing regulations and, with few exceptions, little or no incentive to upgrade outdated technologies.
- Banning mercury exports will help reduce demand for mercury by increasing prices (eg in artisanal and small-scale gold mining) and thus encouraging more efficient use and reduced releases, with no adverse economic impact.^{2,3}
- The risk of new mercury production coming onto the market (claimed by some) will not materialise given the limited ability of the few remaining mercury-producing countries to expand their output⁴, for technical and political reasons.
- Adopting an EU mercury export ban is in line with the 23/9 UNEP decision, paragraphs 25 b and c.
- For all of the above reasons, the EU advocated the EU mercury export ban at the 23rd Governing Council (GC) of UNEP, in Nairobi in February 2005. It would be extremely counterproductive if the EU is now perceived as back-peddalling. The EU must be prepared to send a strong message at the international meetings planned for this autumn - the Intergovernmental Forum for Chemical Safety (IFCS) side event on Heavy Metals (23 September, in Budapest) and the Commission's International Mercury Conference – Reducing Supply and Demand (26-27 October, in Brussels) - and in preparation for the 24th UNEP GC (February 2007) where an even better opportunity will be presented to achieve its global mercury policy objectives.
- **The proposed ban on exports of EU mercury should be implemented as soon as possible, preferably by 2008⁵, but certainly no later than 1 January 2011.** The European Parliament's resolution (March 2006) asking for implementation by 2010 is instructive in this regard.

2. A trade tracking system should be put in place, to record all imports and exports of metallic mercury and mercury compounds between Member States and between the EU and external countries where trade is unrestricted.

Given that better data on mercury flows within and outside Europe are needed immediately (also acknowledged by the 23rd UNEP Governing Council) the necessary provisions for tracking and reporting on the movements of mercury and mercury compounds should be urgently set up. The movement of mercury within industry should also be recorded and reported to the Commission, before and after the effective date of the export ban.

3. The scope of the export ban must cover metallic mercury, mercury compounds and mercury-containing products, which are, or will soon be, subject to use and marketing restrictions within the EU.

Allowing the continued export of mercury compounds would create a loophole. EU traders could simply produce or trade mercury compounds for export, which comprise some of the largest global mercury uses. Thus an EU export ban would have a much reduced effect on global mercury trade or its consumption. For example, a recent report prepared for the EU indicates the mercury compound 'calomel' is generated in significant quantities in the EU, most commonly in emission control systems at metal smelters. Calomel can readily be processed into commodity mercury at locations outside the EU, thus the ability and experience needed to process and trade

² Veiga MM, PA Maxson, LD Hylander, "Origin and consumption of mercury in small-scale gold mining." *Journal of Cleaner Production* 14 (2006) 436-447, Elsevier..

³ COM (2005) 20 final - Extended Impact Assessment, on the Community Strategy on Mercury, pg. 26

⁴ COM (2005) 20 final - Extended Impact Assessment, on the Community Strategy on Mercury, pg. 25-26 and <http://www.mem-algeria.org>.

⁵ As originally proposed in earlier Commission drafts but also by the Luxembourg Presidency <http://register.consilium.eu.int/pdf/en/05/st07/st07986.en05.pdf>

calomel for this purpose already exists⁶. Our information also indicates that converting the liquid metal to a mercury compound, and then converting it back to elemental mercury once it has left the EU, would cost about US\$200 per flask. At the current market price of some \$600 per flask, unscrupulous traders could further abuse the 'mercury compound loophole', and still make money (Only recently the price of mercury was just \$200 per flask).

Mercury-containing products are increasingly regulated in the EU and elsewhere around the world. It is no longer morally acceptable that the EU should export mercury-containing products that are regulated in the EU to other countries where they may not yet be regulated.

4. The EU should consider prohibiting imports of mercury and mercury compounds.

To better protect the EU's environment and health, and to manage effectively the supply and demand of mercury, a potential import ban of metallic mercury and mercury compounds ought to be investigated further⁷.

5. The storage of decommissioned mercury from the chlor-alkali industry must be started as soon as possible, in continuously-monitored secure sites, which are located where immediate intervention can take place if necessary.

To ensure the safe storage of surplus mercury, regardless of the means, the following measures must be included in the relevant instrument: continuous monitoring, minimum safety standards, regular and transparent reporting, advance planning and projections, assurance to deliver, and penalties for failure. A framework of minimum conditions for storing surplus mercury should be established, based on the above-mentioned proposals. Passage of the legislation is needed as soon as possible to facilitate the planning process, because the details of where and how much storage will occur, requires substantial time to resolve. In addition, similar discussions will be initiated on a global scale following the UNEP Governing Council meeting in February 2007.

6. A prior review of the status of mercury in the EU must be scheduled, possibly including issues not covered by the proposed regulation, based on our earlier suggestions. The review should take place well ahead of the export ban date.

A prior review must be held at least one year before the effective date of the export ban. Assuming the trade tracking system is in place, the review will determine whether issues not included in the draft regulation ought to be reconsidered. Another important function of the review will be to provide baseline information needed for comparative purposes at the subsequent formal review. Without these data, the formal review has no way of demonstrating the market's detailed evolution. The formal review would then serve little purpose regarding the key question of the mercury export ban's market impact.

In conclusion, let us reiterate our appreciation for this Commission initiative. A strong EU position recognises the EU's responsibility for its share of the problems. Ensuring an EU mercury export ban is also a pragmatic acknowledgement that there is little point in simply reducing mercury demand within the EU, only for unwanted mercury to be exported to the developing world under far less stringent controls, released, and ultimately returned to Europe's atmosphere and the fish we eat.

The value of a strong EU commitment to tackling mercury problems on the global stage must not be underestimated. This is a straightforward opportunity to reduce health risks to millions of EU citizens, and many more globally, that we cannot afford to miss.

⁶ Concorde East/West, Mercury Flows and Safe Storage of Surplus Mercury, August 2006, pp. 30-31.

⁷ With respect to the purely legal question of confronting trade obstacles, we note the very recent promulgation of Council Regulation No. 1236/2005, restricting trade in products used for torture and other inhuman punishment. We specifically note the import prohibition of equipment that can only be used for capital punishment, torture, or other similar purposes in Article 4 of this regulation. This import prohibition suggests the EU can undertake very targeted import bans where it is necessary to implement important EU policies.

Yours sincerely,

John Hontelez
Secretary General
European Environmental Bureau
<http://www.eeb.org>

Michael T. Bender,
Northern Representative
Ban Mercury Working Group
<http://www.ban.org/Ban-Hg-Wg>

Génon Jensen
Executive Director, European Public Health Alliance
Environment Network
<http://www.env-health.org>

Dr. Cestmir Hrdinka,
Executive Director
Health Care Without Harm Europe
www.noharm.org

Cc: Respective DG Directors General and Legal Service

ⁱ Environmental NGOS include

The **European Environmental Bureau (EEB)**, www.eeb.org, is a federation of more than 140 environmental citizens' organisations based in all EU Member States and most Accession Countries, as well as in a few neighbouring countries. These organisations range from local and national, to European and international. The aim of the EEB is to protect and improve the environment of Europe and to enable the citizens of Europe to play their part in achieving that goal.

The **Zero Mercury Working group**, www.zeromercury.org, is an international coalition of more than 40 public interest non-governmental organizations from around the world formed in 2006 by the European Environmental Bureau and the Mercury Policy Project/Ban Mercury Working Group. The aim of the group is to reach 'Zero' emissions, demand and supply of mercury, from all sources we can control, towards eliminating mercury in the environment at EU level and globally."

The **Ban Mercury Working Group**, www.ban.org/Ban-Hg-Wg/, is an international coalition of 28 public interest non-governmental organisations from around the world formed initially in 2002 by two US based NGOs, the Basel Action Network (www.ban.org) and the Mercury Policy Project (www.Mercurypolicy.org). working to end pollution from the toxic metal -- Mercury.

European Public Health Alliance Environment Network (EEN), <http://www.env-health.org/> is an international non-governmental organisation advocating environmental protection as a means to improving health and well-being. Member groups and organisations represent health, environment, women, health professionals and others. The group has a diverse membership of 41 member groups (six international organisations, 11 European networks and 24 national/local organisations) including non-governmental organisations, professional bodies representative of doctors, nurses and other healthcare workers, academic institutions and other not-for-profit organisations.

Health Care Without Harm Europe (HCWH), www.noharm.org, is an international coalition of hospitals and health care systems, medical and nursing professionals, community groups, health-affected constituencies, labour unions, environmental and religious organisations. HCWH is dedicated to transforming the health care industry worldwide, without compromising patient safety or care, so that it is ecologically sustainable and no longer a source of harm to public health and the environment.

And with the support of NGOs from the USA (Natural Resources Defence Council), India (Toxics Link), China (Global Village of Beijing), Brazil (Association for Combats against the POPS).