Brussels, 6th June 2007

Dear Minister,

Environmental and Health NGOs[i] appeal for a wide-reaching mercury export ban and safe temporary storage of surplus mercury

The coalition of environmental and health NGOs welcomes the Commission's proposal of an EU mercury export ban and the safe storage of surplus mercury, in keeping with the EU Strategy on Mercury (28/1/2005). However, we consider that several aspects of the Regulation should be strengthened to ensure protection for human health and the environment, and therefore welcome the direction of the European Parliament rapporteur's report and the Environment Committee's vote and proposed adopted amendments. In view of your discussions in preparation for the Environment Council on 28 June 2007[1], for a potential political agreement, we ask you kindly to consider these proposals.

It is well-known that mercury travels throughout the atmosphere, contaminating European and global food supplies at levels which seriously threaten human health, wildlife and the environment. Since the current measures are insufficient to reduce contamination, further action must be taken.

We therefore urge you to take account of the following issues[2]:

1. The proposed ban should be implemented as soon as possible, and preferably by 2008[3]

The later the implementation date, the more mercury will go onto the world market. The EU is the world's largest source of mercury exports, most of which go to developing countries where it is often haphazardly used and released, contaminating workers and their families, local communities and global food supplies.

2. The export ban should include mercury compounds and cinnabar

Compounds represent some of the world's highest-volume uses of mercury, and thus present a major loophole in the proposal. There are various ways in which mercury can be recovered or reconverted from different compounds (calomel, cinnabar, non-ferrous metals, mercuric oxide, mercuric chloride and other organo-mercury compounds), many of them at a substantial profit.

3. Mercury-containing waste with high mercury content should also be prohibited from export

According to EU legislation, mercury and mercury-containing wastes can be exported with the consent of the receiving country only to OECD countries. These countries have the ability to extract mercury from mercury compounds or mercury-containing wastes. This remains a loophole in the proposed regulation through which mercury can still be exported indirectly from the EU, and therefore needs to be closed.

4. Mercury-containing products subject to EU marketing and use restrictions should also be included in the ban

- Mercury-containing products are a major contributor to mercury spills during their use and disposal and therefore present both direct health risks and environmental contamination.
- The EU should shun double standards. Mercury-containing products prohibited here should not be exported to countries where they may not yet be regulated, and where their disposal is often poorly handled.

[1] To our information a Council Working Party on the Environment is foreseen for 7 June, and CoRePer on the 13 June on this issue.
[2] For more information please see earlier letter http://www.zeromercury.org/EU_developments/070424NGOS_COuncil_WPE_Hg_Export_ban.pdf
[3] 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

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

The Commission's proposal on the final disposal of metallic mercury seems premature for several reasons.

- Disposal of liquid waste is banned under the EU Landfill Directive, due to the risks the waste entails. Disposal of liquid metallic mercury in salt mines raises serious concerns over very long-term environmental safety.[4]
- The European Commission is co-financing a LIFE preparatory project (MAYASA, Spain), to investigate several issues related to storage. The project only began in late 2006[5].
- In the USA, lengthy investigation into the safe disposal of mercury has to date only been able to set a temporary timeframe of 40 years, with a study concluding that the safest way is to store mercury in above-ground facilities where continuous monitoring takes place, amid other defined safety conditions[6]
- Research to develop technology for chemical stabilisation of metallic and oxidised mercury is still underway in Sweden, but no commercial solution is yet available[7].

Until safe disposal techniques have been developed and fully evaluated, metallic mercury should be stored temporarily so that it can be retrieved.

- A framework of minimum conditions for storage should be established, ensuring continuous monitoring, minimum safety standards, regular and transparent reporting, advance planning and projections, assurance of delivery, and penalties for failure.
- The responsibility for safe final disposal should remain with Member States and the chlor-alkali industry as appropriate.

6. The trade-tracking system should be set up, as soon as possible before the export ban date, to provide information periodically and record all exports and imports of elemental and compound mercury between Member States, and between the EU and external countries.

- Periodic reporting would ensure the trade was transparent, and allow the Commission and stakeholders easily to assess developments which run contrary to the ban's intention and effectiveness.
- The tracking system would create a level playing field for mercury importers and traders, giving them an incentive to take responsibility for their trade.
- The movement of mercury within the industry sector should also be recorded and reported to the Commission, before and after the effective date of the export ban.
- Regular submission of information from the relevant industries to Member States should be ensured: the information should include figures on the total amount of mercury still in use, recovered upon closure or conversion of the plant, sent for temporary storage, transfers, amounts stored on-site temporarily etc.

7. The regulation should be based on Art. 175 of the EC Treaty and allow Member States to implement stricter measures, as early as appropriate.

- The proposed measure is driven by the objectives of protecting the environment and human health, not by commercial policy considerations[8]. The legal basis should therefore refer to the environment and allow Member States to adopt more stringent measures (as per Art. 175 and 176 of the EC Treaty).

[4] EEB Conference report " EU mercury surplus management and Mercury-use restrictions in measuring and control equipment", October 2006, p.23

[5] http://www.mayasa.es/ing/mersade.asp

[6] US EPA Preliminary Analysis of Alternatives for the Long Term Management of Excess Mercury, August 2002, http://www.epa.gov/ORD/NRMRL/pubs/600r03048/600R03048.pdf

[7] http://www.sakab.se/upload/dokument/pdf/Laddningsbara%20filer/Forskning%20&%20utveckling/Mercury_immobilization.pdf

[8] EC Proposed Regulation on the banning of exports and the safe storage of metallic mercury, page 6: "The export ban element indicates Article 133 ECT as the appropriate legal bases, EVEN IF the measure is motivated by the objectives of protecting human health, and NOT by commercial policy considerations.

8. The EU should consider targeted import prohibitions of mercury and mercury compounds to implement this important EU policy [9] and thereby:

- Ensure EU mercury supplies are consistent with EU demand, mandatory storage obligations, and policies encouraging mercury recovery from waste and products.
- Better protect the EU waste/mercury recyclers – preventing low-cost mercury from flooding the EU.

9. Technical and financial support to developing countries and NGOs working on the issue could be crucial for those countries' progress towards mercury-free products and processes.

- The recent decision of the 24th UNEP Governing Council invited Governments to provide resources to the developing countries in view of the agreed global work to reduce mercury supply, demand and emissions.

To conclude, we much appreciate this Commission initiative. A strong EU position recognises the EU's responsibility for its share of the problem. Ensuring an EU mercury export ban pragmatically acknowledges that there is little point in just reducing mercury demand within the EU, only for unwanted mercury to be exported to developing countries under far less stringent controls, released, for it ultimately to be returned to Europe's atmosphere and the fish we eat.

The value of a strong EU commitment to tackling mercury problems globally must not be underestimated. This is a straightforward opportunity to reduce health risks to millions of people in the EU and worldwide that we cannot afford to miss.

Thank you in advance for your support,

Yours sincerely,



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Cc: Environment Delegates of the MS Permanent Representations to the EU (by email)

[i] Environmental NGOS include
The **European Environmental Bureau, (EEB)**, www.eeb.org, is a federation of more then 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 56 public interest non-governmental organizations from around the world formed in 2005 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."
Health and Environment Alliance (HEAL), 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 over 50 groups 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, and environmental. 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.

[9] 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.