

April 2017

Transmittal of Draft Mauritius Products Regulations to
Meet Obligations Under the Minamata Convention on Mercury

Attached for your consideration are two draft regulations prepared by the Natural Resources Defense Council (NRDC),¹ which would enable the Mauritius government to meet the mercury product phase out obligations under Article 4 of the Minamata Convention on Mercury.

To prepare these drafts, NRDC reviewed Mauritius' statutory and regulatory authorities relevant to Article 4 of the Convention, including

- The Customs Act 1988
- The Consumer Protection Act 1991
- The Consumer Protection (Price and Supplies Control) Act 1998
- The Environmental Protection Act 2002
- The Dangerous Chemicals Control Act 2004
- The Fisheries and Marine Resources Act 2007
- Consumer Protection (Control of Imports) Regulations 1999
- Consumer Protection (Control of Imports) (Amendment No. 3) Regulations 2006
- Consumer Protection (Export Control) Regulations 2000
- Customs (SADC Certificate of Origin) Regulations 2000
- Environmental Protection (Standards for Air) Regulations 1999
- Environmental Protection (Standards for Hazardous Wastes) Regulations 2001
- Waste Water (Standards for Discharge of Industrial Effluent into a Waste Water System) Regulations 2004
- Banning of Plastic Bags Regulation 2015

Based upon this review, NRDC determined that Mauritius currently regulates two of the mercury-added products covered under the Convention. First, mercury-added pesticides are listed in Part II of Schedule 18 of the Dangerous Chemicals Control Act.

¹ NRDC is acting as an advisor to the Pesticide Action Network Mauritius (PANeM), under a European Environmental Bureau/Zero Mercury Working Group (EEB/ZMWG) project, funded by the European Commission (EC) through the Food and Agriculture Organization (FAO) of the United Nations (UN). The EEB/ZMWG project is entitled: ***“Contributing to the preparation/implementation of the Minamata Convention on Mercury, with a focus on developing strategies for phasing out mercury-added products and on reducing mercury use in Artisanal and Small Scale Gold Mining through development of National Action Plans.” July 2014-December 2017***

Therefore, under Section 27 of the Act, the importation, manufacture, use, or possession of such pesticides is prohibited, absent written authorization from the Dangerous Chemicals Control Board (hereafter the “Board”). Assuming the Board can revoke any existing authorizations pertaining to the manufacture, import, or export of mercury-added pesticides prior to the end of 2020, and commit (as written policy) to restrict any post-2020 authorizations only to circumstances meeting one of the exemptions specified in Annex A of the Convention, this existing authority may be sufficient to meet the mercury-added pesticide phase-out obligation of Article 4.

Second, Amendment No. 3 of the Consumer Protection (Control of Imports) regulations added “batteries containing mercury” to the Second Schedule of the regulations.² By virtue of this listing, mercury batteries are considered “prohibited goods”, and thereby subject to an import ban.

The Convention phase-out obligation applies to manufacture, import, and export. Assuming there are no existing mercury-added battery manufacturers in Mauritius, the government may choose to rely upon its authorities under the Dangerous Goods Control Act to prohibit the manufacture of mercury-added batteries. Specifically, mercury and mercury compounds are listed in both the First and Second Schedules under the Act, meaning they are regulated as both “dangerous” and “extremely dangerous” chemicals.

Under Section 10 of the Act, the import, export, and manufacture, sales, storage, distribution or trade of mercury (and mercury compounds) is prohibited without a license issued by the Board. Under Section 11 of the Act, no person may import or export an extremely dangerous chemical without a permit from the Board. Accordingly, as discussed above, the Board can commit (as written policy) not to issue licenses or permits for the import or sale of mercury for use in the manufacture of mercury-added batteries.³ To address the export of mercury-added batteries, we propose relying upon

² We note the term used in the Mauritius regulation – “mercury containing” - is broader than the analogous term in the Convention “mercury-added”, insofar as the former captures mercury unintentionally added to batteries, such as through contamination of the feedstock materials used to produce the batteries.

³ Article 4.1 of the Convention obligates governments to “take appropriate measures” to “not allow” the manufacture, export, or import the mercury-added products listed in Annex A. Acting to restrict the manufacture through the allowed uses of mercury and its compounds may be considered such a “measure”. We note the Dangerous Chemical Control Act appears well suited for this purpose, since the Act creates an Advisory Council composed of all the relevant ministries, one of the functions of the Council is to advise on matters related to the implementation of intervention conventions relating to dangerous chemicals, and the Board itself is authorized to develop “policies and measures” necessary to ensure effective consultation on its business. The Mauritius focal point for approving mercury (and mercury compound) imports designated under Article 17.4 of the Convention should be expressly charged with prohibiting mercury imports for this purpose.

the legal authorities in Part VI of the 1988 Customs Act, and Section 35 of the Consumer Protection Act 1998, to prohibit the export of specified goods by regulation, as attached.⁴

Given the battery precedent in Mauritius regulations, and the control of products containing CFCs, asbestos, and PCBs in the same way, we propose this approach for the remaining products to be phased out under Article 4 of the Convention.⁵ Specifically, our first proposed regulation would add the remaining mercury-added products covered by Annex A of the Convention to the list of prohibited goods in the Second Schedule of the Consumer Protection Act regulations.⁶ The Board would then commit (in writing) to not licensing the import, sale, trade, or distribution of mercury (or its compounds) for use in the manufacture of these products.⁷ The export of these products would be prohibited under the second attached draft regulation.

⁴ By prohibiting the import and manufacture of mercury-added batteries, the government has virtually eliminated the supplies available for export, and thus has arguably “taken measures” not to allow exports even without the proposed Customs regulations.

⁵ It is also possible to issue the necessary mercury product regulations pursuant to Section 96 of the Environmental Protection Act of 2002, as exemplified by the 2015 regulations restricting the import, manufacture, and sales of plastic bags. This option was not preferred because of existing hazardous substance control precedents.

⁶ We did not incorporate the exception in Annex A of the Convention for non-electronic measuring devices “installed in large scale equipment” or “those used for high precision equipment” because the exception in Annex A is dependent upon a finding that no suitable mercury free alternatives are available. Since the use of such equipment may be limited in Mauritius, and mercury free equipment is often available if needed, we drafted the regulation assuming the exception is not needed in Mauritius. A variance process could be established under these regulations should the government of Mauritius conclude the exception is warranted.

⁷ Under Section 30 of the Dangerous Chemicals Control Act, the Board may issue a notice to prohibit a particular use of a dangerous chemical upon finding that use “involves an imminent risk to public health, public safety, or to the environment”. This Board commitment may acknowledge the Minamata Convention on Mercury, including its preamble text on risks to human health and the environment, and the obligations of the Mauritius government to discharge its obligations as a Party to the Convention.

Article 4.6 of the Convention requires a party to “discourage” the manufacture and distribution in commerce of new mercury product types. Accordingly, we add such products types to the First Schedule of the Consumer Product Act regulations as a “controlled good”. Under this approach, the import of such goods would require a permit, thereby creating a review process to discourage new product types and consideration of the factors specified in Article 4.6 of the Convention. The Board’s existing authority to require licenses and permits for mercury and mercury compound imports and sales already enables such a process for the manufacture of new mercury product types in Mauritius.⁸

⁸ We reach no conclusion about whether additional authorities are needed to implement the dental amalgam phase down measures identified in Part II of Annex A. Such an analysis can only be performed after Mauritius selects the measures it chooses to implement among the options in Part II of Annex A.

**Consumer Protection (Export Control) (Amendment No. X)
Regulations 20XX**

GN No. XX of 20XX

THE CONSUMER PROTECTION (PRICE AND SUPPLIES CONTROL) ACT
AND THE CUSTOMS ACT
Regulations made by the Minister under section 35 of the Consumer Protection
(Price and Supplies Control) Act and section 62 of the Customs Act 1988

1. These regulations may be cited as the **Consumer Protection (Control of Exports) (Amendment No. X) Regulations 20XX**.

2. In these regulations –

“mercury-added” means the intentional addition of mercury or a mercury compound to a product or product component

"principal regulations" means the Consumer Protection (Export Control) Regulations 2000.

3. The First Schedule to the principal regulations is amended by adding immediately after item XX, the following new items:

XX. Mercury-added batteries

XX. Mercury-added switches and relays, except very high accuracy capacitance and loss measurement bridges and high frequency radio frequency switches and relays in monitoring and control instruments with a maximum mercury content of 20 mg per bridge, switch or relay

XX. Mercury-added compact fluorescent lamps (CFLs) for general lighting purposes that are ≤ 30 watts with a mercury content exceeding 5 mg per lamp burner

XX. Mercury-added linear fluorescent lamps (LFLs) for general lighting purposes:

(a) triband phosphor < 60 watts with a mercury content exceeding 5 mg per lamp; and

(b) Halophosphate phosphor ≤ 40 watts with a mercury content exceeding 10 mg per lamp

XX. Mercury-added high pressure mercury vapour lamps (HPMV) for general lighting purposes

XX. Mercury-added cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for electronic displays:

(a) short length (≤ 500 mm) with mercury content exceeding 3.5 mg per lamp

(b) medium length (> 500 mm and $\leq 1\ 500$ mm) with mercury content exceeding 5 mg per lamp

(c) long length ($> 1\ 500$ mm) with mercury content exceeding 13 mg per lamp

XX. Mercury-added cosmetics (with mercury content above 1ppm), including skin lightening soaps and creams, but not including eye area cosmetics where mercury is used as a preservative

XX. Mercury-added biocides (including mercury-added biocides in paint)

XX. Mercury-added topical antiseptics

XX. The following mercury-added non-electronic measuring devices:

(a) barometers;

(b) hygrometers;

(c) manometers;

(d) thermometers;

(e) sphygmomanometers.

4. Regulation (5) of the principal regulations is amended to add a new subsection at the end, as follows:

(X) No export permit shall be granted under regulation (4) for a mercury-added product unless the applicant can demonstrate such export does not violate the requirements of the Minamata Convention on Mercury.

Made by the Minister on XXth day of _____.

Consumer Protection (Control of Imports) (Amendment No. X) Regulations 20XX

GN No. XX of 20XX

THE CONSUMER PROTECTION (PRICE AND SUPPLIES

CONTROL) ACT Regulations made by the Minister under

**section 35 of the Consumer Protection
(Price and Supplies Control) Act**

1. These regulations may be cited as the **Consumer Protection (Control of Imports) (Amendment No. X) Regulations 20XX**.

2. In these regulations –

“mercury-added” means the intentional addition of mercury or a mercury compound to a product or product component

“principal regulations” means the Consumer Protection (Control of Imports) Regulations 1999.

3. The First Schedule to the principal regulations is amended by adding immediately after item XX, the following new item:

XX. Mercury-added products of a type not previously imported prior to the effective date of these regulations.

4. The Second Schedule to the principal regulations is amended by adding immediately after item XX, the following new items –

XX. Mercury-added switches and relays, except very high accuracy capacitance and loss measurement bridges and high frequency radio frequency switches and relays in monitoring and control instruments with a maximum mercury content of 20 mg per bridge, switch or relay

XX. Mercury-added compact fluorescent lamps (CFLs) for general lighting purposes that are ≤ 30 watts with a mercury content exceeding 5 mg per lamp burner

XX. Mercury-added linear fluorescent lamps (LFLs) for general lighting purposes:
(a) triband phosphor < 60 watts with a mercury content exceeding 5 mg per lamp; and

(b) Halophosphate phosphor \leq 40 watts with a mercury content exceeding 10 mg per lamp

XX. Mercury-added high pressure mercury vapour lamps (HPMV) for general lighting purposes

XX. Mercury-added cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for electronic displays:

(a) short length (\leq 500 mm) with mercury content exceeding 3.5 mg per lamp

(b) medium length (> 500 mm and \leq 1 500 mm) with mercury content exceeding 5 mg per lamp

(c) long length (> 1 500 mm) with mercury content exceeding 13 mg per lamp

XX. Mercury-added cosmetics (with mercury content above 1ppm), including skin lightening soaps and creams, but not including eye area cosmetics where mercury is used as a preservative

XX. Mercury-added biocides (including mercury-added biocides in paint)

XX. Mercury-added topical antiseptics

XX. The following mercury-added non-electronic measuring devices:

(a) barometers;

(b) hygrometers;

(c) manometers;

(d) thermometers;

(e) sphygmomanometers.

Made by the Minister on XXth day of _____.