



## ZMWG VIEWS ON COP 1 DECISIONS

September 2017

### Introduction

This paper summarizes the views of the Zero Mercury Working Group (ZMWG) on the anticipated decisions at the first Conference of the Parties (COP 1). We highlight only the priority issues, and the key points on these issues. We encourage COP 1 delegates to consult with ZMWG representatives for more details or positions on documents not discussed below.

### Adoption of Forms and Guidance Approved by the INC

The Intergovernmental Negotiation Committee (INC) approved many of the forms and guidance that the Convention specifies must be adopted at COP 1. These INC approvals were achieved by consensus after considerable effort and deliberations, thus we concur with the INC chair that debate on these documents should not be reopened.<sup>1</sup> **Accordingly, the following INC approved forms and guidance should be summarily adopted at COP 1:**

- Article 3 guidance on identifying mercury stocks, and the forms/instructions for complying with mercury trade consent and related certification requirements;
- The product and process exemption forms and associated register of exemptions under Article 6 of the Convention;
- Article 8 (air emissions) guidance on BAT/BEP, options for existing facility control requirements, preparing emissions inventories, and selecting “relevant sources” within the specified source categories; and
- Guidance for preparing ASGM National Actions Plan under Article 7.<sup>2</sup>

### Reporting

The Article 21 reporting requirements will provide critical information on both the global mercury situation and the effectiveness of the Convention in achieving mercury reductions and

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<sup>1</sup> Scenario Note (COP 1/2), Par. 4.

<sup>2</sup> This document was provisionally adopted at INC 7, and received an additional round of public comment prior to COP 1.

protecting human health. While significant progress was made at INC 7 regarding the content of the reporting form, four key issues remain.<sup>3</sup>

One issue is whether Parties should provide emissions inventory data, or a summary of the emissions data, under their Article 8 reporting. Paragraph 11 of Article 8 requires each Party to include information on the reporting form on the implementation of Article 8, including “information concerning the measures taken and the effectiveness of the measures.” Paragraph 7 of Article 8 requires each Party to “establish” and “maintain thereafter” an inventory of emissions, thus the inventory becomes the mechanism for measuring the effectiveness of a Party’s air emissions control measures. Obtaining data on emissions reductions will be critical to determining the Convention’s effectiveness.

On the current draft reporting form, under Article 8 reporting element # 2, a Party must provide details on the measures implemented and “explain the progress” that the applied measures have achieved in reducing emissions”. It is unclear what data should be provided to explain this progress, and how these data relate to the emissions inventory. Then under reporting element # 3 under Article 8, indicating where the inventory may be found is in brackets, and also may be considered “supplemental”.

Taking reporting elements # 2 and 3 together, the reporting form should be clarified so that progress is reported consistent with the Convention emissions inventory. **Under reporting elements # 2 and 3, we recommend that a Party report on measures effectiveness by either providing a link to its publicly available inventory, or by aggregating the data for each relevant source category and summarizing the key data from the inventory, including total emissions within each source category.** Without this simple item on the form, the data needed to monitor the progress of emissions reduction and the effectiveness of the Convention may not be available. What is the value of an inventory obligation under the Convention if the key data are not provided?<sup>4</sup>

Similarly, under Paragraph 2(b) of Article 8, a Party can choose to exempt some sources within a category (i.e., coal-fired industrial boilers), as long as facilities responsible for at least 75% of the emissions from that category are subject to controls. At COP 1, it must be decided whether a Party choosing to exempt sources must explain how it determined the 75% threshold is met, since this item is now bracketed under Article 8 reporting element # 4. **We recommend that the rationale be provided, thus the brackets should be removed.** This information is a necessary part of explaining the measures adopted to comply with Article 8, since it is equally

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<sup>3</sup> Document COP 1/11, Annex II, is the work product of the contact group at INC 7. The bracketed portion of the document indicates items left to be resolved at COP 1.

<sup>4</sup> The same issue applies to inventory release reporting under Article 9, in particular reporting element # 2 on the draft reporting form under Article 9.

important to identify both the sources covered and the controls applied to the sources. This is also a matter of fairness and equity, since governments deserve the assurance that each Party is regulating the necessary facilities to achieve substantial emissions control.

The third issue is whether Parties must report on the quantities of waste mercury (i.e., commodity-grade mercury no longer used) that was disposed, and the method of final disposal. This information would enable the COP to determine how much mercury was removed from global circulation, and facilitate tracking of restricted mercury sources under the Convention, such as mercury from decommissioning chlor-alkali plants. **We recommend that this information be required to facilitate the COP understanding of global mercury supply and flows, and thus the brackets and “supplemental” designation in the last part of Article 11 reporting element # 1 should be removed.**

The fourth and final issue is the frequency of reporting. **For mercury production and trade, we recommend the data be provided annually because of the importance of the data, the need for current data given the changing global circumstances, and the problems with other data sources.** Annual reporting of production/trade is required under Basel, CITES, and the Montreal Protocol.

Current data on global supply and trade are crucial because the situation can change drastically and quickly, as exemplified by the changes in production and trade during the last three years. Accurate and timely data will help Parties rely upon the mercury supply sources allowed under the Convention, identify and address illegal trade, and reduce mercury use in ASGM. The data will also help the COP evaluate Convention effectiveness. The only alternative source of trade information is COMTRADE data, which has serious shortcomings related to quality and completeness of data.

We note very few countries are mercury producers, thus the production reporting burden is limited and targeted. Moreover, some of the key mercury producers are receiving financial assistance to obtain the data that would be reported. Governments can comply with trade reporting simply by submitting a copy of the already agreed to consent form to the Secretariat, creating virtually no additional reporting burden.

Other parts of the reporting form can be submitted less frequently.

#### Waste Thresholds

As provided in document COP 1/26, the COP may further consider developing waste thresholds. Under Article 11, there are three categories of waste: (1) waste consisting of mercury or mercury compounds; (2) wastes containing mercury or mercury compounds (i.e., used mercury products such as thermometers or switches); and (3) wastes contaminated with mercury or

mercury compounds (i.e., industrial wastes, contaminated soil). **Virtually all governments have declined to set thresholds for regulating the first two categories of mercury wastes. We believe all waste mercury and waste mercury products should be regulated under the Convention, thus no threshold is necessary or appropriate.** There may be tailored management standards developed for these wastes, but Convention jurisdiction would still attach in order to apply these standards.

Should an expert group be formed to consider thresholds for the third category of wastes, civil society participation as observers should be expressly provided, similar to the BAT/BEP expert group previously established by the INC.

#### Interim Storage Guidelines

At INC 7, the Secretariat was requested to draft for consideration at COP 1 the interim Article 10 storage guidelines, in consultation with an expert group nominated by governments and stakeholders, and the Basel Secretariat. The Secretariat presents the proposed guidelines in document COP 1/25, and in the introduction suggests both their acceptance for short-term use at COP 1, and that the Secretariat be tasked with preparing further revisions to the guidelines for consideration at COP 2. **We concur with the path forward suggested by the Secretariat, since the current draft is satisfactory for the subject areas it covers, but is currently lacking elements related to ensuring interim storage facilities are safely closed without leaving mercury or mercury contamination onsite.**

#### Effectiveness Evaluation

The Convention requires COP 1 to “initiate the establishment of arrangements for providing itself with comparable monitoring data” on mercury and mercury compounds. In anticipation of COP 1, governments at INC 7 instructed the interim secretariat to (a) compile information on existing monitoring programmes; (b) draft a road map for developing a framework for monitoring, as well as for incorporating “other information” into the evaluation of the Convention’s effectiveness; and (c) draft a report with recommendations on the arrangements for providing comparable monitoring data, including references for assessing baselines.

The interim secretariat has produced a document for COP consideration (UNEP/MC/COP.1/12) that responds to these requests. As provided in the draft road map, the COP would establish an ad hoc group of experts to work on the development of the monitoring program. The composition of this group is not specified (other than it will consider expertise and geographic representation). **We recommend that the COP specify the expert group representation shall include a balance of government, academic and civil society representatives (expressly providing for NGO representation).**

Further, according to the draft road map, the group will not only consider a framework for monitoring; it will also be asked to comment on a draft strategy for “incorporating reports and other monitoring” into effectiveness evaluation that will be presented for consideration at COP

**2. We fully agree that the COP should establish a process for assembling the other (non-monitoring) information required for the effectiveness evaluation, as set out in Article 22, no later than COP 2.** It is critical that the COP begin to develop a comprehensive framework for effectiveness evaluation that logically integrates all types of data to be considered. In fact, data other than monitoring data are likely to dominate the effectiveness evaluation in the early years of the Convention, given the complexity of monitoring mercury in the environment as well as in biota, especially on a global scale; the different timescales of mercury emissions, cycling and ambient concentrations; and the high level of uncertainty of attributing changes seen in monitoring data to Convention measures. Therefore, the COP should give high priority to determining consistent methods for adequately collecting and using these data in order to have a coherent framework in place before the first evaluation begins.

As such, **we recommend that the ad hoc expert group include not only monitoring experts, but a mix of expertise that will allow appropriate consideration of the full range of environmental, technical, financial, policy, and economic information that is required, per Article 22, as part of the effectiveness evaluation.**

#### Matters for Future Action

In document COP 1/22, a timetable for future actions required under the Convention is proposed. For consideration of Annex A and B revisions, required to be completed no later than August 2022, initiation of work is recommended for COP 3, presumably two years from now assuming annual COP meetings for the first several years of Convention implementation. However, for the consideration of whether certain mercury compounds should be incorporated into the Article trade consent requirements, no such timetable is provided.<sup>5</sup> Given a growing number of countries are regulating the trade of mercury compounds because of their conversion potential to elemental mercury, and the potential for Convention amendments associated with Annex A and B revisions, **we recommend that the COP consider the issue of mercury compounds trade in parallel with the consideration of Annex A and B revisions.**

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<sup>5</sup> Document COP 1/22, Par. 10(a).