



**ZERO MERCURY WORKING GROUP PRELIMINARY VIEWS ON INC 5 CHAIR'S  
DRAFT TREATY TEXT – NOVEMBER 2012**

**Introduction**

This document summarizes the Zero Mercury Working Group (ZMWG) recommendations on which options and alternatives should form the basis for negotiated text by the INC, and identifies key draft provisions, which warrant support, modification, addition, or deletion at INC 5. ZMWG recommends consideration of the following:

<b>Preamble</b>	
<b>Adding:</b>	Preamble text reaffirming the polluter pays principle.
<b>Article 1 bis Relationship with other international agreements</b>	
<b>Removing:</b>	Paragraph 1, which states that the mercury treaty would not affect rights and obligations under other treaties. Adoption of this language may needlessly encourage WTO challenges, thus similar language was rejected for the Stockholm Convention. Paragraph 2 would be retained, mirroring the Stockholm text that trade and environmental treaties are “mutually supportive”.
<b>Article 2, Definitions</b>	
<b>Adding:</b>	Clarification to “uses allowed” (consistent with the Chair’s commentary in paragraph 31) that mercury use in ASGM is only allowed as provided in Article 9. See also proposed changes to paragraph 5 of Article 9 discussed below.
<b>Removing:</b>	K (alt) since it is unnecessary given the exemption process now available to Parties under Article 8
<b>Article 3, Supply</b>	
<b>Retaining:</b>	Informed consent for mercury trade under paragraphs 6 and 7, since informed consent is a critical mechanism for Parties to ensure mercury entering their country will only be used for allowed purposes under their domestic law, and only in quantities needed for those purposes. This mechanism will be particularly important for managing or preventing the unwanted diversion of mercury to ASGM, as required in Annex E, par. 1(f).
<b>Retaining:</b>	Paragraph 5(b) preventing mercury associated with decommissioning mercury cell chlor-alkali plants from entering the marketplace because decommissioning presents an extraordinary, one-time opportunity to reduce the global mercury supply by sequestering large quantities of mercury already collected in one location. Under the polluter pays principle, industry will bear the responsibility for environmentally sound storage and disposal of this mercury.
<b>Retaining:</b>	Paragraph 1(b) and the inclusion of specified mercury compounds within the trade provisions, since these compounds can easily and profitably be converted into elemental mercury.
<b>Removing:</b>	The exception in paragraph 4(a) from the prohibition on sale or distribution of mercury from primary mercury mining, since primary mercury mining is the least preferred source of mercury. Parties should be required to utilize existing sources of mercury rather than adding new mercury to the global pollution problem.

<b>Article 6, Products</b>	
<b>Adding:</b>	Reporting requirements indicating the requirements of this Article have been met, similar to the requirement in Article 3, par. 8. The Conference of the Parties will need periodic reporting on product manufacture and trade to determine the effectiveness of the treaty.
<b>Adding:</b>	Informed consent related to mercury product trade, so that Parties can prevent imports of mercury-added products prohibited under domestic law. This mechanism is particularly important to prevent the dumping of unwanted products in the developing world.
<b>Adding:</b>	In paragraph 3, an obligation for Parties to report on the manufacture of mercury-added products not listed in Annex C, to facilitate the register of information established under this Paragraph. We suggest the requirement be limited to Parties where manufacturing is conducted to minimize the burden of the reporting requirement.
<b>Adding:</b>	Text to paragraph 5 further discouraging the manufacture of new mercury-added products, such as COP review and approval.
<b>Adding:</b>	To Annex C, Part 1, button cell batteries, non-medical measuring devices, and topical antiseptics. Mercury free alternatives to these products are already widely available and will be available globally within the time frames contemplated in the Annex and Article 8.
<b>Adding and Retaining:</b>	Adding dental amalgam to Part 1 of Annex C, coupled with retaining the phase down measures in Part II of Annex C to enable continuing progress in advance of the phase-out date.
<b>Removing:</b>	The general exemption for cultural and heritage uses in Annex C, and instead modifying the language of the particular product category where it applies (i.e., pesticides and biocides to address the use of cinnabar in traditional paints).
<b>Article 7, Processes</b>	
<b>Retaining:</b>	The requirement to identify any facilities covered by Annex D, as specified in paragraph 4(c).
<b>Retaining:</b>	Paragraph 5 alt. imposing a ban on new facilities using processes listed in Annex D, and the demonstration required before allowing any new processes.
<b>Retaining:</b>	In Annex D, the phase-out of mercury use in chlor-alkali, sodium methylate, and other processes using mercury as a catalyst or electrode (i.e., polyurethane production) in the short-term.
<b>Removing:</b>	VCM production from Part II of Annex D, and placing it in Part I, so that delays in phasing out VCM production are subject to the Article 8 exemption mechanisms like other production processes.
<b>Adding:</b>	Reporting requirements indicating the requirements of this Article have been met, similar to the requirement in Article 3, par. 8. The Conference of the Parties will need periodic reporting on mercury uses in processes to determine the effectiveness of the treaty, particularly if VCM production remains in Part II of Annex D and continues indefinitely.
<b>Article 8, Exemptions</b>	
<b>Remove:</b>	Paragraph 8 bis as unnecessary given the exemption process now available to Parties under Article 8.

<b>Article 9, Artisanal Small Scale Gold Mining (ASGM)</b>	
<b>Adding:</b>	To paragraph 5 governing the trade of mercury for ASGM; <ul style="list-style-type: none"> <li>• Text to paragraph 5(a) requiring consistency with the three year progress reports submitted under paragraph 3(c) as well as a Party's action plan, so that imports are decreased over time consistent with progress made in mercury reductions;</li> <li>• COP review and approval of imports of mercury for ASGM beginning five years after the treaty comes into force, consistent with exemption requests in paragraph 5 under Article 8; and</li> <li>• COP authority to terminate mercury trade for ASGM when it determines such trade is no longer needed (such authority could also be provided in Article 3), to prevent backsliding from mercury use reductions achieved through implementation of national action plans and further encourage mercury use reductions through market forces.</li> </ul>
<b>Articles 10 and 11, Emissions and Releases</b>	
<b>Retaining:</b>	Text which subjects new facilities to the mandatory BAT compliance obligation as soon as possible.
<b>Retaining:</b>	Option 1, which establishes a mandatory but flexible obligation to control emissions from existing sources, including paragraph 6 which provides the level of control objective to be achieved through the various potential control approaches.
<b>Retaining:</b>	Air source categories listed in Annex F.
<b>Removing:</b>	Option 2 which would allow existing sources to continue emitting mercury unabated, in particular paragraphs 10(d) under each Article which merely "encourages" emissions/releases reductions for existing sources. This failure to address existing source jeopardizes the effectiveness of the mercury treaty.
<b>Article 12, Storage</b>	
<b>Adding:</b>	A mandatory obligation under paragraph 3 for the COP to adopt storage requirements as an annex to the Convention at a future date, so that environmentally protective mercury storage can be ensured.
<b>Article 13, Wastes</b>	
<b>Adding:</b>	A mandatory obligation under paragraph 3 for the COP to adopt waste management requirements as an annex to the Convention at a future date, so that environmentally sound mercury waste management can be ensured.
<b>Adding:</b>	Text to paragraph 3(a) clarifying what an annex may include on the management of mercury waste; "waste facility location" etc. are merely exemplary of future waste management elements to be covered in the annex, so elements such as appropriate disposal technologies and methodologies, and thresholds, may also be included.
<b>Retaining:</b>	The bracketed text in paragraph 3(c), except for the "in particular" clause, to ensure consistency with the Basel Convention regarding trade with non-parties.

<b>Article 15, Financial Assistance (see also Article 21 regarding interim funding arrangements)</b>	
<b>Retaining:</b>	Text which is consistent with the following architecture: <ul style="list-style-type: none"> <li>• The financial mechanism shall include a Dedicated Fund to ensure adequate resources are available to facilitate compliance and discourage non-compliance;</li> <li>• The mechanism shall operate under the authority and guidance of the Conference of the Parties, who will ensure resources are allocated consistent with COP priorities;</li> <li>• The financial support mechanism shall be designated and operated to facilitate compliance and discourage non-compliance with the obligations of this Convention; and</li> <li>• The governance structure for the Dedicated Fund shall provide for representation of developing nations, and operational transparency.</li> </ul>
<b>Adding:</b>	The polluter pays principle to paragraph 2.
<b>Article 16, Technical Assistance</b>	
<b>Retaining:</b>	Text in options 1 and 2 which facilitates the identification and knowledge of appropriate technologies for Parties requiring such assistance.
<b>Article 17, Compliance</b>	
<b>Retaining:</b>	Option 2 so that the structure for facilitating compliance is in place from the outset of treaty implementation.
<b>Article 18, Information Exchange</b>	
<b>Removing:</b>	The text in paragraph 5 making public access to information on public health and safety, and environmental threats, conditional upon national law since this condition would enable the continued exposure of vulnerable populations without their knowledge and jeopardizes the ability of the COP to monitor the effectiveness of treaty implementation. We note the Stockholm Convention does not contain this national law exception (See Article 9, par. 5).
<b>Article 19, Public Information, awareness and education</b>	
<b>Retaining:</b>	The text in paragraph 1(a)(v) requiring Parties to facilitate the flow of information on their activities to comply with the Convention.
<b>Article 20, Research Development and Monitoring</b>	
<b>Retaining:</b>	The bracketed text in paragraph 1(f) to facilitate the improvement of data compiled under the Convention on commerce and trade of mercury and mercury-added products. Such research and development may include customs code harmonization and other activities related to enhancing mercury trade tracking and reporting.
<b>Article 20 bis: Health Aspects</b>	
<b>Retaining:</b>	The elements of 20 bis related to the development and implementation of health-based guidelines and risk communication strategies to protect vulnerable populations and indigenous people from mercury exposure, such as fish and mammal consumption guidelines and advisories (paragraphs 1(a)-(c)), where existing treaty text does not suffice.

<b>Article 21: Implementation Plans</b>	
<b>Retaining:</b>	Treaty text imposing a mandatory obligation for parties to prepare a NIP prior to ratification or shortly thereafter, where the NIP provides a roadmap as to how parties intend to comply with the Convention. Financial support for NIP development (and associated inventory and gap analysis work) would be made available under a robust interim funding arrangement. Plans required by treaty control measures, such as the ASGM national action plan, are separate and more detailed documents, typically prepared after the NIP is completed or well underway.
<b>Article 22, Reporting</b>	
<b>Retaining:</b>	The Chair's draft requiring reporting as needed to monitor the implementation of the various control measures under the treaty.
<b>Article 23, Effectiveness Evaluation</b>	
<b>Retaining:</b>	The Chair's draft text to ensure a sound treaty effectiveness evaluation.
<b>Article 33, Reservations</b>	
<b>Retaining:</b>	Text prohibiting reservations to this Convention, so that Parties are obligated to comply with all aspects of the treaty. We note the Stockholm Convention does not provide for reservations.