

16 February 2009

SUBMISSION OF THE ZERO MERCURY WORKING GROUP (ZMWG)
INFORMATION DOCUMENT ON DESIRED OUTCOME FOR THE 25TH SESSION OF
THE UNEP GOVERNING COUNCIL (GC 25)

1. The GC 25 decision on mercury should contain two important elements. The first element is the formation and associated mandate for an Intergovernmental Negotiating Committee (INC) to prepare a free standing legally binding instrument (LBI) for mercury. The second element is the mandate for a near term program of action to be immediately implemented while the INC is underway. Attached to this information document is proposed text that contains both elements.
2. The INC should begin its work as soon as possible, rather than wait two or more years as proposed in UNEP/GC/25/5. While several issues may require more time than others to resolve, this should not delay the start of INC deliberations on the remaining majority of issues. Further delay is unacceptable, given the Global Mercury Assessment triggering this process was completed over six years ago and progress to reduce global mercury pollution since then has been extremely limited.
3. The Elements of a Comprehensive Mercury Framework developed by the Open Ended Working Group on Mercury last October provide a solid foundation on which to begin the INC deliberations. In particular, the elements related to supply (including storage and trade), emission reductions (through the use of BAT/BEP or otherwise), and product/process phase-outs will benefit from a LBI for at least five reasons.¹
 - First, the legal instrument is the most direct and effective vehicle for prohibiting new undesired activities (i.e., new mercury mines, new uncontrolled emission sources, new manufacturing facilities using outdated technologies). A legally binding instrument will increase the confidence of countries that, if they forego such new activities, their efforts will not be undercut by others.
 - Second, a binding legal instrument can ensure that trading partners operate in a similar way, which will be particularly important in the trade of mercury and mercury products. Governments and the private sector must have some assurance that costs they may incur in implementing their reduction commitments will not decrease their competitiveness with respect to other countries. Additionally, a global legal instrument will lessen the possibility of WTO challenges or threatened challenges that could thwart global reduction efforts.

¹ The actual scope of the legal instrument will be broader since the instrument will need provisions related to governance and assistance (financial or otherwise), and other areas should be added to facilitate overall mercury program performance and coordination.

- Third, activities in these areas will require substantial global coordination to be effective. For example, trade restrictions, sequestering mercury from converting chlor-alkali plants, phasing out the manufacture and export of mercury products, and emission controls on targeted industrial processes all require coordinated action to be effective. The “flexibility” inherent in a purely voluntary approach will not produce the level of coordinated behavior needed to make the mercury framework effective. The track record of the existing mercury partnerships illustrates this critical shortcoming.
- Fourth, the reality is that effective implementation of these measures will ultimately require a binding legal basis at the national (and sometimes regional) levels, as indicated by the growing number of laws and regulations worldwide issued recently or pending covering trade, emissions, products, and processes. However, without a global legally binding instrument (LBI), the sum of these national laws is an uneven patchwork limiting overall global effectiveness. An international legal instrument is much more likely to lead to corresponding national and regional legal initiatives than a purely voluntary approach, and thus will better fill this gap in coverage in a comprehensive, coherent way.
- Lastly, an LBI will more effectively facilitate additional financial and technical resources than a purely voluntary approach. One reason the voluntary approach has failed is that it has not generated sufficient resources to address the problem. We have observed the financial realities of the voluntary approach for mercury over the last four years, and do not see any events on the horizon likely to improve this situation significantly if we continue to rely solely on a voluntary approach.

4. As the Open Ended Working Group concluded, a free-standing LBI is a better approach than a Stockholm Convention protocol.

5. Developing countries and countries with economies in transition will require substantial technical and financial assistance to successfully meet their responsibilities under a mercury LBI. While it is premature to specify details of the financing mechanism at this time, the financial mechanism(s) ultimately relied upon should have the following characteristics:

- Commitments by donor countries to provide sufficient new and additional resources consistent with the commitments developing countries will have under the LBI.
- An ongoing and flexible ability to direct the disbursement funds according to the substantive priorities of the program at the time, and strong representation from the developing world on those mechanisms developed under the LBI to guide the disbursement of funds.
- An ongoing ability to link the availability of funds to a Party’s compliance with the terms of the treaty.

6. Since mercury may not be the only metal warranting global action in the future, the GC decision should acknowledge that a mercury LBI could, in the future, be extended to additional substances, and that the mandate to the INC may be supplemented by future GC decisions.

7. We cannot wait for the LBI to enter into force to begin serious efforts to address the global mercury pollution problem. While the INC is doing its work, it is imperative that other actions be taken to improve our understanding of certain aspects of the mercury problem, enhance the capacity of governments and others to undertake effective mercury-related activities, and reduce global mercury uses and releases. Paragraph 15 of our attached proposal identifies the priority elements that will achieve these objectives. Our proposed text differs from others by specifying a clear, substantive, and immediate program for action. The Governing Council mercury decision should contain specific instructions to UNEP identifying immediate priorities for mercury activities, in addition to providing support to the INC, as well as commitments to provide UNEP with the resources to implement this program.

8. Our near-term mercury program (3-4 years) includes facility surveys (to obtain crucial data on operating and design features) and BAT guidance development for priority air emission sources, field work to reduce mercury use in small-scale gold mining, continued activities to facilitate storage of mercury in developing and transition countries and otherwise reduce global mercury supplies, and capacity building related to fish sampling and associated communication strategies targeted at developing and transition countries and small island developing states. Some of these activities may be carried out through the partnerships and some through other means.

9. In conclusion, the time for action is now. After three consecutive GCs discussing next steps forward, and with the clear direction suggested by the outcomes of the OEWG, the path forward is now clear. A comprehensive legally binding instrument must be negotiated as soon as possible. The children of this world deserve a better fate than a legacy of global mercury contamination that harms their development.