

October 2008

**SUBMISSION OF THE ZERO MERCURY WORKING GROUP (ZMWG)  
INFORMATION DOCUMENT ON DEVELOPMENT OF A MERCURY FRAMEWORK**

1. An important outcome of OEWG 2 should be agreement on the elements needed in a mercury framework, even if there is no agreement on how those elements should be implemented. In Document UNEP(DTIE)/Hg/OEWG.2/8, the Secretariat proposes a package of elements that could collectively comprise the basis for a comprehensive mercury framework, regardless of its legal nature. The ZMWG believes that Document 2/8 provides a suitable basis for starting the discussion of the elements needed in an effective mercury framework.
2. The ZMWG recommends revisions to some of these elements as they are drafted in Document 2/8 (see attached). Some of the changes proposed by ZMWG foresee a sectoral approach whereby targeted measures are taken globally to address particular supply or emission sources, products, or processes. Other changes are needed to ensure the mercury framework is comprehensive in nature, addressing all the anthropogenic activities contributing to the global mercury pollution problem.
3. Once the required elements are identified, OEWG 2 will discuss which of the elements require a legal instrument. In our view, the elements related to supply (including storage and trade), emission reductions (through the use of BAT or otherwise), and product/process phase-outs will require a legal instrument for a variety of reasons.<sup>1</sup>

First, the legal instrument is the most direct and effective vehicle for prohibiting new undesired activities (i.e., new mercury mines, new emission sources without controls, new manufacturing facilities using outdated technologies, new uses of mercury, etc.). 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, in the areas of supply and trade particularly, both for mercury and products, a binding legal instrument will ensure that trading partners operate on a level playing field, and that any costs they may incur in implementing their reduction commitments will not decrease their competitiveness with respect to other countries. Additionally, a legal

---

<sup>1</sup> 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.

instrument will lessen the possibility of WTO challenges or threatened challenges that could thwart global reduction efforts.

Third, the elements 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. Certainly, 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 or regional levels, as evidenced by the growing number of laws and regulations issued recently or pending covering trade, emissions, products, and processes. A key aspect of the global challenge of mercury is the uneven existence of these mechanisms within different regions and globally. 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.

Lastly, we continue to believe a binding legal instrument will more effectively facilitate additional financial and technical resources than a purely voluntary approach. 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. OEWG 1 narrowed the choice of legal instruments to either a protocol to the Stockholm Convention or a free-standing mercury convention (possibly allowing the addition of other metals at a future time). ZMWG favors a free-standing convention rather than a Stockholm protocol, because it is unclear whether mercury falls within the scope of the Stockholm Convention, adding this new responsibility to the Stockholm Convention will unnecessarily distract it from its current activities and priorities, and most synergies to be gained from working with the Stockholm Secretariat can be obtained using less formal means.

5. In the event consensus cannot be reached on the need for a binding legal instrument, we recommend presenting Governing Council with several alternate approaches, one of which proposes a free standing mercury convention. We prefer a lack of consensus at this juncture over a consensus lacking a strong legal instrument component, since the position of one or more governments may change significantly in the near future.