

Overview

ZMWG welcomes the draft Elements Paper prepared by UNEP for INC2 and recommends that it be used as the basis for initiating its negotiations. Its overall approach to reduce the global supply and trade of mercury is sound, and its targeting of products and processes for phase-out is welcomed, as are controls on mercury emissions from new coal-fired power plants.

However, in order to achieve success, the mercury convention will need to be significantly more ambitious than many sections of the Elements Paper. The following areas are some of the most crucial:

Article 7: Products containing mercury: ZMWG recommends that the Convention list products that are allowed to be used rather than a list of those to be prohibited/phased out. If the delegates support the latter approach, however, the current list of products subject to phase-out must be expanded, and there should be streamlined rules for adding products in the future. In addition, trade with non-Parties must be further limited; the Elements Paper is particularly weak in this regard, and strengthening changes will encourage governments to become Parties to the Convention.

Article 9: Artisanal and small-scale gold mining: Artisanal and Small-Scale Gold Mining (ASGM) is the largest use of mercury in the world, and the Convention must require stronger steps to reduce use in this sector. Parties with ASGM within their borders must be required to prepare and implement action plans with targets and timetables that specify how they will achieve reductions in mercury use and releases in this sector, including when and how the worst mercury management practices will be eliminated and strategies for providing information to miners and affected communities.

Article 10: Reducing mercury releases to air: Article 10 of the Elements Paper would apply control technology only to new facilities, thus essentially grandfathering the current level of global mercury emissions. Best available techniques (BAT) must be applied to existing as well as new priority air emission sources, although what is considered BAT may differ between new and existing sources to take into account existing pollution control equipment already installed.

Article 13: Contaminated sites: Improvements are needed to better address the needs of exposed populations at contaminated sites, including but not limited to access to information regarding their exposures; creating capacity within governments to conduct health investigations around contaminated sites; and creating mechanisms for ensuring victims receive appropriate compensation based upon the principle of polluter pays.

Article 15: Financial resources and mechanisms: The Convention should set up a Dedicated Fund as its financial mechanism -- with the expectation that the fund will provide substantial resources to meet treaty obligations; operate in a way that encourages compliance; target resources to Convention priorities; and include broad Party representation within its governing structure.

Detailed Comments

Part I: Introduction

1. Objective

Replace with the word “placeholder” until later in the negotiations, because the existing language is very weak and fails to establish a fundamental goal of eliminating mercury uses and releases, even where it is feasible to do so.

2. Definitions

Make a series of technical corrections to the definition of:

- “artisanal and small scale gold mining” (ASGM) to reflect both the formal and informal status of the activity;
- “allowable use” to clarify that small amounts of mercury may be used for research purposes;
- “mercury” to mean only elemental mercury, which facilitates later references in the text;
- “environmentally sound storage” to clarify the objective of the storage; and
- “mercury compounds” to include all potentially relevant compounds related to releases, waste, and contaminated sites.

Part II: Measures to reduce the supply of mercury

3. Mercury supply sources (and associated Annex A)

- Terminate all primary mining within 3 years of the date that the Convention enters force.
- Add by-product recovery from natural gas production, a potentially significant mercury supply source in some regions, to the list of controlled mercury supply sources.

4. Environmentally sound storage

- Clarify that the storage requirement applies to the elemental mercury derived from mercury compounds, and not to the compounds themselves.

5. International trade with Parties in mercury or mercury compounds

- Require a domestic approval framework for the authorization of trade of mercury and mercury compounds, so that only trade authorized under the treaty can take place.
- Clarify that it is the trade of mercury to support ASGM that is prohibited, not the use of mercury in ASGM.

- Require that international trade for dental uses of mercury be in the form of dental amalgam, and NOT as elemental mercury or other mercury compounds. (Note that imports of elemental mercury destined for ASGM are often falsely justified as dental mercury.)

6. International trade with non-Parties in mercury or mercury compounds

Prohibit exports of mercury to non-Parties under any circumstances, to prevent diversion of mercury or improper storage by non-Parties. This broader prohibition would have the additional benefit of encouraging more governments to join the Convention.

Part III: Measures to reduce intentional use of mercury

7. Mercury-added products (and associated Annex C)

We recommend an approach where all mercury-added products are phased out, except those specifically exempt under the treaty, instead of the current approach which lists prohibited uses. However, if the current approach is taken, the INC should:

- Create a streamlined process for reviewing and adding targeted products in the future.
- Add the following additional product categories for phase-out in Annex C:
 - i. Soaps and cosmetics (i.e., skin lightening creams);
 - ii. Topical antiseptics, such as mercurochrome;
 - iii. Paints; and
 - iv. Pesticides.
- Set mercury content limits for lamps, because a simple prohibition may result in a blanket allowable use exemption without minimizing mercury content in the short term.
- Require new products to be approved under the allowable use exemption process, where the availability of non-mercury alternatives can be evaluated.
- Restrict trade in mercury products with non-Parties, both to encourage governments to become Parties and to ensure restricted mercury products are only used in accordance with the Convention's exemption procedures. Specifically:
 - i. Prohibit exports of restricted products to non-Parties.
 - ii. Require Parties to obtain an allowable use exemption to import otherwise restricted products from non-Parties.
 - iii. Prohibit the export of equipment used to manufacture products restricted under the Convention to non-Parties.
 - iv. Prohibit Parties from importing products made by non-Parties using mercury processes prohibited under the treaty, such as PVC or caustic soda, where the COP can identify the products and factories using the prohibited mercury processes.

8. Manufacturing processes in which mercury is used (and associated Annex D)

- Require both the development *and implementation* of the required phase-out action plans.
- Prohibit the export of phased-out process equipment to non-Parties.
- Add polyurethane elastomer production to the list of prohibited processes.

- Define chlor-alkali production to include the production of sodium methylate, which also uses mercury cells.
- Add a requirement for a periodic review of Annex D to determine if the treaty contains significant gaps in coverage of mercury processes, or if new technologies or information should result in control measures for previously unaddressed processes.

9. Artisanal and small-scale gold mining (ASGM) (and associated Annex G)

- Require Parties with ASGM within their borders to prepare and implement specific action plans which will specify how they will achieve mercury use and release reductions in this sector.
- Specify that the action plans include, among other elements, strategies, targets, and timetables to:
 - i. Prevent specific practices (such as whole ore amalgamation and the burning of amalgam without vapour capture).
 - ii. Provide information to small-scale gold miners and affected communities.
 - iii. Achieve a long-term objective of eliminating mercury use in this sector.

Part IV: Measures to reduce releases of mercury and mercury compounds to air, water and land

10. Atmospheric emissions (and associated Annex E)

- Require existing facilities to install BAT, with more time and more flexibility to achieve compliance than for new sources, recognizing that the BAT/BEP guidance will provide a menu of control options to control mercury emissions that could be applied to the various different fuel types and plant configurations, and thus take advantage of effective multi-pollution control strategies;
- Include within BAT the use of Continuous Emissions Monitoring equipment (CEMs), which provides accurate, real-time data on mercury emissions;
- Require that action plans be developed **and implemented**;
- Define mercury emissions to ensure all the relevant forms of mercury are addressed under the air control measures;
- Encourage the COP to design the reporting system that fosters data harmonization and comparison, to facilitate treaty monitoring and effectiveness; and
- Add natural gas production facilities to the list of controlled atmospheric emission sources.

11. Release to water and land (and associated Annex F)

- Add dental offices to Annex F since they are a well documented substantial source of mercury releases to water.
- Clarify that disposal facilities receiving wastes from those processes listed in Annexes D and E are covered.
- Clarify that releases of concern include releases of both mercury and mercury compounds.
- Require Parties to “take action in conformity” with these guidelines, thereby making it clear that the guidelines cannot be ignored or bypassed in favour of a substantially weaker control regime.

12. Mercury wastes

- Apply the principle that generator nations should manage wastes within their own borders when they are able to do so, and prohibit the dumping of mercury wastes from the developed to the developing world.
- Delete references to defining low mercury wastes by concentration, since waste management techniques will very often be defined by the type of waste (i.e., used product), not its mercury content.
- Clarify that the scope of mercury wastes falling within Article 12 includes wastes generated by the sources listed in Annexes D-F.
- Clarify that the Conference of the Parties retains its role as the principal policy setting body for mercury waste management under the treaty.

13. Contaminated sites

- Strengthen language to make clear that site remediation includes health effects investigations as needed, providing prompt and accurate information to exposed populations regarding the risks they face, and ensuring appropriate compensation of victims adversely harmed from contaminated site releases using the principle of polluter pays.
- Ensure vulnerable populations are protected during remediation.
- Require that BAT/BEP guidance includes information on conducting health investigations and reducing exposures during remediation.
- Require that the COP provides Parties with guidance on how to construct appropriate liability schemes based on the polluter pays principle.

Part V: Transitional measures

14. Allowable-use exemptions

- Limit the “automatic” allowable use exemptions to two years.
- Limit earned exemptions (those subject to COP review and approval) to four years.
- Require the COP to consult with experts and stakeholders when developing its allowable-use exemption process
- Require the COP to consider whether mercury and mercury wastes will be appropriately managed and whether activities are planned or underway to eliminate the mercury use when evaluating allowable use exemption requests.
- Create “sunset” (final) dates for the exemption processes after which no further exemptions will be allowed. For chlor-alkali production, and mercury-added paints, pesticides, soaps/cosmetics, and topical antiseptics, specify a sunset date of 2020, since phase outs/eliminations are already well underway for these products and processes.

Part VI: Financial resources and technical and implementation assistance

15. Financial resources and mechanisms

- Create a financial assistance regime that is:
 - i. Adequate both in financial support and in accountability.
 - ii. Operated in a way that promotes compliance through coordination with the compliance mechanisms in the Convention.

To achieve this, the treaty should:

- Create a Dedicated Fund, similar to the one supporting the Montreal Protocol, because a dedicated fund can provide a new and consistent source of funding calibrated specifically to the needs of the Convention.
- Ensure the governing structure of the fund provides for diverse representation from the Parties and for transparency in its operations.
- Ensure the governing structure facilitates the fund's ability to allocate resources according to Convention priorities and adapt to changing Convention needs.
- Identify an interim funding source to finance action plan development and mercury use/release activities before the Convention comes into force.
- Require that the Fund's periodic evaluation include an evaluation of stakeholder involvement and that the administration of its activities be conducted in a transparent manner.

16. Technical Assistance

Clarify that technical assistance should be based upon the local needs of the Party seeking assistance, as reflected in its request.

17. Implementation committee

Revise the terms of reference to ensure the Committee has the benefit of hearing from all interested parties as it undertakes its responsibilities under the treaty.

Part VII: Awareness-raising, research and monitoring, and communication of information

18. Information exchange

No revisions.

19. Public information, awareness and education

- Ensure the public is provided relevant domestic information regarding treaty activities and progress toward reducing or eliminating mercury use.
- Ensure that Parties reach out to vulnerable populations so they understand the risks by mercury exposure and the Party's plans to reduce such risks.

20. Research, development and monitoring

- Improve data gathering related to treaty implementation and effectiveness, including data on mercury uses and releases, and mercury contaminant levels in vulnerable populations and aquatic food sources throughout the world.
- Clarify the broad scope of the mercury compound releases of concern.

- Foster improvements in emissions control and monitoring, as well as the development of non-mercury products and processes.

21. Implementation plans

Clarify that stakeholder involvement in plan development and implementation is expected and encouraged.

22. Reporting

Improve the information gathering process to better monitor Convention progress and effectiveness in the following ways:

- Expand the key areas where periodic reporting is required.
- Require that the data be publicly available.
- Initiate reporting 2 years after the Convention comes into force.
- Require annual reporting on mercury products and trade.
- Require biennial reporting on air emissions.
- Strengthen provisions to require that specific data (regarding products, processes, releases to land and water, etc) be provided the COP as needed.
- Provide additional authority to the COP to request data on new products as needed to ensure new mercury-added products are only authorized under extraordinary circumstances.

23. Effectiveness evaluation

Include human exposure and monitoring of aquatic food supplies in the Convention effectiveness evaluation.

Parts VIII (Institutional arrangements) and IX (Settlements of disputes), Articles 24-26.

No revisions.

Part X: Further development of the Convention

24. Amendments to the Convention

No changes.

25. Adoption and amendment of annexes

Streamline the process for making additions or revisions to existing annexes.

Part XI: Final provisions (Sections 29- 36)

No revisions.