PRELIMINARY DRAFT ZERO MERCURY WORKING GROUP RESPONSE TO CO-CHAIRS PROPOSED APPROACH TO EMISSIONS AND RELEASES

May 2012

In their April 3, 2012 paper, the co-chairs of the contact group on emissions and releases present two possible approaches to control mercury air emissions in the treaty. The first approach, which we refer to as the "direct" approach, would require parties to reduce emissions at identified priority sources (new and existing) by imposing BAT/BEP, emission limits, or percentage mercury emission reductions (we presume at the facility level). The second approach, which can be referred to as the "indirect" approach, would require parties to submit to the COP a plan for achieving emissions reductions, including targets and timetables. The plan would be subject to COP review and associated progress reporting requirements.

1. ZMWG prefers the direct approach, because it offers greater certainty in achieving substantial progress toward global emissions reductions in a timely manner. The indirect approach would take too long to implement, may divert precious treaty resources from actual mercury emission reduction projects, and may produce inconsistent results among the parties. However, we note several aspects in the direct approach which will require clarification or improvement to achieve the desired outcome:

- While the COP is charged with developing emission limits and reduction targets, it is less clear in the co-chairs draft whether the COP will develop the BAT/BEP requirements
- The extent of flexibility for national circumstances in setting BAT/BEP is yet to be determined – when considering this issue, less flexibility and more stringent emission controls may be appropriate for new facilities
- Any provision which would allow parties to set size thresholds for either jurisdictional purposes or for phasing in emission controls should be carefully considered by the INC to avoid loophole creation. In the case of smelters, for example, the smaller facilities may be contributing a significant share of the mercury releases nationally and globally.
- Except for ASGM, the sources of emissions listed in Annex F will be controlled, particularly coal-fired power plants and industrial boilers; non-ferrous metals processing (industrial gold, lead, zinc, copper); cement production; waste incineration; and secondary steel production

2. Under either approach proposed by the co-chairs, the releases to land and water, even from the same sources subject to air emission controls, may be unaddressed. We believe this is a serious gap in coverage because it can result in inappropriate cross-media transfers of mercury pollution. While the co-chairs note other sections of the treaty, particularly the waste management section, may provide the necessary coverage, this is far from clear at the present time. For example, in the case of mining and mineral processing, it is unclear whether Article 13 will expressly cover industrial gold, zinc, and other mining wastes where mercury is not recovered but is released to land and water.

3. ZMWG supports the inclusion of continuous monitoring of sources, and party reporting obligations related to progress implementing these control measures, into the elements of both approaches.