

Introduction

This document summarizes recommendations on which options and alternatives should form the basis for further work by the INC, and identifies key draft provisions, which warrant support, modification, or deletion as the negotiations proceed. Please refer to ZMWG Preliminary Views on INC3 Draft Treaty Text Full Version for more details.

Article 1, Objectives

Remove: Article 1 bis, 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 of Article 1 bis would be retained, mirroring the Stockholm Convention text that the Mercury Convention and other trade and environment treaties are “mutually supportive”.

Article 3, Supply

Retain: Option 1, which prohibits mining for export purposes within 0-5 years (depending upon the alternatives chosen), and phase-out all mercury mining within 3-5 years. We recommend a 3-year maximum phase-out of primary mining.

Remove: Option 2, which would leave the phase-out of mining to the discretion of a party based upon what the party determined to be economically feasible, and require compensation for not mining.

Article 4, International Trade with Parties

Retain: Paragraph 2 bis containing the domestic approval authorities needed to implement the trade provisions of the treaty, and paragraph 3(b) requiring that the trade of mercury for use as dental amalgam be in the encapsulated form.

Remove: Alternative 2 of paragraph 2(b) because it weakens the requirement that governments consent to the import of mercury.

Remove: Paragraph 4(d) because it defers inappropriately to the Basel Convention.

Article 5, International Trade with Non-Parties

Addition Needed: Non-party trade provisions are currently weak because exports to non-parties are not limited to uses allowed under the convention. The text should prohibit exports to non-Parties outright, but at a minimum, any exports for use should be limited to allowable uses.

Article 6 Products

Retain: Option 2, which uses a negative list approach, stating that manufacture of mercury-added products is generally prohibited, unless an allowable use exemption has been

- Retain:** obtained. However, delete Paragraph 5 that would make phase-out non-mandatory. Paragraph 4 of option 1, which prohibits the trade of equipment used to make phased out products.
- Retain:** Requirement for a Party trading with non-Parties to obtain an allowable use exemption.
- Remove:** Option 3 because important details are unclear or lacking in the text, and product phase-out decisions should not be deferred completely to the COP.
- Remove:** Option 4 because a voluntary approach to phasing out mercury products will not produce meaningful results.

Article 7, Processes

- Retain:** Option 2, the negative list approach, i.e., a general ban of mercury in all processes except the processes receiving an allowable use exemption under Article 8.
- Retain:** Paragraph 6, which prohibits export of equipment used in mercury-added production processes.
- Remove:** Option 3 because it is too flexible and lacking detail. There is no need for an “essential use” category, since the exemption process can handle special cases.

Article 8, Exemptions

- Retain:** The elements of Option 1 that require:
- COP review and approval required before an exemption is granted (par. 1, alternative 2),
 - limit the exemptions to a reasonable time period (par. 4, alt. 2),
 - require meaningful demonstrations an exemption is appropriate (bracketed text in pars. 5 and 7), and
 - give authority to end the availability of exemptions when non-mercury alternatives are globally available (par. 9, alternative 2).
- Remove:** Option 2 because it creates an open-ended exemption process, resulting in exemptions too easily obtained for too long a period of time.

Article 9, ASGM

- Retain:** Para 1 Option 1 which requires all parties which have ASGM activities to comply, and addresses both the ASGM sector and the use of mercury in the sector.
- Retain:** Para 1bis, option 2 and associated Annex E, which contains simple and straightforward requirements for the development of a national action plan.
- Retain:** Option 2 of Para 2 on international cooperation since it elaborates on possible activities in this area.
- Retain:** Option 2 of Para 3, which provides for an allowable use exemption to export or import mercury for ASGM.
- Addition needed:** The Article 8 exemption process would be amended to provide for export/import exemptions.
- Remove:** ASGM from Annex D (list of industrial processes) since ASGM is best left as a separate article.

Articles 10 and 11 Emissions

- Retain:** Text which subjects new and existing facilities to the mandatory BAT compliance obligation as soon as possible.
- Retain:** Threshold limit values and reduction benchmarks as part of the mandatory control

obligation (most of the bracketed language in paragraph 4 of Option 1 to implement BAT/BEP measures).

Retain: Air source categories in Annex F, except for ASGM.

Remove: Any text which weakens the BAT mandate for new and existing facilities.

Remove: Language requiring BAT to be supplied “free of charge” to anyone as a poison pill.

Remove: ASGM from source categories in the Annexes, since ASGM warrants a separate control regime under Article 9.

Combining Articles 10 and 11: ZMWG favors an approach which targets significant pollution sources to all media, and the preparation of BAT guidelines which address all relevant media for the targeted source categories.

Article 12, Storage

Retain: Alternative 1 provides broader coverage under Article 12, especially the inclusion of mercury whose classification falls out of the Basel Convention.

Retain: Provision requiring Secretariat to assist facilitation of regional storage planning.

Remove: Option 2 as it defers development of storage guidelines to the Basel Convention, because the Basel Convention has limited jurisdiction in this area.

Remove: Proposed Annex for a storage guideline as this may prove unworkable.

Remove: Language suggesting every party or every region must develop one storage facility as premature and likely unnecessary.

Article 13, Wastes

Clarity Needed: On the scope of Article 13 particularly how wastes from emission sources covered under Articles 10 and 11 will be handled under the treaty.

Retain: Alternative 1 text in paragraph (1)(c) regarding transboundary movement of mercury wastes, limiting such movement to between developed countries, or from developing countries to developed countries after the exporting Party has received the written consent of the importing State and determines that the importing state has environmentally sound disposal facilities.

Remove: Text “deferring policymaking or guideline development to the Basel Convention” wherever it appears in the Article. Cooperation and coordination between the two Conventions is the better approach.

Strengthen: Paragraph 3 by requesting the COP to establish time sequenced mercury waste reduction targets, taking into account the product and process phase-outs established under Articles 6 and 7.

Article 14, Contaminated Sites

Retain and Strengthen: Option 1 needs to be improved as follows:

- Include a mandatory inventory and site characterization requirement, so that parties obtain the necessary baseline information needed to prioritize sites and identify emergency situations.
- In paragraph 3(c), REMOVE the bracketed term “where feasible”, if the INC

truly wants the guidelines to address the concerns of victims.

- Text should be added to paragraph 3 to encourage polluters to pay the remediation costs and appropriate compensation to victims, in particular language seeking the development of guidance on allocating financial responsibility for addressing contaminated sites.
- Guideline development should cover the safe management of wastes generated from site remediation, and related text should require the safe management of remediation wastes in accordance with Article 13.
- Finally, the text should ensure local populations are informed about the site characterizations and the risks they face.

Remove: Option 2 from further consideration since it is not responsive to the needs of parties or victims of contaminated sites, particularly in the developing world.

Article 15, Financial Assistance

Retain: Text which is consistent with the following architecture:

- The financial mechanism shall include a Dedicated Fund to ensure adequate resources are available to facilitate compliance and discourage non-compliance.
- 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.
- The financial support mechanism shall be designated and operated to facilitate compliance and discourage non-compliance with the obligations of this Convention
- The governance structure for the Dedicated Fund shall provide for representation of developing nations, and operational transparency.
- Each Party shall include in its reports submitted pursuant to Article 22 (Reporting) information demonstrating how it has implemented the provisions of this article.
- The principle of polluter pays is reflected in how the mechanism is used.

Remove: Text which makes compliance “contingent” upon financial assistance, particularly where the private sector can and should bear this responsibility. This kind of language appears in many forms and places in the proposed text.

Article 16, Technical Assistance

Retain: Option 1 paragraph 1 (including the bracketed NGO language),

Remove: 1 bis and option 3 as poison pills (i.e., requiring developed countries to provide technology “free of charge”); and language on partnerships in the treaty itself since the COP can employ partnerships when needed without treaty text.

Subtitle J: Article 18, Information Exchange

Include: NGOs in information exchange considering the important contributions NGOs have and will make to treaty development and implementation.

Remove: Term “socially viable” in paragraph 1(c) as vague and not consistent with the need to exchange information, so it should be deleted.

Reject: Proposal to move paragraph 3 to Article 4 (international trade) since it may limit the role of the designated national authority only to information exchange regarding trade.

Subtitle J: Article 19, Public Information, awareness and education

Retain: Bracketed text in paragraphs (a) and (b) to ensure the public is provided relevant information, so they understand the risks from mercury exposure and the party's plans to reduce such risks.

Subtitle J: Article 20, Research Development and Monitoring

Retain: Inclusion of the bracketed text to facilitate data collection under the Convention.

Subtitle J: Article 22, Reporting

Retain: Option 1

Remove: Option 2 since it would confuse/prolong/delay the reporting process and its follow up implementation by potentially providing any Party with self-declared compliance "waivers".

Article 23, Effectiveness Evaluation

Retain: Bracketed text in paragraph 2 as part of the treaty effectiveness evaluation.

Article 33, Reservations

Remove: Ability of parties to make reservations to this Convention. All parties must be bound by terms of the Convention for it to work effectively and achieve the desired results. We note the Stockholm Convention does not provide for reservations.

- END -