This paper summarizes the recommendations of the Zero Mercury Working Group (ZMWG) on the anticipated decisions at the third Conference of the Parties (COP 3). We highlight only the priority issues, and the key points on these issues. We encourage COP 3 delegates to consult with ZMWG representatives for more details or positions on documents not discussed below.

In the following document you can find the ZMWG recommendations on:

1. The review of the Annex A and B and Harmonised Custom Codes
2. The development of guidance for inventories of mercury releases to land and water under Article 9
3. Setting Waste Thresholds under Article 11

**ZMWG RECOMMENDATION ON THE REVIEW OF ANNEX A AND B and HARMONISED CUSTOMS CODES**

1. Articles 4 and 5 of the Convention require the COP to review Annexes A and B within five years of the Convention coming into force.

2. This review should take into account data collected nationally and globally since the Annexes were finalized in January 2013, advances in technology and non-mercury product availability, and national transitions toward non-mercury products.

3. In document COP 3/4, the Secretariat prepared a draft decision document which initiates the review process. We support the key elements of the draft decision: (1) the creation of an expert group to conduct intersessional work; (2) express NGO participation as observers on the expert group; and (3) the mandate for the group to prepare recommendations for consideration at COP 4. Additional process details may be beneficial, such as the Secretariat requesting information from Parties and other stakeholders to be submitted in advance of the first meeting of the expert group.

4. We suggest one significant change to the draft decision. Specifically, the intersessional work on harmonized codes should be assigned to the Secretariat, in collaboration with the Global Mercury Partnership, rather than this expert group.¹ This expert group already has an ambitious scope, and the work on customs codes requires different expertise. Moreover, the Secretariat and the

¹ See Paragraph 1(c) of the Mandate in the draft decision.
Partnership successfully prepared the report on harmonized codes for consideration at COP 3; there is no compelling need to change this process moving forward.

5. Regarding the substantive COP mandate to the Secretariat on harmonized codes, the options for consideration are presented in document COP 3/5, and the background report is document COP 3/INF/12. Of the options presented, we recommend Option B, under which voluntary guidance would be prepared for COP 4 on 8 or 10-digit customs codes which a Party may adopt to better distinguish mercury from non-mercury products. We recommend this option because it can be implemented quickly, and it builds off the work already undertaken by some national governments.

ZMWG RECOMMENDATION ON THE DEVELOPMENT OF GUIDANCE FOR INVENTORIES OF MERCURY RELEASES TO LAND AND WATER UNDER ARTICLE 9

1. At COP 2, an expert group was established to prepare a report that includes a list of source categories to be covered under Article 9, and a suggested roadmap for developing draft guidance for preparing Article 9 inventories.

2. The expert group report is document COP 3/6. The group could not come to agreement on a specific list of sources, but progress was made in defining some of the terms in Article 9 regarding the scope of coverage. Specifically, Article 9 defines “relevant source” as any “significant”, man-made “point source”, “not otherwise addressed under the Convention”. The group found exemplary definitions of “point source” under national laws, and determined Parties had substantial discretion to determine which sources are “significant”. The group also agreed on a proposed roadmap for the development of release inventory guidance.

3. The expert group could not agree on the list of sources “not otherwise addressed by the Convention”. The text of the report indicates that the following sources of releases to land and water are not addressed:

   - Non-waste primary mercury mining activities;
   - The manufacture of products not listed in Annex A, or below the specified concentration limits in Annex A;
   - Industrial processes using mercury not listed in Annex B;
   - The air emission source categories listed in Annex D, except where the releases arise from waste management activities subject to Article 11

4. The principal area of uncertainty and disagreement concerns the relationship between Article 9 and the waste provisions of Article 11. There are two main issues requiring consideration at COP 3. First, how should wastewaters be addressed? Although technically falling within the Basel definition of wastes, most governments control wastewater discharges to surface waters under clean water programs, not waste programs. Moreover, wastewaters are not typically shipped internationally. **Accordingly, ZMWG and many experts believe a Party should be allowed to**
control wastewater discharges under Article 9, consistent with a Party’s national law and regulatory framework. Examples of possible wastewater sources a Party may choose to control under Article 9 include coal washing, and wastewaters from air pollution control devices at Annex D air emission sources.

5. The second issue is how to address gaps in coverage under the existing Basel technical guidelines. Are the sources “addressed” without applicable information on how to control the releases? Significantly, this issue can be resolved without debating the legal fine points. The Basel Convention recently began the process of updating the guidance, thereby providing the COP and governments the opportunity to meaningfully engage and fill significant gaps in the current document. In the draft decision document covering waste thresholds (document COP 3/7), paragraph 5 of the draft decision calls upon the waste expert group to “cooperate” with the Basel Convention update process, but does not indicate how this should be accomplished. We suggest strengthening this coordination process in two ways. First, the Secretariat should request from Parties and other stakeholders information identifying potential gaps in the current Basel guidelines that should be addressed, and other revisions to the Guidelines as needed to improve its utility, by January 31, 2020. This information would help inform the waste expert group engagement with the Basel guideline update. Second, the COP should request that the Secretariat collaborate with the Basel Convention Secretariat to establish a process or mechanism for the Minamata Convention waste expert group “cooperation” with the Basel group performing the guidelines update.

6. In summary, ZMWG supports the Secretariat’s draft decision undertaking intersessional work after COP 3 to finish the work of the expert group, develop the inventory guidance, and propose a roadmap for BAT/BEP guidance development. However, we also believe the COP should also provide policy direction to the expert group regarding wastewaters, since this is a Convention interpretation issue best made by the COP. And we recommend strengthening the draft decision on waste thresholds in COP 3/7 regarding the waste threshold expert group’s efforts to interact with the process for the Basel guidelines update.

**ZMWG RECOMMENDATION ON SETTING WASTE_THRESHOLDS UNDER ARTICLE 11**

1. Under Article 11 of the Convention, mercury wastes are divided into three categories: (1) **Category A - wastes consisting of mercury or mercury compounds**, such as excess mercury from closing or converting chlor-alkali facilities or calomel generated from mining operations; (2) **Category B - wastes containing mercury or mercury compounds**, such as mercury products at the end of their useful life; and (3) **Category C - wastes contaminated with mercury or mercury compounds**, such as industrial process wastes and contaminated soil removed from remediation sites.
2. At COP 2, an expert group was established. The mandate for the working group and the expert group’s recommendations can be found in document COP 3/7, and are summarized as follows:

- **Identify wastes falling within each of these categories** – tables of relevant wastes for each waste category were created;
- **Recommend an approach for the Category C wastes threshold** - the threshold should be based upon the total concentration of mercury in the waste, since the threshold should take into account all the ways the waste could be managed and the resulting exposure pathways
- **Consider the relevance of thresholds for Category A and B wastes** – no thresholds are needed for Category A and B wastes, since all these wastes should be covered by the Convention
- **Identify possible approaches for setting thresholds for certain mining wastes (waste rock, overburden, and tailings)** – no thresholds are needed for waste rock and overburden at this time, thereby continuing their exempt status under the Convention. For tailings from non-ferrous mining, a two-step jurisdictional threshold is recommended. First, the concentration of mercury in the tailings must exceed the threshold established for Category C wastes. Second, a leaching threshold would be established. Both thresholds must be exceeded to trigger Article 11 coverage.

3. **ZMWG supports these recommendations from the expert group, and the need for intersessional work after COP 3.**

4. ZMWG urges governments at COP 3 to decide how to control wastewater discharges under the Convention (see our position paper on Article 9 releases).

5. Paragraph 5 of the draft decision calls upon the waste expert group to “cooperate” with the Basel Convention update process, but does not indicate how this should be accomplished. We suggest strengthening this coordination process in two ways. First, the Secretariat should request from Parties and other stakeholders information identifying potential gaps in the current Basel guidelines that should be addressed, and other revisions to the Guidelines as needed to improve its utility, by January 31, 2020. This information would help inform the waste expert group engagement with the Basel guideline update. Second, the COP should request that the Secretariat collaborate with the Basel Convention Secretariat to establish a process or mechanism for the Minamata Convention waste expert group “cooperation” with the Basel group performing the guidelines update.

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2 ASGM tailings are considered Category C wastes, because the mercury in the tailings was intentionally added during the process to facilitate the extraction of gold. See document COP 3/7, Annex II, par. 8. Accordingly, ASGM tailings are currently covered under the Convention, but would be subject to whatever total concentration threshold is eventually established for these tailings by the COP.