

Elements of Text and Options for a Mercury Treaty Submission by Canada

Preamble

The preamble to the Stockholm Convention contains several paragraphs relevant to the mercury convention that could be drawn upon. Accordingly, we propose the following three preambular paragraphs, recognizing that other paragraphs could also be included:

Recognizing that mercury is a neurotoxin which persists in the environment, bioaccumulates, can be transported across international boundaries, including through air and water, and deposited far from its place of release, where it accumulates in terrestrial and aquatic ecosystems,

Acknowledging that Arctic ecosystems and indigenous communities are particularly at risk because of the biomagnification of mercury, and that contamination of some traditional foods presents a hazard to human health,

Recalling the relevant international environmental conventions, especially the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, including the regional agreements developed within the framework of its Article 11, and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

Objective

The objective of a convention is an important article and can serve as a basis for measuring the subsequent effectiveness of the convention. Canada prefers a concise objective that reflects a goal, rather than expressing the means to achieve that goal. For example, it could read as follows:

The objective of this Convention is to protect human health and the global environment from the release of mercury and its compounds throughout their life-cycles by minimizing and, where feasible, ultimately eliminating global anthropogenic mercury releases to air, water and land.

Demand—products

Canada is supportive of convention measures that address the manufacture and sale of products that contain mercury or mercury compounds. It is our view that the INC should have a robust discussion on which products would be covered by the convention. For example, Canada would not see the convention covering, as a product, fish that are contaminated with mercury as a result of environmental exposure.

As the continued need for mercury in some products (essential use) is also a reality, careful consideration should be given to defining essential uses. In this regard, it could be useful to consider including in the convention criteria for essential use such as environmental, health and safety reasons or a lack of available, technically and economically viable alternatives or substitutes.

Requirements for product labelling for certain uses and content limits where continued use of mercury in products is essential could also be elements of the convention text or annexes, as well as a procedure for the periodic review of the requirements and basis for essential use in order to ensure phase-out as alternatives (or substitute products) become technically and/or economically feasible.

Canada supports the way the specific exemption system works in the Stockholm Convention. While we have not included all of Article 4 here we see it as a very practical system of registering for, and later withdrawing from, exemptions. Such a system would hopefully reduce the number of exemptions that remain over time.

A text suggestion that includes several of these elements:

1. Commencing [] years after the date of entry into force of this Convention, each Party shall [prohibit or take measures to [eliminate]][not allow]] the manufacture of products that contain mercury or mercury compounds and [prohibit or take measures to [eliminate]][not allow]] the import, sale and offer for sale of products that contain mercury or mercury compounds that were manufactured [] years after the date of entry into force of this Convention.

2. Notwithstanding paragraph 1, a Party may allow the manufacture, sale, offer for sale, and import of a product that contains mercury or mercury compounds if:

a) Mercury is incidentally present in the product, or

b) The product is listed in Annex X – Essential Uses and the Party has claimed an exemption to continue these activities.

3. Commencing [] years after the date of entry into force of this Convention, and every [] years thereafter, the Conference of the Parties shall examine the list of products and their content limits listed in Annex X and consider whether the Annex requires amendment.

Atmospheric emissions

Canada, and in particular Canada's Arctic, is disproportionately impacted by anthropogenic atmospheric mercury emissions from long-range transport sources. The most significant source of these emissions is from "unintentional releases" from outside of Canada (eg coal fired power plants). Impacts of mercury on Canada's ecosystems and risks to human health have been found.

It is therefore a priority for Canada to ensure that measures to reduce releases from human sources that result in long-range transport of mercury are key elements of any global legal agreement on mercury. Canada strongly supports the inclusion of targets and

timelines for atmospheric emissions reduction in the mercury convention. The paragraph 29 study, anticipated to be made available in advance of INC-2, should help inform our collective thinking in this regard. In addition, the convention or guidance documents produced under the auspices of the convention could identify and describe possible ways to achieve reduction targets.

Wastes

Canada supports the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (Basel Convention) as the principal instrument that governs the transboundary movement of mercury wastes and its environmentally sound disposal globally.

The Basel Convention includes in its scope and mandate the setting of guidelines for the environmentally sound disposal of wastes it covers (Article 4 (8)). The extensive set of provisions and control system governing the 171 parties to the Basel Convention with respect to the transboundary movement of hazardous wastes provide a substantial foundation to advance the establishment of criteria, standards, or best environmental practices for the environmentally sound disposal, including storage, of mercury containing wastes and to ensure their effective implementation.

Elements of text for the mercury convention could include a reference to the role of existing international agreements, including the Basel Convention, in governing the transboundary movement of waste and its environmentally sound disposal, and mention possible areas of co-operation between the Basel and mercury conventions.

For example:

- 1. Each Party shall not allow the import or export of mercury wastes, except for the purpose of environmentally sound disposal in conformity with their international obligations.*
- 2. The Conference of the Parties shall cooperate closely with the appropriate bodies of the Basel Convention to, inter alia:*
 - (a) apprise the Basel Convention about mercury waste management issues arising under this Convention that may need to be addressed pursuant to Basel technical guidelines, including the development of any new environmentally sound waste disposal options that may be developed under the auspices of this Convention;*
 - (b) share with Parties to the Basel Convention information made available under this Convention with respect to mercury wastes, including with respect to any storage capacity encouraged or developed under this Convention.*

Inventories and Reporting

Canada supports the inclusion of a requirement in the mercury convention for the development and maintenance of national release inventories. Inventories and reporting play important roles in effectiveness evaluation.

Convention text will need to address the content and format of inventories as well as the frequency and base year for reporting of release inventory and other information. The Convention on Long-Range Transboundary Air Pollution and the Stockholm Convention may provide useful starting points for discussion of these areas, and the UNEP mercury toolkit represents a solid technical reference.

National Reports

Text for national reporting could include:

- 1. Each Party shall report to the Conference of the Parties on the measures it has taken to implement the provisions of this Convention and on the effectiveness of such measures in meeting the objectives of the Convention.*
- 2. Such reporting shall be at periodic intervals and in a format to be decided upon by the Conference of the Parties at its first meeting.*

Financial Assistance

Canada believes that the next phase of INC discussions on financial and technical assistance for developing countries and countries with economies in transition should build on the general agreement at INC-1 to base initial discussion on identifying guiding principles and criteria as a practical means to help determine a suitable financial mechanism for the convention.

There were many thoughtful suggestions on financing from participants at INC-1. From Canada's perspective, some of the key guiding principles include:

- **Effectiveness:** Funding should be channelled to initiatives that will result in meaningful, measurable reductions in global mercury emissions. This funding should be linked to implementation, focused on assisting countries achieve compliance with their specific obligations;
- **Organizational Synergies:** We should strongly consider the merits of building on existing mechanisms rather than creating new ones. If a new mechanism could be more effective and efficient, it must complement and not duplicate existing mechanisms;
- **Feasibility:** The financial mechanism must provide adequate and predictable funding to recipients in a manner that is realistic and feasible;
- **Source of Funding:** New approaches will be needed on funding. The financial mechanism must be structured to leverage additional funding sources; explore innovative funding options; and encourage private sector investment; and consider expanding the donor base;

- Eligibility: Recognizing that countries have national responsibilities to deal with mercury, but have different capacities to do so, we need to consider how to best ensure assistance is tailored to individual needs.

Finally, Canada would like to reiterate the importance of having the negotiations on the compliance mechanism move forward at the same time as financial provisions.

National Implementation Plans

Canada supports a provision on national implementation plans (NIPs), as a key element for Parties to plan how they will meet their obligations. Properly designed NIPs should systematically and thoroughly identify a set of national priorities to deal with mercury; outline specific activities to meet the direct obligations under the agreement; provide a reliable basis for estimating incremental resource needs for technical and financial assistance; monitor and report on implementation of, and compliance with obligations; and contribute to regular evaluation of the Convention's effectiveness.

Canada believes that the Stockholm Convention's NIP provision could serve as a model, if enhanced to increase its utility for technical and financial assistance purposes through consistent formatting, and common methodologies for financial information and resource estimates. Consideration should also be given to streamlining NIP preparation as much as possible - increasing efficiency and cost-effectiveness while reducing resource burdens on countries and financing agencies. The experiences and lessons learned of countries, implementing agencies and experts with NIPs under the Stockholm Convention could also help inform discussions.

Compliance Committee

Canada supports the inclusion of a compliance mechanism in the mercury convention.

Traditionally many multilateral environmental agreements have included a simple paragraph along the following lines to establishment a requirement for the Conference of the Parties to establish such a mechanism after entry into force of the agreement:

“The Parties, at their first meeting, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance”. (*Montreal Protocol, Article 8*)

Compliance mechanisms have recently been difficult to conclude for some environmental conventions when their negotiation has been deferred to the Conference of the Parties to carry out after those conventions have entered into force. As a result of this experience, a number of delegations at INC-1 called for an approach that would establish the compliance committee in the draft treaty. The text below reflects that approach and outlines key features that would enable the compliance committee to commence its

functions upon entry into force of the convention, while leaving more detailed procedures for the Conference of the Parties to adopt.

1. *A Compliance Committee is hereby established,*
2. *The Committee shall consist of [10] members nominated by Parties and elected by the Conference of the Parties on the basis of two members from each of the five regional groups of the United Nations. Members shall have recognized competence in the field of mercury, including technical or legal expertise and shall serve objectively, impartially and in the interest of achieving compliance with the Convention.*
3. *The Committee shall promote compliance with the provisions of the Convention and address possible non-compliance of any Party. In this regard, the Committee shall:*
 - (a) receive written submissions from any Party with respect to concerns regarding its own compliance or that of any other Party;*
 - (b) examine Parties' national reports pursuant to Article [] and identify any questions relating to a Party's compliance with the Convention.*
 - (c) examine, as appropriate, systemic issues of general compliance and implementation of interest to all Parties;*
 - (d) undertake any other functions assigned to it by the Conference of the Parties.*
4. *The Committee will make appropriate findings in respect of potential cases of non-compliance in the matters brought before it, and may make recommendations to the Conference of the Parties regarding the actions that should be taken in respect of non-compliance, taking into account factors such as the capacity of the Party concerned, as well as the cause, type, degree and frequency of occurrence of such non-compliance. These recommendations may include facilitating technical and financial assistance, development of an action plan, and the issuing of cautions.*
5. *The Conference of the Parties shall decide on any further matters relating to the organization and operation of the Committee.*

Effectiveness Evaluation

Canada supports the inclusion of an article on effectiveness evaluation in the mercury convention, based on the Stockholm Convention provisions, and would want to see this linked with provisions on monitoring, reporting and compliance. Canada considers that monitoring of mercury in the environment and human populations with higher exposures is a key input to assess periodically whether the mercury treaty is effective in achieving its objective(s).

Elements of text could address baselines in conjunction with specific effectiveness indicators.

For example:

1. Commencing [] years after the date of entry into force of this Convention, and periodically thereafter at intervals to be decided by the Conference of the Parties, the Conference shall evaluate the effectiveness of this Convention in achieving its objective.

2. In order to facilitate such evaluation, the Conference of the Parties shall, at its first meeting, initiate the development of a harmonized global monitoring plan and the establishment of arrangements to provide itself with comparable, cost-effective monitoring data on the presence and movement of mercury in the environment. These monitoring data would be based on the establishment of appropriate core media as well as regional and global environmental transport and fate. These arrangements:

(a) Should be implemented by the Parties on a regional basis when appropriate, in accordance with their technical and financial capabilities, using existing monitoring programmes and mechanisms to the extent possible and promoting harmonization of approaches;

(b) May be supplemented, where necessary, taking into account the differences between regions and their capabilities to implement monitoring activities;

(c) Should include information on natural versus anthropogenic emissions and climate effects on the presence of mercury and its speciation (form) [as this relates to toxicity];

(d) Should integrate monitoring results and transport models for the purpose of interpreting trends; and

(e) Shall include reports to the Conference of the Parties on the results of the monitoring activities on a regional and global basis at intervals to be specified by the Conference of the Parties.

3. The evaluation described in paragraph 1 shall be conducted on the basis of available scientific, environmental, technical and economic information, including:

(a) Reports and other monitoring information provided pursuant to paragraph 2;

(b) National reports submitted pursuant to Article []; and

(c) Compliance information provided pursuant to the procedures established in Article [].

Ratification, acceptance, approval or accession

Canada would like to have the possibility considered of amendments to an annex (for example on essential uses) entering into force either through an opt-out procedure or an opt-in procedure, as declared by Parties at the time of ratification of the convention. This is the procedure that was established in the Stockholm Convention.

Possible Text:

In its instrument of ratification, acceptance, approval or accession, any Party may declare that, with respect to it, any amendment to Annex [] shall enter into force only upon the deposit of its instrument of ratification, acceptance, approval or accession with respect thereto.

Related language in Article 22 (4) of the Stockholm Convention may also be useful:

The proposal, adoption and entry into force of amendments to Annex shall be subject to the same procedures as for the proposal, adoption and entry into force of additional annexes to this Convention, except that an amendment to Annex shall not enter into force with respect to any Party that has made a declaration with respect to amendment to those Annexes in accordance with paragraph 4 of Article 25, in which case any such amendment shall enter into force for such a Party on the ninetieth day after the date of deposit with the depositary of its instrument of ratification, acceptance, approval or accession with respect to such amendment.