

## **India's views regarding the elements of a comprehensive and suitable approach to a Legally Binding Instrument on Mercury**

India recognizes the importance of reducing risks to human health and environment from the use and emissions of mercury and is committed to actively engage itself in the process of preparing a global instrument on mercury considering that there are various sources of mercury emissions and that mercury is used in a wide range of mass consumption products. It is important to take comprehensive measures and develop a flexible framework taking into consideration the different circumstances, developmental priorities and capacities of different countries. The Mercury Instrument should be deliberated taking into account the principles of Rio Declaration on Environment and Development, including the principle of common but differentiated responsibilities. Taking note of the views expressed in the INC-1, India would like to submit the following position:

### **Statement of Objectives**

1. The objectives of the mercury instrument need to be clearly and succinctly stated. These should be overarching in nature, rather than a combination of multiple actions which may be difficult to comprehend. The statement of objectives may include appropriate reference to the importance of the principle of common but differentiated responsibilities and technical and financial assistance.

### **Issues of supply, demand and trade**

2. The supply, demand and trade in mercury are all inter-related and should not, therefore, be treated in distinct, water tight compartments. These issues should be dealt with in a composite manner. If the demand side is not addressed adequately and strict control measures are imposed on supply, perverse incentives for illegal trade could be created. This has been the experience internationally in several areas of economic

activity. Due consideration should be given to the issue of permissible uses and exemptions as has been provided in several multilateral environmental agreements.

### **Flexibility in time frames**

3. Flexibility in time frames for implementing various provisions is also important given the need to develop affordable and safe alternatives and country specific circumstances and needs. Rather than a blanket ban on import and export, a regulatory mechanism for international trade may be considered, and exemptions for specified uses be provided until affordable and safe technological alternatives are available. Realistic time frames should be provided for such permissible use and exemptions. For example, completely eliminating supply of mercury in energy efficient lighting systems will imply adopting new alternatives such as LED which are several times more expensive or resorting to high energy consumption in fluorescent lamps. This would severely impact access to electricity of the very large countries low income population in several developing countries. The cost and affordability issues, therefore, have to be given full consideration.

### **Capacity Building, Technical and Financial assistance**

4. The need for capacity building, adequate technical assistance and financial support to developing countries and countries with economies in transition is absolutely essential for effective implementation of the new instrument and must, therefore, be clearly reflected in the instrument in the form of enforcement provisions with integral and explicit linkage to compliance provisions. The experience in this regard with most MEAs, with some exceptions, has been far from satisfactory. Additional resources have been meager and the process for accessing financial assistance under the GEF mechanism is slow and cumbersome. For example, the Stockholm Convention on Persistent Organic Pollutants, provides that full incremental costs of phasing out a new chemical by the developing countries will be provided by the developed countries. This, however, has not materialized and has in turn contributed to unsatisfactory progress on developing a

compliance mechanism. The new instrument should therefore, have explicitly spelt out and monitorable provisions for technical assistance and financial resources. There is a need for a clear linkage between these two sets of provisions i.e. the provisions dealing with control measures and those dealing with obligations of developed countries to provide additional finances. This issue has become all the more important in view of the current global economic outlook with many developed countries facing challenging economic situations.

### **Voluntary Approach**

5. The Mercury Instrument should, therefore, break new ground and focus on investments which will promote Research and Development and Public-Private-Partnerships, to develop affordable new technologies, products and processes so that the objectives of the instrument are translated into reality. The instrument should rely on encouraging voluntary approaches through industry and private sector. Public-private-partnership in the chlor-alkali sector in India, is an example of successful voluntary approach whereby use of mercury has been almost phased out from this sector. This approach could be replicated in several other sectors, where use of mercury and mercury emissions needs to be tackled. Developing countries and countries with economies in transition need to maintain the momentum of high economic growth for improving the living standards of their people. Alternative mercury free products in health care and electric

**Box-1:** Mercury is not mined in India and the requirement is, therefore, imported. The endeavor of the Government has been to progressively reduce the demand for mercury. In chlor-alkali sector, the consumption of mercury has been substantially reduced from 55.25 metric tonnes per annum to 4.53 metric tonnes per annum over the last ten years through collaborative Government-private sector initiatives. With this voluntary approach, India has brought down the consumption of mercury by around 90% and will completely phase out demand for mercury in this sector by the year 2012. However, mercury is being used in other sectors such as health care instruments and energy lamps etc. Mercury is an essential ingredient for most of the energy efficient lamps, such as CFLs. The use of these energy efficient lamps is being encouraged and is in fact earning credits under the CDM mechanism, which is, as we know, a global endeavor. Efforts are being made to reduce demand for mercury in these through better technologies and improved house keeping.

lighting sector are many more times expensive. The coal based thermal power sector is quite large in several countries. Any change in technology or new measures will involve substantial financial implications. The magnitude of this challenge can be illustrated by the fact that in India around 100,000 villages have no access to electricity. It is proposed to more than double the power generating capacity over next ten years. Since the composition of natural resources can not be changed, bulk of this new capacity would have to be in the coal based thermal sector. A voluntary approach in such sectors is therefore, the only viable way. This will need to be supplemented by capacity building and provision of technical and financial assistance to gradually reduce use and emissions of mercury.

### **Compliance mechanism**

6. Without good compliance, a multilateral treaty would have limited value. However, the advantage of a formal compliance mechanism, as a means of promoting the objectives of the instrument, may be overstated. It would be more useful to promote compliance by encouraging and supporting the Parties through a voluntary approach. A strong reporting system, dissemination of information, focus on creating public awareness and investing resources in developing affordable alternative products processes may be far more productive. A strong set of control measures and a compliance mechanism, may appear good on paper, it may not necessarily lead to good implementation. On the other hand, such an instrument may have the potential to adversely impact Parties' goal of sustainable economic development and may, therefore, end up reducing the universal acceptability of the instrument. This will be counterproductive to the global community's collective efforts in reducing use and emissions of mercury.

India is of the view that all Parties must do as much as they can on their own for implementing the provisions of the proposal instrument. However, the additional financial burden of implementing the measures under the instrument should be affordable. Therefore, the control measures and the technical and financial assistance

must be integrally related under the instrument. In other words, compliance should include provisions related to commitments of technical and financial assistance and should be subject to same level of monitoring as the monitoring of implementation of control measures.

### **Awareness and knowledge dissemination:**

7. There is a need for awareness-raising and knowledge dissemination on adverse effects of mercury, mitigation/remediation of mercury waste sites, and other related issues. Capacity-building and technology transfer and technical and financial assistance are indispensable for developing countries to achieve the common goal of minimizing the global pollution of mercury.

Over the years, multiplicity of legislation and regulatory interventions in the environmental sector have produced mixed results. Industries have been reluctant to accept new and additional regulatory burden. On the other hand, policy instruments which are less intrusive than “command and control” regulations and the voluntary approaches/negotiated agreements between Government and industries have often been more successful.

### **Structure of the Mercury Instrument**

8. The Instrument needs to consider the legitimate priority needs of developing countries for the achievement of sustained economic growth and reduction of poverty. It is, therefore, suggested that the choice of the structure should depend on the content of instrument, that is on the kind of control measures that are eventually agreed on, whether they are voluntary or legally binding, how specific and detailed they are, and what is the time frame for implementation.

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