

**Intergovernmental Negotiation Committee
to prepare a legally binding
instrument on mercury**

NORWAY

**Comments on issues discussed
at INC 1**

Oslo, Norway 16. June 2010

1. STRUCTURE OF THE CONVENTION

The structure of the new instrument is important. Norway would like to point to the structure of the Stockholm Convention on POPs as a possible structure of the mercury instrument. The Stockholm Convention follows the basic structure of modern MEAs, and has found a practical and workable balance between the inclusion of basic obligations in the main body of the convention and the inclusion of detailed control measures in annexes. This is the first option addressed in paragraph 8 in document INC.1/4. A similar approach can be found in many other MEAs. Norway is open to pick good ideas and elements also from other MEAs. The documents prepared by the secretariat for INC1 has identified such ideas and elements.

To some degree Norway think the INC could take the approach that “form shall follow function”, based on the fact that the main purpose of the structure is to respond adequately and effectively to the goals and measures agreed by the countries. When we do more clearly see how these goals and measures will look like, we will develop the details of the instrument.

We will advice against a structure that allows countries to ratify and become party to selected parts of an instrument only, and not to others. The instrument, including the elements listed in UNEP GC decision 25/5 for a comprehensive approach to mercury, should be developed and ratified as “a package” and not be subject to some kind of pick-and-choose approach. The latter would also not be in the spirit of the UNEP GC decision.

2. THE OBJECTIVE OF THE INSTRUMENT

Defining the objective of the new mercury instrument is important, but the full and detailed discussion of this issue could in our view better be held at a later stage of the negotiations. At the first meetings of the INC we find it important that INC focus most on discussing the concrete goals and measures for the different emission sources to be covered by the instrument, and on matters related to the effective implementation of the instrument.

In principle we could support an objective in line with the approach used by the Global mercury Partnership: ”To protect human health and the global environment from the release of mercury and its compounds by minimizing, and where feasible, ultimately eliminating global, anthropogenic mercury releases to air, water and land”.

3. CONTROL AND ENFORCEMENT – COMPLIANCE

We will here address three issues related to control and enforcement: Reporting, verification and compliance.

The mercury instrument will need to include good and transparent reporting systems as a means to monitor implementation of the obligations by parties. In addition, mechanisms to verify the information given by parties on their implementation should established. A legally binding instrument will need clear reporting and verification systems to be meaningful.

A fair and effective compliance mechanism (CM) is also an important element in any new MEA. The compliance mechanism should be linked to the technical and financial support system under the convention. This would be both fair and effective.

The approach taken by other conventions to develop the CM after the convention has entered into force, has not been successful. Norway is therefore of the opinion that the main elements

of a CM should be discussed and developed in parallel with the development of other substantial elements of the convention, in particular the mercury control measures and the provisions on technical and financial support.

Effective reporting, verification and compliance systems will be important for the credibility of the new instrument. For aid agencies providing technical and financial assistance this may be an important issue.

Further, the instrument should include provisions on effectiveness evaluation, a mechanism to monitor progress in reaching the objective of the instrument. Such a mechanism should among others include global monitoring of mercury in humans and the environment.

4. PROVISIONS FOR CAPACITY BUILDING AND TECHNICAL ASSISTANCE

According to the mandate given by the UNEP GC (27.h) the INC shall “specify arrangements for capacity building and technical assistance (TA) to support developing countries and countries with economies in transition”.

Norway share the views expressed by others that such arrangements must ensure timely and appropriate assistance.

The global community have by now many years of experience in establishing and implementing arrangements for TA under MEAs and other international regimes. The secretariat has provided useful information on this in document INC.1/9. The INC must make full use of this experience in its deliberations, drawing upon the best practical and effective elements of these arrangements.

The arrangement to be established under the mercury instrument must be well coordinated with related existing arrangement, so it can attain the full benefits from close cooperation and coordination with these arrangements. In this regard, we should look to the newly agreed arrangements for synergies between the Stockholm, Basel and Rotterdam conventions, the so-called “chemicals and waste cluster”. It will be most important for the new mercury instrument to link up to the cooperative technical assistance arrangements being established for this cluster, and be part of the work to improve and strengthen these arrangements.

In document INC.1/5, section III.B, the secretariat presented a range of options for possible provisions on TA, including the promotion of technology transfer. Here are a lot relevant provisions to draw from. In the discussions of these options we need, as mentioned, to find arrangements that will ensure the best possible cooperation and coordination with arrangements of the other chemicals and waste conventions.

Norway is of the opinion that the provisions and obligations to be included in the instrument must be clear and adequate, but should not try to regulate in detail what kind of TA to be provided and how it should be provided. Such details should be left to the COP to decide, taking into account that the need for TA may vary considerably between developing countries and that the needs will change over time. The arrangements must a.o. take into account that the needs of the least developed countries may be quite different from those of the more developed countries.

The more detailed arrangements on TA to be developed by the COP must be tailor-made to the concrete obligations in the new instrument. In this respect we refer to decision 25/5 of the UNEP GC which recognizes that the provisions of TA to effectively implement the obligations may be important for some obligations, but not for all. TA arrangements which try to cover almost all and everything may suffer from lack of priorities and focus. That may

make them less effective in directing the appropriate TA to the appropriate countries at the appropriate time.

5. PROVISIONS TO REDUCE THE SUPPLY OF MERCURY

Provisions to reduce the supply of mercury will have to be a core element in the new instrument, and we agree that it should address both the sources of supply and the availability of the supply for industrial and other uses.

The instrument must effectively regulate the supply of elemental mercury to the market. Reducing the supply of mercury to the market will be a key measure in ensuring reduced mercury use and pollution. It will be an important incentive for the development and use of alternative products and processes.

Many mercury uses in products and processes can be eliminated, even if we see that for a period of time there may be a need for a certain amount of mercury for specific uses where alternatives do not yet exist or are at a stage of development where they cannot yet be used at a large scale. The supply of mercury from identified sources categories should gradually be phased out, keeping in mind that the demand for mercury will decrease substantially over time.

First and foremost, primary mercury mining operations should cease. The first step should be to prohibit the establishment of new primary mercury mining operations, as well as the expansion of existing operations. Existing mercury mining operations should be phased out by a date to be agreed. Primary mining is a major source for the excessive amount of mercury in global circulation, and the mining operation itself is a significant source of mercury pollution. There will still be more than sufficient amounts of mercury from other sources available on the market to cover the need of mercury for use in products and process which for a period of time still may be allowed.

Further, the instrument should require that mercury which is produced as by-product of mining for other metals and at smelting plants should be captured and stored in an environmentally sound manner. A date should be agreed by when existing stockpiles of mercury should be considered as wastes and go to environmentally sound storage. The same goes for mercury resulting from decommissioned chlor-alkali production plants.

The remaining use of mercury should be based on the recovery or recirculation of mercury from other sources. Such recovery or recirculation will have to be carried out in a safe and environmentally sound manner based on the use of BAT and BEP. For this purpose, guidelines on BAT and BEP need to be developed.

The instrument should also have provisions concerning the prohibition or phasing out of the use and trade of mercury from identified source categories. These provisions should follow the same logic as the regulation of the source categories, and complement the provisions regulating the supply sources. Exemptions from this general rule of prohibition should only be granted for the use of mercury in products and processes which are considered to be “acceptable purposes”, that is for allowable uses in areas where alternatives do not yet exist or are not yet available.

It will be necessary that the instrument requires the parties to develop national inventories to ensure sufficient knowledge of their mercury source categories. This is necessary in order to ensure timely implementation of the provisions related to the various supply sources.

6. PROVISIONS TO ENHANCE CAPACITY FOR ENVIRONMENTALLY SOUND STORAGE

Based on international agreement that the use and sale of mercury shall be substantially reduced, the instrument must include provisions which requires the mercury that will not enter the market to be safely stored. Consequently, requirements for the environmentally sound storage of mercury derived from stockpiles will be a key element in the instrument. Also for certain types of mercury-containing waste, safe storage will be the only acceptable final disposal option.

Safe, permanent storage solutions are necessary both to prevent leakages to the environment from stored mercury and mercury wastes, and to prevent excess mercury to enter the market and cause pollution. The storage capacity to be established must be sufficient to meet future demands for such storage.

The requirements for storage must be based on BAT and BEP, and among other factors, take into account the need for stabilization of elemental mercury. Guidelines should be developed in cooperation with the Basel Convention to support the implementation of BAT/BEP for storage.

In order to ensure sufficient storage capacities, action plans should be required for the development and establishment of sufficient safe storage capacity, if appropriate at a regional level through bilateral and international cooperation.

The instrument should also require the parties to take measures to identify stockpiles and mercury-containing wastes and the final disposal of such stockpiles and wastes. The issue of final disposal of stockpiles and waste must also be considered in relationship to trade related provisions.

7. PROVISIONS TO REDUCE THE DEMAND FOR MERCURY IN PRODUCTS AND PROCESSES

Mercury has been and is still used in many different products and industrial processes. Many of these uses are clearly related to the easy availability of mercury today, and not the absence of applicable alternatives.

For many of the areas where mercury is still in use, alternative and environmentally safer products and production processes exist. Many countries, also developing countries, have substituted to such alternatives.

Measures to substantially reduce the use of mercury in products and process are a very important element in the mercury instrument.

Processes

Regarding the use of mercury in industrial process, as in the VCM and the chlor-alkali industries as well as in other industries, it is the opinion of Norway that the instrument should include time scales for changing of the production process to mercury free processes, or to the closure of plants using mercury. For both VCM and chlor-alkali industries alternative technologies are available today. A prohibition of establishing new plants using mercury, and expansion of existing plants, should enter into force from the date when the new instrument enters into force. Other industrial processes than those mentioned where mercury is still used should also be addressed.

The instrument should also include provisions that prevent the use of mercury in new industrial process.

Small-scale gold mining is today the biggest user of mercury, resulting in serious local pollution problems as well as contributing to long-range transport of mercury. This industry operates to a very large extent by using simple technologies which do not prevent or reduce the pollution or protect the workers. Technologies, often simple and low-cost, do exist to substantially reduce or eliminate the pollution and the use of mercury. Mercury may be captured, recovered and reused, and the volume of raw material treated with mercury can be reduced. Environmentally sound management of waste from this activity is also important. The instrument should have provisions to address this. Norway is of the opinion that the instrument should require parties to reduce or eliminate the use and pollution of mercury from small-scale gold mining by setting targets for this and to develop action plans, taking into account the important role of this industry in providing livelihood in many communities in developing countries. A measure which will contribute to the reduction of the pollution from small-scale gold mining is to reduce the supply of mercury to the global market. Further, restrictions on trade (import/export) in mercury will be important in establishing a regime that will lead to reduction in mercury use and pollution from ASGM.

Capacity building as well as technical and financial assistance will be essential instruments for reducing the mercury pollution from ASGM.

Products

Most mercury uses in products can be eliminated, as applicable alternatives exist and are available. It is our opinion that the instrument should include a general ban on the use of mercury in products, with limited exemptions for agreed purposes. The exemptions may gradually be phased out as alternative products are developed and become available. Such a general prohibition will also ensure that mercury, in the coming years, is not being used in new applications which are introduced in the market.

For major applications, such as measuring instruments and most types of batteries, we do already have good alternatives. Such products containing mercury should therefore be covered by the general prohibition. Another major use of mercury, the use of dental amalgam should gradually be phased out. For products where a prohibition to use mercury is not yet possible, we need to agree standards or limits for the maximum mercury contents in these products, for example in mercury-containing lamps. Further, provisions should be included in the instrument to require the labeling of products still containing mercury.

As a consequence of introducing a general ban, the instrument should prohibit the import and export of mercury containing products, with time-limited exceptions for products which are still allowed for production with mercury.

Establishment of a mechanism, possibly some kind of a “technical panel”, to evaluate the continuing need for use of mercury in products which the instrument allows still to take place, should be considered. So that the parties can be advised and take actions to phase out these uses when alternative products become available. The instrument should also include provisions for cooperation between the parties to contribute to the development of such alternative products and processes.

8. PROVISIONS TO REDUCE INTERNATIONAL TRADE IN MERCURY

One important argument for the development of a legally binding instruments on mercury was that a legally binding instrument is the only way the international community effectively can control international trade in mercury, including the export of mercury containing wastes. Controlling trade in mercury will, as a supplement to provisions aimed at reducing the supply of mercury from defined source, contribute to reducing the availability of mercury for use in products and processes where we want to limit or stop this use. Further, trade regulations will support provisions to control the demand of mercury, and help ensuring the effect of such provisions.

Trade in certain mercury compounds is today partly regulated by the Rotterdam Convention, but the Rotterdam Convention does only have provisions on prior informed consent from the importing country.

Norway would like to point to the Stockholm Convention on POPs as a possible model for trade regulation in the mercury instrument. Article 3 of that convention regulates import as well as export of the regulated POPs. According to the Stockholm Convention, import and export of the POPs are only allowed for the purpose of environmentally sound disposal or for the specific uses that are permitted under the convention.

The mercury instrument should include trade restrictions for both elemental mercury, mercury compounds and products containing mercury. Exceptions may be needed for the use of mercury for specific purposes, at least temporarily. The need for exceptions will depend on and respond to the control provisions otherwise included in the instrument.

Trade with non-parties should be regulated in the instrument. Provisions to this effect can be found in both the Stockholm Convention, the Montreal Protocol and the Basel Convention, and further discussion is needed to decide on the most appropriate way to regulate such trade under a mercury instrument.

9. PROVISIONS TO REDUCE ATMOSPHERIC EMISSIONS OF MERCURY

The instrument should include obligations for parties to reduce its total emissions of mercury to the atmosphere derived from anthropogenic sources - with the goal of their continuing minimization and, where feasible, their ultimate elimination - and that each party at a minimum shall take concrete technical measures as defined in the instrument.

We will here focus on provisions and measures aimed at reducing "unintentional releases", as other sources of atmospheric emissions such as intentional use of mercury in processes are discussed in other sections.

In our discussions on how to control and reduce atmospheric emissions of mercury, the major source of global mercury pollution, it is important to note that "unintentional releases" by far represents the most significant source of atmospheric emissions. These are caused by mercury in the raw materials used in various industries and combustion processes. The new mercury instrument must include provisions which will lead to substantial reductions of these emissions.

Important measures to reduce "unintentional releases" is cleaning of emissions from industry and combustion processes, such as coal fired plants, metal smelters, cement industry and waste incineration. The mercury instrument should therefore include requirements for use of best available techniques for "identified sectors", and set mandatory emission limit values for these sectors. Time-scales for the phasing in of requirements could be set and differentiate between new and existing plants depending on complexity and costs. In the discussions of relevant measures on mercury, possible synergies with efforts to reduce other pollution from

these sectors should be taken into account, aiming at win-win situations. It will be necessary to develop guidelines on BAT/BEP to support such provisions.

In our opinion, the instrument will have to include clear provisions on monitoring and reporting of mercury emissions from the sectors regulated. We need to establish effective systems which will ensure that the parties can oversee the developments in emissions and reductions achieved, assess compliance with the regulations, the effects of the measures implemented, and consider possible additional measures.

Parties will need to develop action plans for the implementation of the obligations. Such plans should a.o. include measures for the development and management of source inventories and release estimates, an evaluation of the efficacy of laws and policies of the party, steps to be taken by responsible authorities to enforce the provision, and steps to promote education, training and awareness. The action plans should also include strategies for the reduction of mercury emissions from sectors which are not identified as "key sectors". The national action plans for reduced atmospheric emissions should be an integral part of national implementation plans.

The measures related to reducing the atmospheric emissions of mercury will of course have to be supplemented by provision of technical and financial assistance to developing countries in need for such assistance.

10. PROVISIONS TO ADDRESS MERCURY-CONTAINING WASTE

The instrument must include provisions requiring the environmentally sound management of mercury-containing waste. Article 6 of the Stockholm Convention have provisions on environmentally sound management of POPs-containing waste.

There is a close link between environmentally sound management of mercury-containing wastes and environmentally sound storage of stockpiles of mercury and mercury-containing waste.

Guidance should be developed on BAT/BEP for environmentally sound management of mercury-containing waste.

Provisions for and guidance on environmentally sound management of mercury waste should be closely coordinated with the provisions in and work under the Basel Convention. The same goes for technical assistance and training in effective waste management.

The instrument should in our opinion also include provisions requiring the parties to draw up inventories of stockpiles of mercury and of mercury-containing wastes, and to develop strategies for identifying mercury-containing products and processes which are sources of mercury-containing wastes.

An important measure to reduce mercury pollution from waste incineration and waste landfills is to strive to ensure that waste fractions containing mercury are separated from other ordinary wastes and are treated separately as hazardous waste and in an environmentally sound manner. The instrument should include provisions to this effect. An additional element to be considered, is the establishment limit values or threshold levels for mercury in ordinary waste streams.