

**Submission by the United States**  
**Mercury Intergovernmental Negotiating Committee**

The United States supports development of a comprehensive, legally-binding instrument on mercury that will significantly reduce global mercury use and releases and improve the global environment by requiring action in the priority areas identified by the Governing Council. The United States considers the mandate from INC-1 to the Secretariat to draft initial elements or text as an important effort to consolidate the views expressed at INC-1. We believe that the INC process should result in an instrument that requires reductions in the supply and use of mercury as well as reductions in the release of mercury to the atmosphere.

**AIR**

The reduction of atmospheric mercury emissions is a priority area that needs to be addressed with binding obligations under the global instrument. The INC process provides a unique opportunity to focus on mercury air emissions. Cost-effective strategies and technologies for reducing mercury emissions are commercially available and in use in many countries. Note that for the purpose of this submission, the term air emissions sources refers to byproduct emissions sources, as opposed to releases from processes where mercury is used to catalyze production. Emission sources involving the use of mercury in processes, such as chlor-alkali manufacture and artisanal gold mining, present a different set of issues and are considered separately.

The document UNEP/Hg/INC.1/5 provides a useful menu of possible approaches that should be evaluated both individually and in combination, keeping in mind that the applicability of the various approaches may differ by sector, depending on the characteristics of the sector. The Paragraph 29 study is expected to give us important information that will enable better assessment of the extent to which mercury-specific control measures are needed to achieve emission reductions as well as the potential to achieve reductions from co-control approaches. Therefore, at this stage all of the options presented in UNEP/Hg/INC.1/5 should continue to be considered, including combinations of these approaches.

We believe that the following elements should be considered to develop an effective approach to reduce mercury air emissions under the agreement:

- Prioritization of actions based on the magnitude of the emission sources and the availability of approaches to address them;
- Flexibility to achieve the desired outcome using different approaches (e. g. allowing for a range of approaches if they can demonstrate equivalent reductions);
- Responsiveness to the specific characteristics of each sector and differences that may exist among countries;

- Consideration of the cost implications and cost-effectiveness of various approaches;
- Distinguishing obligations for new versus existing facilities where appropriate;
- Taking into account countries' capacities and the institutional capacity associated with the instrument when determining the timeframe for implementation of obligations;
- Including consideration of mercury emission reductions as co-benefits of control of other pollutants.

Below are some specific remarks regarding the options outlined in UNEP/Hg/INC.1/5, all of which we believe should continue to be considered by the INC, including combinations of these approaches:

**Action Plans:** Depending on how national action plans are addressed in the broader context of the agreement, national action plans related to emissions could be useful as a complement to more specific mercury emissions reduction obligations. Action plans are not an end in themselves, but could support implementation of and compliance with obligations that lead to meaningful emission reductions. We believe that the most efficient strategy would be a streamlined approach that anticipates plans only for countries or sectors that have significant emissions.

**Reduction goals, targets, and timetables:** While a global mercury reduction goal can be useful to articulate a common vision for the level of ambition of the agreement, an aspirational global goal alone would not be sufficient to ensure progress on emission reductions and would need to be a complement to commitments. Sector- or country-specific reduction targets, either independent of or in conjunction with other commitments, have the advantage of providing flexibility in selecting the most cost effective and readily available emissions reduction strategies. Both global goals and country reduction targets have the advantage of potentially being able to account for mercury emission reductions achieved as co-benefits of other actions toward implementation of the agreement. In establishing the appropriate baseline for either a global goal or national targets, it would be essential to take into account a country's emission reductions already achieved either from previous mercury-specific control actions or as a co-benefit of other pollution control efforts, in order to enable countries to get credit for the reductions already achieved and encourage clean development in those sectors in the future.

Emission limit values (ELVs) for facilities within a sector also have the advantage of providing flexibility to use the most cost-effective approach, including accounting for co-benefits. For an ELV approach to be effective, countries would need to have mechanisms to ensure sources are in compliance with facility-specific values.

**Substitutes or Modified materials, products and processes:** Provisions to address or encourage the use of substitutes or modified approaches may be feasible for some sources where economically feasible alternative sources of input or feed materials are available. Such approaches can be useful as a supplement to a broader framework of requirements, and may be

best evaluated as part of a best available techniques and best environmental practices (BAT/BEP) or other emission-reduction framework.

***Best available techniques and best environmental practices (BAT/BEP):*** BAT/BEP requirements and/or guidance can be meaningfully incorporated in a final agreement; however, careful consideration would need to be given to crafting a BAT/BEP approach that accounts for potential differences in processes and input materials both among and within countries and also achieves meaningful mercury emission reductions. The structure of any BAT/BEP approach should allow for advancement in technology without a complicated or lengthy process to accommodate changes. The potential for meaningful reductions through the use of BAT/BEP will be informed by the results of the Paragraph 29 study.

## **FINANCIAL AND TECHNICAL ASSISTANCE**

The United States supports a financial mechanism that meets the following key criteria to address global mercury pollution. First, the mechanism should cost-effectively and efficiently facilitate implementation of projects and programs. Second, the mechanism should be responsive to the governing body of the mercury instrument, and the instrument itself should define that relationship. Third, the mechanism should work closely and effectively with a compliance mechanism to facilitate compliance with the instrument (without incentivizing non-compliance). Fourth, the mechanism should be structured to ensure that countries are able to provide significant sustained support over time, in part because they know the mechanism is operated efficiently and their money is well-spent. It is premature to settle on any particular entity for the financial mechanism, but a stand-alone mechanism has numerous advantages when evaluated against these criteria. We should further discuss various options, including: (1) a stand-alone mechanism (MLF model), (2) GEF focal area, (3) GEF Special Fund, and (4) models based on public health funds such as the Global Fund or the Global Alliance for Vaccines and Immunization.

The mechanism should give due regard to the capacity of countries to contribute to the mechanism itself, as well as the capacity to implement actions to ensure compliance. With respect to capacity to contribute to financial support for the mechanism, we support having the broadest base of donor support possible, including both traditional donors as well as emerging economies and other partners such as the private sector. A broader donor base should result in greater availability of resources, as well as a greater sense of equity to ensure the mechanism uses its resources efficiently.

With respect to the already existing capacity of countries to implement obligations, the instrument should also take into consideration that this capacity varies considerably among recipient countries. The amount of support necessary to implement a given obligation would therefore vary among countries. We support an approach that considers the resource needs of countries with limited existing capacity for action, and that calls for a greater level of contribution and effort from countries that already have significant capacity in place to regulate and address mercury risks.

In addition, the instrument's obligations should be designed to make the most efficient use of financial resources, with attention paid to the timelines inherent in developing and implementing projects to meet obligations. The instrument should also be able to rely on non-government resources to support efforts in some areas.

We appreciate the views of many governments at INC-1 recognizing that a strategic approach to implementation is linked to financial support. We support efforts to promote reliable financing of the mercury instrument, and are willing to explore ways to accomplish this objective. The instrument nevertheless needs to reflect the nature of contributions that countries are able to make. For the implementation of multilateral environmental agreements, the United States budgetary appropriations process relies on voluntary contributions; the elements paper from the Secretariat should reflect this option for contributions to the financial mechanism.

It is also important that we give strong attention to the trustee of a mechanism, and the fiduciary standards, safeguard policies, auditing, and reporting of how funds are managed. The structure of the mechanism should allow for strong and effective organization for the instrument to be effective over the long run.

Finally, we recognize the need for technical assistance for developing countries to help implement obligations in the agreement. It will be important to get a better understanding of the needs and goals of countries in using such assistance, and assessing what types of assistance would be most helpful. In the end, we want to ensure that approaches are affordable, effective, and sustainable over the long run.

## **COMPLIANCE**

An instrument with obligations that states cannot and do not follow will not meet its goals. Therefore, compliance must be a consideration, not only for addressing problems that arise after the instrument is in force, but also should be carefully considered during its initial design. The substantive provisions of the instrument themselves should facilitate and promote compliance. This means obligations should be clear, easily understood by the parties that must implement them, and verifiable. They should also be realistic in considering the practical capacity of states to take and monitor the actions contemplated, and not be so ambitious that they are impossible to meet. At the same time, commitments need to be defined with enough ambition so they result in significant environmental benefit.

Other provisions that can help facilitate compliance include reporting requirements. Reporting requirements should be clear, precise, and based on specific obligations undertaken by the party. In addition, the instrument should encourage steps to be taken by states prior to ratification, such as by requiring a declaration upon ratification that identifies the existence of any necessary implementing legislation.

The instrument should also have a mechanism to address compliance problems that arise after entry into force. The compliance mechanism should be established within the instrument, and not be left for a conference of the parties to establish at some later date. Administrative and technical details of a mechanism's operation could be set out through a variety of methods,

including use of annexes or terms of reference that might be more easily modified later if necessary. The United States believes a successful compliance mechanism would have several key characteristics: (1) a focus mainly on facilitating compliance rather than punishing non-compliance; (2) equal application to all parties based on their obligations; (3) simplicity; and (4) a transparent process with ultimate decisions in the hands of the parties.

## **PRODUCTS**

The United States recognizes the importance of reducing the amount of mercury used in products to ensure that overall mercury use is significantly reduced on a global basis. Viable and cost-effective alternatives exist for many mercury-containing products, and the INC process should carefully consider the approaches used by governments to date that have successfully reduced mercury use in certain products and/or product categories. We support looking at a variety of options, or a combination of options, so long as they can produce significant change on a global level. To that end, we would like the draft elements to include, in particular, two possible models: (1) a broad ban on mercury-containing products with a list of exceptions, or (2) an explicit list of banned mercury-containing products. Each of these models will require careful consideration by the INC to ensure that the obligations to be undertaken relating to mercury-containing products can be implemented by all countries. Obligations relating to mercury-containing products could include those relating to production, use, import, and export. For either of these models, a process could be put in place so that the lists, which might be included in annexes, could evolve over time. We remain open to consideration of other options as well, but are focused in particular on these two approaches.

## **ARTISANAL AND SMALL-SCALE GOLD MINING (ASGM)**

The United States supports coordinated global efforts to reduce mercury use and releases in ASGM. These efforts might include both mercury supply restrictions as well as provisions in the instrument that encourage governments to adopt practical approaches to reducing mercury use in ASGM. The United States supports prohibitions of some of the most environmentally damaging practices in ASGM such as whole ore amalgamation, burning of amalgam by miners in the field or by gold buyers without the use of mercury vapor capture technologies, burning of amalgam in residential settings, and improper mixing of cyanide with mercury-laden tailings piles, which can result in dangerous mercury-cyanide complexes. It may be practical to have obligations triggered when countries exceed a specified production volume of ASGM gold, as identified through an appropriate verification process. We believe that the aforementioned approaches have a greater potential for success than across-the-board bans of the use of mercury for ASGM.

Provisions on ASGM should take into account the social and economic situation in each country, which varies widely, not only among the various regions, but even within national boundaries. This could be facilitated by national, stakeholder-focused action plans that outline the specific mercury-reduction activities appropriate to that country and how they would be implemented. In addition, the instrument should take into account the information provided in currently-available technical guidelines or codes of conduct such as the United Nations Industrial Development Organization (UNIDO) *Technical Guidelines on Mercury Management in Artisanal and Small-Scale Gold Mining*, and the ARM/FLO (Alliance for Responsible Mining and Fairtrade

Labelling Organisations International) Fairtrade and Fairmined Gold Standards, the first third-party independent certification for gold. We further believe that provisions dealing with ASGM in the instrument should be distinct from provisions for industrial processes.

## **PROCESSES**

The United States supports eliminating the use of mercury in industrial processes. Distinct approaches may be needed for different industrial process uses of mercury, such as chlor-alkali and vinyl chloride monomer. For the chlor-alkali sector, we support a mechanism that prohibits new chlor-alkali facilities using mercury catalyst cells. This should be achieved by offering countries the option of either banning new mercury cell chlor-alkali facilities or prohibiting mercury emissions from new facilities. We could also support an approach similar to that mandated by the LRTAP Heavy Metals Protocol, which requires new chlor-alkali facilities to emit no more than 0.01 g Hg/Mg of chlorine production capacity. For existing mercury cell chlor-alkali plants, we support provisions requiring countries to phase out either mercury use or mercury emissions by a specified target date. Similarly, the United States supports a transition to mercury-free techniques for vinyl chloride monomer production. However, in both cases, it is vital for the instrument to include provisions for safe, long-term storage of excess elemental mercury that results from the closure or conversion of facilities using mercury processes.

## **WASTE MANAGEMENT AND SITE REMEDIATION**

The United States supports an approach to waste management and disposal using flexible provisions to facilitate sound mercury management in all countries. We recognize and support the significant work that has been done by the Basel Convention in identifying mercury wastes and developing technical guidance for environmentally sound management treatment and disposal, or long-term mercury storage. The instrument will need a flexible approach that will recognize the variety of different regulatory and facilitative approaches being taken to mercury waste management, including separate collection of mercury wastes and recycling where possible. We believe that the Basel Convention can be relied on to some extent to address mercury wastes, but would like to discuss gaps in its coverage. We would also look to the waste provisions in the Stockholm Convention as a possible model, noting, however, the differences between POPs and mercury waste with respect to treatment and recycling (potentially for continuing legitimate uses) in this context.

We recognize that contaminated sites may pose significant exposures and risks to local populations, and that countries may wish to focus at the domestic level on appropriate legislative, regulatory, or other appropriate measures aimed at controlling exposure at such sites. The United States has remediated a number of contaminated domestic mercury sites, and our experience suggests this can be an expensive endeavor that may not be particularly cost-effective in addressing global mercury risks. We believe that sharing of experience, information exchange, and development of national capacity to address remediation are appropriate approaches at the global level for remediation.

## **SUPPLY AND STORAGE**

With respect to supply, the United States believes that primary mercury mining should be phased out where it currently exists, and prohibited where it does not currently exist. The supply of large stocks of elemental mercury should be further limited through the use of trade measures, which should be consistent with existing international trade obligations.

The instrument must also provide adequate mechanisms to ensure the safe and appropriate management of excess mercury. We believe the best way to manage excess mercury is through provisions that ensure the availability of environmentally sound regional storage capacity to enable appropriate supply reductions and limit the availability of elemental mercury for uses that the instrument controls. The draft elements or text should allow export of mercury for the purposes of environmentally sound storage, treatment, and disposal and also address the collection and recycling of mercury-containing products to minimize the amount of mercury entering landfills.

## **FINAL PROVISIONS**

The final provisions included in document UNEP(DTIE)/Hg/INC.1/7 provide a good starting point for discussions and for elements of a draft text. There are a number of minor changes we might suggest as the process moves on, but a few more general points are as follows:

- Settlement of disputes: the proposed conciliation procedures should be modified to make clear that the purpose of such procedures would be to facilitate a mutually agreed resolution of the dispute, borrowing language from the proposed procedures for the Desertification Convention.
- Amendments: Some agreements provide that amendments can only be offered beginning a certain time after entry into force of the convention (e.g., five years). This would give time for parties to join the convention and evaluate its effectiveness as well as help ensure that amendments reflect a general consensus.
- Ratification: A requirement that states make a declaration upon ratification identifying, for example, necessary implementing legislation could facilitate compliance, as noted above.

## **EFFECTIVENESS EVALUATION**

The United States supports the inclusion of a mechanism to evaluate the effectiveness of the instrument. We believe that an effectiveness evaluation should consider and evaluate sources of information that help inform an assessment of progress being made. These sources include: (1) reporting done to measure trends; (2) scientific monitoring information (such as ambient mercury concentrations, mercury deposition, and/or mercury concentrations in fish); and (3) information on compliance with the obligations of the instrument.