



**Governing Council
of the United Nations
Environment Programme**

Distr.: General
19 November 2008

Original: English



**Twenty-fifth session of the Governing Council/
Global Ministerial Environment Forum**
Nairobi, 16–20 February 2009
Item 4 (a) of the provisional agenda*

Policy issues: state of the environment

Chemicals management, including mercury

Addendum

**Report to the Governing Council on the outcome of the discussions of
the Ad Hoc Open-ended Working Group on Mercury**

Note by the Executive Director

Summary

The annex to the present report sets out the final report of the Ad Hoc Open-ended Working Group on Mercury for the consideration of the Governing Council at its twenty-fifth session. The report is being circulated as agreed by the Working Group at its second meeting, held in Nairobi from 6 to 10 October 2008, and has not been formally edited. The full report of the second meeting of the Working Group is contained in document UNEP/GC.25/INF/25.

* UNEP/GC.25/1.

Annex

Final report of the Ad Hoc Open-ended Working Group on Mercury to the Governing Council of the United Nations Environment Programme

I. Introduction

1. In its decision 24/3 IV, the Governing Council of the United Nations Environment Programme (UNEP) established an ad hoc open-ended working group to review and assess options for enhanced voluntary measures and new or existing international legal instruments required to make progress in addressing the global challenges posed by mercury. The Governing Council requested the working group to provide a final report reflecting all views expressed and presenting options and any consensus recommendations.

2. The Ad Hoc Open-ended Working Group on Mercury is pleased to offer the present report in response to the request of the Governing Council in decision 24/3 IV.

II. Policy framework for addressing the global challenges posed by mercury

3. The Ad Hoc Open-ended Working Group recommends that the Governing Council consider adopting at its twenty-fifth session a policy framework for addressing the global challenges posed by mercury. Possible elements of such a framework are outlined in the annex to the present report. Although the elements were not agreed in detail, they attracted broad support and the Working Group recommended that these elements be submitted to the Governing Council for its consideration. The elements collectively constitute a comprehensive approach that may be needed to address, and resolve, the global challenge of mercury. They could provide guidance for action at the national, regional and global levels.

4. The proposed elements include the priorities identified by the Governing Council in paragraph 19 of decision 24/3 IV; the range of possible response measures identified by the Working Group during the course of its discussions; and other actions related to the implementation and administration of the proposed framework. The elements reflect the special needs and situations of developing countries and countries with economies in transition, including the need for enhanced knowledge and additional financial and technical support. The sequence in which the elements are listed is not intended to imply any priority in their application.

5. The Working Group noted that the elements were independent of the possible modalities for their implementation and made no judgment as to whether those modalities should be legally binding or voluntary. The Working Group recognized that the ultimate inclusion in the framework and implementation of the elements might vary in regard to the legally binding or voluntary nature of their implementation modalities, their financial implications and the availability of financial resources, their prioritization and time frame for implementation and whether they could be implemented at the local, national or global level.

III. Options for implementation modalities

6. The Working Group explored possible ways to implement the elements of the mercury policy framework. Two basic options were identified. While each of the options received significant support from different government participants, the Working Group did not reach consensus on them. The basic options are:

- (a) A new free-standing, legally binding mercury convention;
- (b) Enhanced voluntary measures.

7. The following sections of the present report describe each of these basic options, including possible variations identified by some Working Group participants. The sections include an outline of advantages and disadvantages of each option.

A. New free-standing, legally binding mercury convention

8. Under this option, Governments would develop and adopt a free-standing, legally binding mercury convention. The convention could cover all of the action elements defined in the policy framework for addressing the global challenges posed by mercury. Some of those action elements might require mandatory “hard” commitments, while other actions under the convention might have “soft” commitments that would give countries latitude in their implementation at the national level; another group of actions could be voluntary. The balance between the hard and soft commitments will need to be negotiated at a later date.

9. A free-standing mercury convention could be prepared in such a way as to complement and enhance cooperation and coordination among existing legally binding instruments, especially the Basel Convention on Transboundary Movements of Hazardous Wastes and their Disposal, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants. Voluntary actions such as those undertaken through the UNEP Mercury Programme, the Strategic Approach to International Chemicals Management, the United Nations Institute for Training and Research, the United Nations Industrial Development Organization and others could help to achieve the objective of addressing the global challenges posed by mercury during the interim period.

10. A free-standing mercury convention could include provisions for financial and technical assistance to support its implementation by eligible Parties, especially from developing countries and countries with economies in transition. Options for such assistance might include a financial mechanism or other arrangements.

11. Potential advantages of a free-standing mercury convention option as identified by proponents of this option include the following, namely, that it would:

(a) Provide the strongest possible expression by Governments of a common commitment to a long-term solution for addressing the challenges posed by mercury;

(b) Enable Governments to implement trade-related measures to reduce mercury emissions in a transparent, multilaterally agreed, non-discriminatory way;

(c) Effectively prohibit new undesired uses and supplies of mercury, including primary mining;

(d) Create a level playing field for all stakeholders and ensure that the efforts of one country are not undercut by another, thereby establishing incentives for developing and applying environmentally friendly technologies and alternatives to mercury;

(e) Support the ability of Governments to include sustainable policies related to mercury in their national and regional priorities, development strategies and resource mobilization efforts;

(f) Ensure broad participation of developing countries and countries with economies in transition through the increased likelihood of sustained, predictable access to technical assistance and new and additional financial resources, taking into consideration the principle of common but differentiated responsibilities;

(g) Offer the best option to establish different compliance timetables for developed and developing countries;

(h) Ensure that implementation is comprehensive, global, not isolated or ad-hoc and contracts all Parties in a balanced way;

12. Potential disadvantages of a free-standing mercury convention option as identified by opponents of this option include the following, namely, that it would:

(a) Require a large amount of time and financial resources to negotiate, representing an opportunity cost in that such resources could otherwise be allocated to implementation activities;

(b) Be less flexible than a voluntary mechanism, due to its potentially extensive ratification and amendment procedures;

- (c) Be less cost-effective because of its heavier administrative and institutional structure and more expensive overhead;
- (d) Provide financial assistance to, and receive contributions from, only convention Parties;
- (e) Fail to include countries that would not accept all provisions of a legally binding instrument;
- (f) Based on experience with other legally binding instruments, not automatically guarantee adequate funding for implementation;
- (g) Create an uneven playing field for Parties to the convention, given the large disparity between countries, especially developed and developing country Parties in terms of their economic and technical development levels and environmental management capacities.

B. Enhanced voluntary measures

13. The proponents of enhanced voluntary measures argue that the global challenges of mercury are extremely complex and involve many aspects. They state that the modalities for implementing the elements of the mercury policy framework have a strong, case-specific nature and depend on the particular circumstances of the individual country, location, sector, process and products concerned. Three possible components of enhanced voluntary measures were identified. These would build upon existing activities such as the UNEP mercury programme and Global Mercury Partnership, existing legal instruments, the Strategic Approach to International Chemicals Management and a proposed new voluntary instrument, the “Programmatic and Organizational Structure on Mercury” (POSM).

14. POSM is a strategic and comprehensive voluntary framework for global action to achieve specific agreed targets and goals through national implementation plans, financing, and a reporting and review mechanism. POSM would be open to all Governments which would agree to global mercury reduction goals, develop guidelines on best available techniques and best environmental practices, and establish national plans. The POSM governing body, the Strategic Mercury Advisory Council, would be open to all Governments with participation by industries, non-governmental organizations and other observers and would support and expand the new framework, such as by a political statement, terms of reference, and a program of work to address the need for enhanced capacity- building and financing. POSM would establish the Mercury Fund, an independent dedicated fund overseen by the governing body, to provide financing to projects in developing countries that could address all of the action elements defined in the policy framework for responding to the global challenges posed by mercury. In addition to continuing with its ongoing work, the UNEP Global Mercury Partnership and other international institutions would serve as an implementing arm that would develop projects with resources from the Mercury Fund. Other sources such as the Global Environment Facility or climate-related institutions would also be accessible to support cross-cutting efforts. Mercury trade would be addressed by an invitation to the Rotterdam Convention to initiate a process for establishing prior informed consent procedures for elemental mercury. The Strategic Mercury Advisory Council would establish a subsidiary body balanced between donor and recipient countries to meet twice per year to advise the Council on a regular basis, manage the Mercury Fund, develop, review and approve project guidelines under the fund, create technical groups to develop best practices, and review the national plans and their progress toward the POSM goals.

15. It was suggested that the Strategic Approach to International Chemicals Management could also serve as the structure under which an enhanced voluntary framework for mercury, or components of it, might be implemented. A further component could be the elaboration and coordination of existing processes, programmes and agreements to address the challenges posed by mercury. In particular, these would include significantly strengthening the UNEP mercury programme and implementing the overarching framework for the UNEP Global Mercury Partnership. This approach could also address specific elements of the mercury policy framework by using existing legal instruments, namely, the Basel Convention for mercury-containing wastes, the Rotterdam Convention for international trade in elemental mercury and possibly mercury-containing compounds and the Stockholm Convention for methyl mercury.

16. Potential advantages of the enhanced voluntary measures option as identified by proponents of this option include the following, namely, that it would:

- (a) Be developed more quickly and at less cost than a legally binding instrument;

(b) Evoke broad participation because of its flexibility and non-legally binding nature, and because national plans would target specific needs of countries;

(c) Be readily adaptable to changes in the mercury problem without requiring extensive ratification and amendment procedures;

(d) Be cost-effective to implement due to its light administrative and institutional infrastructure, which would allow more funding to be directed to implementation;

(e) Allow a gradual approach in which participants could decide over time, in the light of experience and lessons learned, whether additional or legal instruments might be desirable;

(f) Facilitate mercury reductions in an economically efficient and participatory manner for industry and society;

(g) Promote immediate global actions for most of the elements in the mercury policy framework by motivating governments and other stakeholders to find solutions that are most suitable and cost-effective for their specific circumstances.

17. Potential disadvantages of the enhanced voluntary measures option as identified by opponents of this option include the following, namely, that it would:

(a) Be unable to address effectively several of the elements of the mercury policy framework, and thus not be able to promote a comprehensive, sustained, predictable and effective solution to the complex, global problem of mercury;

(b) Based on experience with other voluntary measures, fail to attract sustained and adequate financial resources to assist developing countries and countries with economies in transition;

(c) Fail to take into account the need for enforcement measures and ensure commitment or attract broad participation;

(d) Raise the possibility that the efforts of countries that fully implement their commitments may be jeopardized by others that fail to do so due to lack of support;

(e) Fail to protect effectively against potential challenges under the World Trade Organization to actions undertaken by Governments related to mercury supply and trade;

(f) Result in overall fragmentation and an uncoordinated approach for addressing the mercury problem on a global, long-term basis;

(g) Result in administrative costs for operating the voluntary framework, such as POSM, that are similar to, or even larger than, those that a legally binding instrument would require.

Annex

Elements of a comprehensive mercury framework

A. Elements that frame the issue

1. The elements could provide a context for responding to the challenges posed by mercury and confirm the intent of participants to confront them. They include:

An expression of political commitment;

A list of the principles including the relevant Rio Declarations, in particular the principle of common but differentiated responsibilities as reflected in Principle 7 of the Rio Declaration on Environment and Development, underlying the framework and a description of its scope;

A statement of the framework's objective (e.g., "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").

B. Specific actions to address the challenges posed by mercury

2. The elements listed in the present section represent specific commitments or actions that countries and other stakeholders might wish undertake to accomplish the overall objective of the framework.

1. Reduce the supply of mercury

3. One aim of whatever framework is adopted might be to minimize the release of mercury to the biosphere by reducing the global supply of mercury. This could be accomplished by using goals, targets or timetables to reduce or eliminate the supply of mercury which comes from a variety of sources including:

- (a) Primary mining;
- (b) Decommissioned chlor-alkali cells;
- (c) Mercury stockpiles;
- (d) Mercury produced as a by-product of mining;
- (e) Mercury derived from recycling and other sources.

4. Reducing global supply could be accomplished by using goals, targets or timetables to reduce or eliminate where feasible sources of supply of mercury, recognizing the need for ongoing use where alternatives are not readily available according to a hierarchy of sources. Consideration could be given to the prohibition on new primary mining and a phase out of existing primary mining, taking into account the circumstances of countries.

2. Reduce the demand for mercury in products and processes

5. Industrial and other processes that use mercury can result in significant human exposures and releases of mercury to the environment. Mercury-containing products increase the amount of mercury in waste streams and thereby increase the likelihood of eventual mercury releases. The aim of the actions in this section is to minimize such exposures and releases by reducing demand for mercury in products and processes. This could be accomplished by developing and using, where feasible, such actions as:

(a) Country-specific, sectoral or global demand reduction goals, targets or timetables relating, for example:

- (i) To prohibiting the construction of new production facilities or the expansion of existing facilities;
- (ii) To phasing out mercury use in products and processes by specified dates for each significant product or process;

- (iii) To developing mercury content standards for lamps and other products where non-mercury alternatives are not available;
- (b) Information tools or policies to promote the development and use of substitute or modified materials, products and processes;
- (c) Best available techniques, best environmental practices (including use of non-mercury alternatives) or use of equivalent measures for demand reduction in sectors such as:
 - (i) Artisanal and small-scale gold mining;
 - (ii) Vinyl chloride monomer and chlor-alkali production;
 - (iii) Products and packaging;
 - (iv) Dental practice.

3. **Reduce international trade in mercury**

6. The aim of the actions in this section is to minimize the harmful effects of mercury through reducing international trade in mercury while recognizing that trade may be necessary, for example, for essential products or processes for which no suitable alternatives exist and to facilitate environmentally sound management of mercury. Trade in mercury facilitates its ready supply in many domestic markets, keeping prices low and demand high. Such trade, as well as trade in mercury-containing compounds and products, distributes mercury widely, including to locations where environmentally sound management of mercury and mercury wastes is not practised. Actions should be taken in concert with supply and demand reduction measures and could include:

- (a) Restricting or phasing out trade in elemental mercury and, where appropriate, considering similar measures for mercury compounds;
- (b) Reducing trade in mercury-containing products;
- (c) Operating a prior informed consent procedure for trade in mercury;
- (d) Developing a data reporting system to monitor mercury trade.

4. **Reduce atmospheric emissions of mercury**

7. The aim of the actions in this section is to reduce, minimize and, in circumstances where it is feasible, eliminate atmospheric emissions of mercury derived from anthropogenic sources in key sectors. Consideration should be given to multi-pollutant approaches that have co-benefits that reflect other national and global human health and environmental priorities. This could be accomplished by:

- (a) Development of national implementation strategies or, where appropriate, regional or subregional strategies, which could include:
 - (i) Evaluation of current and projected emissions;
 - (ii) Evaluation of the efficacy of laws and policies relating to management of emissions;
 - (iii) Actions to reduce, and where feasible eliminate, emissions from intentional use and minimize unintentional emissions;
 - (iv) Periodic review of strategies and actions;
 - (v) Schedule for implementation of the strategy;
- (b) Global, national and sectoral implementation strategies for key emission sources, reduction goals, targets and timetables. In some sectors, and in particular the artisanal and small-scale gold mining sector, it will be vital to consider the integrated development activities that will lead to the reduction or elimination of emissions;
- (c) Promoting the development and use of substitute or modified materials, products and processes;
- (d) For new sources:
 - (i) Phasing in the use of best available techniques or equivalent measures for identified sectors and promoting the use of best environmental practices;

- (ii) Promoting the use of best available techniques or equivalent measures and best environmental practices for other key sectors;

(e) For existing sources, promoting the use of best available techniques, best environmental practices, environmentally sound technology, or equivalent measures within key sectors in accordance with national implementation strategies, keeping in view the global scenario to the extent possible and within key sectors, in accordance with an implementation strategy.

5. Achieve environmentally sound management of mercury-containing wastes

8. The aim of the actions in this section is to reduce anthropogenic releases of mercury by managing mercury-containing wastes in an environmentally sound manner. This could be accomplished by:

- (a) Developing and promoting guidance on best available techniques and best environmental practices, using a life-cycle approach, in order:
 - (i) To reduce generation of mercury-containing wastes;
 - (ii) To promote separate collection, separation, transport and environmentally sound treatment of mercury-containing wastes;
 - (iii) To reduce mercury releases from incinerators and landfills;
- (b) Cooperating closely with the appropriate bodies of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal:
 - (i) To restrict or phase out trade in wastes containing mercury or mercury compounds, except for the purpose of environmentally sound management, particularly when there is no environmentally sound facility in the exporting country;
 - (ii) To develop further and implement the Basel Convention technical guidelines on the environmentally sound management of mercury-containing wastes, and to assist developing countries and countries with economies in transition in the implementation of those guidelines.

6. Find environmentally sound storage solutions for mercury

9. Mercury is a constituent element of the earth that cannot be destroyed. Mercury derived from anthropogenic sources must be managed in a manner that reduces the possibility of release into the environment. The aim of the actions in this section is to reduce or eliminate mercury releases from mercury stockpiles and wastes by developing and using environmentally sound, long-term national, regional, and subregional storage solutions. This could be accomplished by:

- (a) Developing and promoting guidance on best available techniques and best environmental practices, and roles and shared responsibilities of different stakeholders, including the consumer and producer, for:
 - (i) Terminal, long-term or short-term storage;
 - (ii) Management of existing stockpiles;
- (b) Cooperating closely with the appropriate bodies of the Basel Convention regarding the management and transport of mercury-containing wastes.

7. Address remediation of existing contaminated sites

10. Owing to the significant use of mercury in the modern era, large amounts of mercury exist in mine tailings, landfills, highly contaminated industrial sites and other locations. Such sites present a constant threat of future release. The aim of the actions in this section is to reduce mercury releases and the potential for future releases by remediating existing contaminated sites. This could be accomplished by:

- (a) Developing and implementing strategies and methodologies for identifying, assessing, prioritizing and remediating contaminated sites;
- (b) Developing and promoting guidelines for the identification of mercury-contaminated sites and guidance on best available techniques and best environmental practices:
 - (i) For preventing mercury contamination from spreading;

- (ii) For managing and, if feasible, remediating and rehabilitating contaminated sites.

8. Increase knowledge

11. Data, information and research on mercury would help to develop and improve understanding and coordination and facilitate improved risk assessment and risk management in respect of the challenges posed by mercury. For many countries, improving the knowledge base and the availability of relevant information is an essential precursor to the actions in sections 1–7 above. The aim of the actions in this section is to increase knowledge by addressing data and information gaps on mercury. This could be accomplished by developing and improving:

- (a) Inventories of national use, consumption and environmental releases;
- (b) Monitoring of current levels of mercury in various media;
- (c) Assessments of the impact of mercury and mercury containing compounds, on human health, particularly for vulnerable communities, and the environment and dissemination of that information;
- (d) Information on transport, transformation, the environmental cycle and fate of mercury;
- (e) Information on commerce and trade in mercury and mercury-containing products;
- (f) Enhanced collection and sharing of existing information.

C. Cross-cutting issues related to implementation

12. The elements listed in the present section include measures that Governments might wish to implement to increase the likelihood that their efforts to address the challenges posed by mercury under any framework that is adopted are effective. They could include the following steps or any variation of them:

- (a) Information exchange, by using existing or establishing new procedures, practices and mechanisms for information exchange related to mercury control, including, where appropriate:
 - (i) Identifying national focal points;
 - (ii) A clearing-house mechanism;
- (b) Public awareness-raising by using existing or establishing new procedures, practices and mechanisms;
- (c) Implementation strategies that are:
 - (i) Developed and implemented at the national, regional or subregional levels;
 - (ii) Publicly available;
 - (iii) Periodically reviewed and updated;
- (d) Monitoring, reporting and review, including:
 - (i) Self-monitoring of implementation of strategies;
 - (ii) Reporting on implementation;
- (e) Recognition of the special needs of developing countries and countries with economies in transition for adequate and sufficient financial and technical assistance, taking into account the Bali Strategic Plan for Technology Support and Capacity-building:
 - (i) That provides new and additional financial resources and environmentally appropriate technical assistance and technology support to develop and strengthen capacity of developing countries and countries with economies in transition to implement environmentally appropriate actions consistent with their poverty reduction strategies;
 - (ii) That uses new or existing facilities and processes to facilitate provision of resources and assistance including through for example, the UNEP mercury partnership programme;
 - (iii) That is periodically reviewed for effectiveness;

- (e) Effectiveness evaluation and review of commitments, including:
 - (i) Periodic evaluation of the effectiveness of the mercury framework in achieving its objectives;
 - (ii) Determining whether the actions and commitments under the framework are sufficient or need to be revised.

D. Policy guidance and administration

13. The elements in the present section relate to overall policy guidance, oversight and administration of the framework. They could include policy guidance or oversight processes and administrative support, and should recognize the need for enhanced cooperation and coordination with the Basel, Rotterdam and Stockholm conventions, and with competent international organizations and intergovernmental and non-governmental bodies.
