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on mercury**

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Item 3 of the provisional agenda\*

**Preparation of a global legally binding instrument  
on mercury**

**New draft text for a comprehensive and suitable approach to a  
global legally binding instrument on mercury**

**Note by the secretariat**

1. At its second session, held in Chiba, Japan, from 24 to 28 January 2011, the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury agreed that the secretariat would:

Prepare for consideration by the committee at its third session a new draft text of the comprehensive and suitable approach to mercury called for by Governing Council decision 25/5. The new text would be based upon the draft elements paper (UNEP(DTIE)/Hg/INC.2/3) and would reflect the views on the possible content of the mercury instrument expressed by parties at the current session and submitted by parties to the secretariat in writing in the weeks after the session. The full range of party views could be indicated in the new draft text through the use of brackets, multiple options or other appropriate means. Any written views submitted to the secretariat would be posted on the UNEP mercury programme website.<sup>1</sup>

2. Accordingly, the secretariat has prepared for the committee's consideration a new draft text of a comprehensive and suitable approach to a global legally binding instrument on mercury, as set out in the annex to the present note.

3. The secretariat has sought to prepare a party-driven draft text that reflects the full range of views expressed by parties at the committee's second session and submitted in writing afterwards. The secretariat has endeavoured to ensure that all textual proposals from parties, and all proposals that could readily be converted into text drafted by the secretariat, are reflected in the new draft. In some cases, proposals that could not readily be converted into text have been noted in the form of comments. The secretariat has taken care to avoid developing general proposals into text when doing so would require it to introduce its own views into the new draft text. Comments and explanatory notes within the new draft always appear in italics.

\* UNEP(DTIE)/Hg/INC.3/1.

<sup>1</sup> Report of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury on the work of its second session (UNEP(DTIE)/Hg/INC.2/20), para. 261.

4. All proposals have been integrated into the draft text without attribution to their proponents. Where possible, similar proposals have been synthesized and combined. Some proposals have been modified to render them consistent with legal practice under existing multilateral environmental agreements; in all instances, however, the secretariat has endeavoured to present the substance and intent of the proposals as they were expressed or submitted by the parties. Proposals and party views submitted in writing are available at <http://www.unep.org/hazardoussubstances/Mercury/Negotiations/INC3/INC3Submissions/tabid/29919/Default.aspx>.
5. The provisions in the new draft text are intended to strike a balance between the need for clarity and the need to reflect the full range of party views. When such a balance has not been possible, the secretariat has favoured inclusiveness of party views over brevity.
6. Square brackets are used in the new draft to indicate that a party has proposed the deletion or insertion of text that was in the draft elements paper, that text appears only as a placeholder, or to present two or more approaches that are alternatives to one another.
7. In some situations, for clarity the text presents two or more approaches to a phrase or passage as “alternative 1,” “alternative 2” and so on. Such alternative phrases or passages should be treated as though they were bracketed.
8. The secretariat has presented the new draft text in the form of unified articles and paragraphs when possible. Nevertheless, some party proposals represent fundamentally different policy approaches that could not be effectively combined. Such approaches are identified in the text as options. For example, parties submitted four fundamentally different approaches for Article 6 on mercury-added products. Accordingly, the text contains four separate options for that article. Three of those include their own versions of Annex C, while the fourth does not.
9. Atmospheric emissions and releases to water and land are presented in two options. The first option presents them in two separate articles (Article 10 for atmospheric emissions and Article 11 for releases to water and land), each with its corresponding annex, while the second option combines them in a single article and a single annex, as suggested by some parties at the committee’s second session. The new single article and annex are referred to respectively as “Article 11.alt” and “Annex G.alt”.
10. The order in which options, alternatives or bracketed passages appear should not be interpreted to suggest any priority among them. Where new text has been proposed that would require the deletion of a passage from the original elements paper, the bracketed elements text appears first, followed by the new, bracketed proposal or proposals.
11. In two cases, articles appear in different parts of the new draft text than they did in the original elements paper. Thus, the former Article 4 on storage is grouped with the articles on wastes and contaminated sites, while the former Article 14 on allowable-use exemptions is grouped with the articles on products and processes. This reordering adheres to how these articles were discussed in the contact groups during the committee’s second session. The article numbers and annex letters in the new draft have been revised to make them sequential throughout the text. Annex II to the present note sets out a table that cross-references the article and annex designations used in the elements paper with those that appear in the new draft text.
12. Some new articles have been added to the text in response to party proposals. They are indicated by brackets and the use of “bis” following the article number.
13. Lastly, there appeared to be consensus at the committee’s second session that some definitions in Article 2 could be improved by deleting or changing particular words. The secretariat has made these few changes, which are indicated with “strike-through” text (e.g., informally).
14. The committee may wish to use the new draft text set out in annex I to the present note as the basis for its work in developing a global legally binding instrument on mercury.

## Annex I

## New draft text for a comprehensive and suitable approach to a global legally binding instrument on mercury

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## New draft text for a comprehensive and suitable approach to a global legally binding instrument on mercury

### A. Preamble

*Comment: Many parties<sup>2</sup> stated at the Committee's second session and in their written submissions that any preambular text should be considered closer to the end of the negotiations. Accordingly, they did not submit proposals for the preamble. Parties that consider it premature to discuss a preamble have reserved the right to make proposals for it at a later stage.*

The Parties to this Convention,

*[Reaffirming the principles of the Rio Declaration on Environment and Development, in particular principles 6, 7, 15 and 16;*

*Recognizing the importance of common but differentiated responsibilities in addressing environmental and human-health problems associated with the improper handling of mercury;*

*Recognizing also that the improper handling of mercury has adverse impacts on the environment and human health and that international cooperation through the mobilization of sufficient, predictable and appropriate financial resources and transfer of technology to developing countries and countries with economies in transition is essential to ensure that they are in a position to meet their obligations under this Convention;*

*Reaffirming the urgent need to adopt special measures to meet the needs of developing countries and countries with economies in transition, including the provision of additional financial resources;*

*Recognizing that the provision of timely and sufficient technical cooperation and the transfer of technologies to address the needs and priorities of developing-country Parties and Parties with economies in transition are necessary for the effective implementation of this Convention;*

*Reaffirming that it is necessary to provide for the mobilization of sufficient funds for the implementation of the provisions of this Convention by all Parties.]*

*Having agreed that the financial mechanism shall be funded by contributions from developed countries to support capacity-building and the requirements of developing countries regarding compliance with the provisions of this Convention, including by means of technology transfer;*

*Taking account of Parties' obligation to protect human health and the environment against damage caused by mercury and acknowledging the work of the World Health Organization to cooperate with Parties on mercury control and to promote a gradual reduction in its use in the health sector;*

*Recognizing the activities of the World Health Organization on the protection of human health in relation to the adverse effects associated with the improper handling of mercury and the role of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal in relation to transboundary movements of mercury wastes and their final disposal, and that the contribution of both must be taken into account to achieve the objective and apply the provisions of this Convention;*

*Recognizing also the underlying synergies between the measures intended in this Convention relating to the reduction of the use of mercury in artisanal and small-scale gold mining and the policies and actions oriented towards the eradication of extreme poverty and hunger, both at the national and global levels, in accordance with the Millennium Development Goals and principles 5 and 6 of the Rio Declaration on Environment and Development;]*

<sup>2</sup> Following the practice in other multilateral environmental agreements, the words "party" or "parties" are capitalized in this draft text when they refer to a Party to the mercury instrument. In contrast, the words are not capitalized when they refer to a member or members of the intergovernmental negotiating committee.

Have agreed as follows:

## B. Introduction

### 1. Objective

Option 1: The objective of this Convention is to protect human health and the environment from anthropogenic releases of mercury and its compounds [by minimizing, and where feasible ultimately eliminating, global anthropogenic mercury releases to air, water and land].

Option 2: The objective of this Convention is to minimize, and ultimately to prevent any potential adverse effects on human health and the environment from, exposure to the release of mercury and its compounds by facilitating information dissemination and exchange and the employment of risk reduction strategies [including the environmentally sound management of mercury throughout its life cycle], through financial and technical cooperation, taking into account the relevant principles of the Rio Declaration on Environment and Development, including principles 6, 7, 15 and 16.

### [1 bis. Relationship with other international agreements

1. The provisions of this Convention shall not affect the rights and obligations of any Party deriving from any existing international agreement. This article is not intended to create a hierarchy between this Convention and other international agreements.

2. This Convention shall be implemented in a mutually supportive manner with other relevant international instruments that do not conflict with its objective, as set out in Article 1.]

### 2. Definitions

*Comments:*

A. *The definitions in this article are presented in alphabetical order. Some parties have suggested that they should be ordered or grouped differently, for example by technical and political groupings.*

B. *Some party interventions suggested that all definitions should appear in Article 2, while others suggested that definitions should appear in the specific articles to which they apply. In this new draft text, the secretariat has placed terms that appear in multiple articles of the text here in Article 2. Definitions of terms that appear in only one article are placed in the respective articles, with the following exceptions: “commodity mercury” is defined in Article 12 and also appears in Article 4, where it is referenced “as set out in Article 12”; and “acceptable use” is defined in Article 8 and also appears in Articles 6 and 7, where it is referenced “in accordance with an acceptable use exemption ... for which the Party is registered as provided in Article 8”.*

C. *Some written submissions suggested that the Convention should define additional terms, either in this article or elsewhere in the text. Suggested additional terms include “disposal”, “by-product”, “anthropogenic release”, “environmentally sound management of mercury and mercury compounds”, “State not a Party to this Convention” and “low mercury content”. The Committee may wish to consider whether these terms should be defined in the text and, if so, what their respective definitions should be.*

For the purposes of this Convention:

(a) “Artisanal and small-scale gold mining” means gold mining conducted ~~informally~~ by individual miners or small enterprises ~~using rudimentary methods and processes~~, with limited capital investment and production;

(b) ~~“Environmentally sound management of mercury wastes” means management of mercury wastes in a manner that includes all practicable steps to ensure that human health and the environment are protected against the adverse effects that may result from such wastes;~~  
[This definition has been modified and moved to Article 13 on mercury wastes.]

[(b) bis “Best available techniques” means the most effective and advanced stage in the development of activities and the methods for their operation that indicate the practical suitability of particular techniques for providing in principle the basis for release limitations designed to eliminate, and where that is not practicable generally to reduce, emissions and releases of mercury and their impact on the environment as a whole. In this context:

(i) “Best” means most effective in achieving a high general level of protection of the environment as a whole;

(ii) “Techniques” refers both to technologies used and the ways in which installations are designed, built, maintained, operated and decommissioned; and

(iii) “Available”, in respect of a given Party and a given facility within that Party, means those techniques developed on a scale that allows implementation in a relevant industrial sector under economically and technically viable conditions, taking into consideration costs and benefits, whether or not the techniques are used or produced inside the territory of the Party in question, provided that they are reasonably accessible to the operator of the facility;]

[(b) ter “Best environmental practices” means the application of the most appropriate combination of environmental control measures and strategies;]

[(c) “Environmentally sound storage of mercury and mercury compounds” means storage of mercury and mercury compounds in a manner consistent with the guidance on environmentally sound storage adopted, updated or revised by the Conference of the Parties under Article 12;]

(d) “Mercury” means elemental mercury (Hg(0), CAS No. 7439-97-6) ~~or mixtures of elemental mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95 per cent by weight;~~

(e) “Mercury ~~and mercury~~ compounds” means any substance consisting of identical molecules composed of atoms of mercury and one or more other chemical elements ~~means the substances listed in Annex B;~~

(f) “Mercury-added product” means a product or product component that contains mercury or a mercury compound intentionally added [to provide a specific characteristic, appearance or quality, to perform a specific function or for any other reason];

*Comments on subparagraph (f):*

A. *One party suggested in its written submission that the definition of “mercury-added product” should reference the concept and determination of thresholds for minimum mercury concentrations. Parties may wish to consider whether such a reference, if any, should appear here in the definition or whether it may more appropriately be included in Annex C in conjunction with specific mercury-added products.*

B. *Another party stated that it was necessary to clarify whether finished or assembled goods using mercury-added products (e.g., automobiles equipped with mercury-containing electric switches and relays, electrical and electronic goods equipped with mercury-containing lamps or batteries) would be included in the definition.*

C. *A third party stated that the Committee should consider whether the definition should include products in which mercury was not intentionally added, but instead was present as a result of mercury being used in the production process or occurring in raw materials.*

(g) “Party” means a State or regional economic integration organization that has consented to be bound by this Convention and for which the Convention is in force;

(h) “Parties present and voting” means Parties present and casting an affirmative or negative vote at a meeting of the Parties;

(i) “Primary mercury mining” means mining in which the principal material sought is ~~mercury or mercury-containing ore;~~

(j) “Regional economic integration organization” means an organization constituted by sovereign States of a given region to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Convention; and

Subparagraph (k), alternative 1

*Comment: If the Committee adopts option 2 of Article 6 and option 2 of Article 7, then clauses (i) and (ii) of subparagraph (k), alternative 1, could be deleted.*

(k) “Use allowed to the Party under this Convention” means any use of mercury or mercury compounds:

[(i) In a mercury-added product that is not listed in Annex C;

(ii) For a manufacturing process that is not listed in Annex D;]

- (iii) Listed in Annex C or Annex D for which the Party is registered for an allowable-use exemption, as provided in Article 8; or
- (iv) For laboratory-scale research or as a reference standard.

Subparagraph (k), alternative 2

(k) “Use allowed to the Party under this Convention” means any use of mercury or mercury compounds that is generally accepted and would take into consideration the specific needs of the Party and the availability of alternative products and processes.

## C. Supply

### 3. Mercury supply sources

#### Article 3, option 1

1. Each Party with primary mercury mining within its territory [at the date of entry into force of this Convention for it] shall:

[(a) [Not allow] [Prohibit] the export of any mercury or mercury compounds produced from primary mercury mining[, including mercury or mercury compounds that were produced from primary mercury mining before the entry into force of this Convention[, except for the purpose of environmentally sound disposal as set out in Article 13];]

[(a) bis Not allow the sale, distribution in commerce or use of mercury or mercury compounds from primary mining [except for a use allowed to the Party under this Convention] [within five years of the date of entry into force of this Convention for it] [that were produced from primary mercury mining before the entry into force of this Convention];]

[(a) ter Ensure that all mercury from primary mining that is not sold, distributed in commerce or used pursuant to subparagraph (a) bis is stored in an environmentally sound manner as set out in Article 12;]

[(b) Include in its reports submitted pursuant to Article 22 information on any primary mercury mining within its territory, including at a minimum:

- (i) Its location; and
- (ii) Estimated quantities[, destinations and intended uses, where known, of mercury or mercury compounds produced annually by such mining] [ sold, distributed, used, exported or stored pursuant to subparagraphs (a) bis or (a) ter)]; and]

[(c) Eliminate such mining [within [three] years of] [by] the date of entry into force of this Convention for it.]

[2. Each Party shall not allow [any] primary mercury mining [that was not being conducted within its territory at the date of entry into force of this Convention for it] [on its territory].]

3. Each Party shall:

(a) Identify the mercury supply sources [listed in Annex A] [other than primary mining] that are located within its territory;

#### Alternative 1, subparagraphs (b) and (c)

[(b) Not allow the sale, distribution in commerce, or use of mercury or mercury compounds from [supply sources listed in Annex A] [the identified sources] except for a use allowed to the Party under this Convention;]

[(c) Not allow the export of mercury or mercury compounds [from supply sources listed in Annex A,] [from the identified sources] except [as provided in Article 4] [ for the purpose of environmentally sound storage or disposal or for a use allowed to a Party under this Convention; and];]

#### Alternative 2, subparagraphs (b) and (c) bis

(b) Not allow the sale, distribution in commerce, export or use of mercury or mercury compounds obtained from supply sources listed in Annex A after any phase-out date specified therein;

(c) Before any such specified phase-out date:

- (i) Not allow the sale, distribution in commerce or use of mercury or mercury compounds from supply sources listed in Annex A except for a use allowed to the Party under this Convention; and
  - (ii) Not allow the export of mercury or mercury compounds from supply sources listed in Annex A, except as provided in Article 4;
- (c) bis Classify all mercury and mercury compounds as waste and ensure that they are managed in accordance with Article 13 if they:
- (i) Were produced from primary mining before the entry into force of this Convention;
  - (ii) Are not allowed to be sold, distributed in commerce, exported or used pursuant to subparagraph (b); or
  - (iii) Are not intended to be sold, distributed in commerce, exported or used for the purposes of a use allowed to the Party under this Convention pursuant to subparagraph (c);
- [(d) Ensure that all mercury and mercury compounds from [the identified] supply sources [listed in Annex A] that are
- Alternative 1 not [sold, distributed in commerce, used] [used for a use allowed to a Party under this Convention] or exported pursuant to subparagraph (b) [or (c)] are [stored in an environmentally sound manner as set out in Article 12] [disposed of in an environmentally sound manner as set out in Article 13]; and]
- Alternative 2 intended to be sold, distributed in commerce, used or exported for the purposes of a use allowed to the Party under this Convention pursuant to subparagraph (c) are stored in an environmentally sound manner in accordance with Article 12 before such sale, distribution, use or export; and]
- [(e) Include in its reports submitted pursuant to Article 22 information on the quantities of mercury and mercury compounds:
- (i) Produced from each [category of] supply source identified pursuant to subparagraph (a); and
  - (ii) Sold, distributed, used, exported or [stored] [disposed of] [managed] pursuant to subparagraphs (b)–(d)].

### **Article 3, option 2**

*Comment: This option does not have an annex associated with it.*

1. Each Party with primary mercury mining within its territory at the date of entry into force of this Convention for it, or that plans to develop such activities as at that date, shall allow the export of mercury or mercury compounds produced from primary mercury mining only in accordance with the provisions of this Convention.
2. Each Party shall adopt measures to regulate primary mercury mining, with a view to reducing the production of elemental mercury and, where economically feasible, prohibiting current or future primary mining. Parties may take into account, among other things:
  - (a) The recovery, collection and environmentally sound storage of mercury;
  - (b) The employment of best available techniques and best environmental practices that are economically feasible; and
  - (c) The application of incentives for recovering or reprocessing mercury mining wastes.
3. Each Party shall develop and complete a national inventory of the location and quantity of elemental mercury and specific compounds in relevant sectors, in addition to mercury wastes generated by various production processes.
4. Each Party with known and identified mercury stocks or mining resources that decides at the date of entry into force of this instrument to renounce the exploitation and promotion of its resources shall be entitled to fair and equitable financial compensation.
5. The implementation of measures under this article shall take into account the social and economic conditions of the Parties, and compliance shall be subject to the mobilization of sufficient,

predictable and appropriate financial resources, technology transfer and cooperation as required for capacity-building in Parties in accordance with their own assessment of their needs and priorities.

## D. International trade in mercury [and mercury compounds]

*Comments:*

A. *The former Article 4 on environmentally sound storage is grouped in this new draft text with wastes and contaminated sites in Part H, below.*

B. *One party proposed in its written submission that Article 5 on trade with non-Parties should be deleted and its key provisions included in Article 4. The new subparagraph (c) in paragraph 2 of Article 4, and paragraph 2 ter of Article 4, are two of the ways in which this proposal is reflected in this new draft text.*

C. *Another written submission proposed that the scope of draft Articles 4 and 5 should be expanded to include international trade in mercury-added products, which is currently covered in Article 6 of this draft text. The texts of Articles 4–6 could be modified to reflect this approach if the Committee so wished.*

D. *A third written submission suggested that the provisions of Articles 4 and 5 should apply only to mercury and mercury mixtures, not to compounds, which is why the term “mercury compounds” has been bracketed in these articles.*

### 4. International trade [with Parties] in mercury [or mercury compounds]

*Comment: This article is based on element 5 of the elements paper.*

1. Each Party shall allow the import of mercury [or mercury compounds [listed in Annex B]] only:
  - (a) For the purpose of environmentally sound storage [of commodity mercury] as set out in Article 12;
  - [(a) bis For the purpose of environmentally sound disposal as set out in Article 13;] or
  - (b) For a use allowed to the Party under this Convention.
2. [Without prejudice to paragraph 1 (a) of Article 3,<sup>3</sup>] [E]ach Party shall allow the export of mercury [or mercury compounds [listed in Annex B]] only after the Party has [on an annual basis]:
  - [(a) Provided an export notification to the importing [Party] [State]; and] [either]
 

Subparagraph (b), alternative 1

    - (b) Received the written consent of the importing Party, including a certification from the importing Party that the shipment of mercury or mercury compounds will be only:
      - (i) For the purpose of environmentally sound storage [of commodity mercury] as set out in Article 12;
      - [(i) bis For the purpose of environmentally sound disposal as set out in Article 13;] or
      - (ii) For a use allowed to the importing Party under this Convention[; or]

Subparagraph (b), alternative 2

      - (b) Received the written prior consent of the importing Party if the exporting Party requires such consent. Parties whose legislation requires this shall submit documentation of their legislation to the Secretariat, which shall communicate it to the Conference of the Parties[; or]
      - [(c) Received the written consent of an importing State not a Party to this Convention, including a certification from the importing State that the shipment of mercury or mercury compounds will be only for the purpose of environmentally sound storage as set out in Article 12 or environmentally sound disposal as set out in Article 13].
  - [2 bis. Each Party that imports or exports mercury [or mercury compounds] subject to this article shall:
    - (a) Designate a national authority for the exchange of information required under this article] [; and]

<sup>3</sup> This reference applies to option 1 of Article 3.

[(b) Establish a domestic licensing system to regulate trade of mercury, mercury compounds and mercury-added products. Each Party required under this paragraph to establish such a licensing system shall:

- (i) Be responsible for the implementation and administration of its licensing system;
- (ii) Allow only registered legal persons within its territory to import or export mercury, mercury compounds or mercury-added products; and
- (iii) Submit a report each calendar year to the Secretariat for distribution to the Conference of the Parties on the number of licenses issued and the volume of mercury, mercury compounds and mercury added-products traded within that year.]

3. For the purposes of this article, paragraphs 1 and 2 notwithstanding, no Party may allow the import or export of mercury [or any mercury compound listed in Annex B] for use in[:

- (a) ] [Artisanal and small-scale gold mining[; or]]
- [(b) Dental amalgam, except in the form of encapsulated dental amalgam in accordance with Article 6].

[4. The provisions of this article notwithstanding, the transboundary movement of any mercury [or mercury compounds] defined as mercury waste under this Convention shall be subject to Article 13 and to the relevant provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.]

[5. Nothing in this article shall prevent a Party from prohibiting all imports or exports of mercury [or mercury compounds] to or from its territory.]

#### **[5. International trade with non-Parties in mercury [or mercury compounds]**

*Comments:*

A. *This article is based on element 6 of the elements paper.*

B. *One party in its written submission suggested that there might be a need to consider a later entry-into-force date for provisions regarding trade with non-Parties to avoid situations in which some countries are adversely affected by the provisions before they can complete internal processes necessary to join the agreement. The party stated that examples of such provisions could be found in Article 4 of the Montreal Protocol on Substances that Deplete the Ozone Layer.*

[1.] Each Party shall allow the import and export of mercury [or mercury compounds listed in Annex B] from or to a State not a Party to this Convention only for the purposes of environmentally sound storage as set out in paragraph 1 of Article 12 or environmentally sound disposal as set out in paragraph 1 of Article 13.

[2. Paragraph 1 notwithstanding, a Party may allow:

- [(a) The import of mercury [or mercury compounds listed in Annex B] from a State not a Party to this Convention when the demand for such mercury or mercury compounds cannot be met by trade with Parties; and]
- (b) The export of mercury [or mercury compounds listed in Annex B] to a State not a Party to this Convention if the State has provided an annual certification to the exporting Party specifying the intended use of the mercury or mercury compounds and including a statement that, with regard to the mercury or mercury compounds, the importing State is committed to:
  - (i) Protecting human health and the environment by taking the necessary measures to minimize or prevent releases of mercury; and
  - (ii) Complying with the provisions of paragraph 1 of Article 12 and paragraph 1 of Article 13.

The certification shall include any appropriate supporting documentation such as legislation, regulatory instruments or administrative or policy guidelines. The exporting Party shall transmit the certification to the Secretariat within 60 days of receipt.]

[3. Each Party that exports mercury [or mercury compounds] under paragraph 1 or paragraph 2 to a State not a Party to this Convention shall require the importing State to provide it with a written confirmation within 30 days of its receipt of the imported mercury [or mercury compounds]. The exporting Party shall not allow any further exports of mercury [or mercury compounds] to the State in question until the confirmation is received.]

[4. Parties shall apply the measures in this article in a manner consistent with the relevant principles and rules of international trade law].

## **E. Products and processes**

### **6. Mercury-added products**

*Comment: This article is based on element 7 of the elements paper.*

#### **Article 6, option 1**

##### **Alternative 1, paragraphs 1 and 2**

1. Each Party shall not allow:
  - (a) The [import,] manufacture or production of mercury-added products listed in Annex C, except:
    - (i) In accordance with an allowable-use [or acceptable-use] exemption listed in that annex for which the Party is registered as provided in Article 8; or
    - [(ii) For mercury-added products manufactured or already in use before or on the date of entry into force of this Convention for the Party; or]
  - (b) The export of mercury-added products listed in Annex C, except as provided in paragraph 2[; or
  - [(c) The import of mercury-added products listed in Annex C from States not Parties to this Convention, unless:
    - (i) The import is in accordance with an allowable-use exemption listed in Annex C for which the Party is registered as provided in Article 8; and
    - (ii) The exporting State provides an export notification to, and receives the written consent of, the importing Party].

Parties shall assist one another as may be necessary to achieve the objectives of this subparagraph.]

2. Each Party may allow the export of a mercury-added product listed in Annex C only:
  - (a) For the purpose of environmentally sound disposal as set out in Article 13; or
  - (b) After:
    - (i) Providing an export notification to the importing State, which shall include a certification that the exporting Party is registered for an allowable-use exemption applicable to the product as provided in Article 8; and
    - (ii) Receiving the written consent of the importing State[, which shall include the importing State's agreement that it will assume responsibility for the environmentally sound disposal of the mercury-added product at the end of its life].

##### **Alternative 2, paragraphs 1 and 2 combined into a single paragraph 1**

1. Each Party shall not allow the production, import or export of mercury-added products listed in Annex C, except:
  - (a) For production or import in accordance with an allowable-use exemption listed in that annex for which the Party is registered as provided in Article 8;
  - (b) For import or export for the purpose of environmentally sound disposal as set out in Article 13; or
  - (c) For export to a Party registered for an allowable-use exemption applicable to the product or to a State not a Party to this Convention that has [provided written consent to the import] [certified to the Party of export that the product will be used for an allowable use available under the Convention and that the State is committed to complying with the provisions of Article 13]. Exports under this subparagraph shall be allowed only if the exporting Party is registered for an allowable-use exemption applicable to the mercury-added product.

3. Each Party [shall not allow] [should take measures to discourage] the manufacture or production of any [new] variety, type or category of mercury-added product that was not manufactured or produced in commerce in the territory of the Party at the date of entry into force of this Convention for it[, except where the product is intended to replace an existing mercury-added product that contains more mercury per unit than does the new product ] [or where the mercury-added product that is newly manufactured or produced has other compensating environmental or human-health benefits].

[4. Each Party shall not allow the export of equipment for producing mercury-added products listed in Annex C, or provide subsidies, aid credits, guarantees or insurance programmes for equipment to produce mercury-added products listed in Annex C, to any State not a Party to this Convention, except in the case of equipment identified as a best available technique under this Convention.]

Paragraph 5, alternative 1

[5. Each Party shall include in its reports submitted pursuant to Article 22 statistical data on its production, import and export of mercury-added products listed in Annex C and on its production of any new mercury-added products.]

Paragraph 5, alternative 2

[5. Each Party shall require its manufacturers of any mercury-added products and its manufacturers using any process in which mercury is used to report at least every three years on:

- (i) The quantities of mercury used each year;
- (ii) The products or processes in which mercury was used;
- (iii) The sources of supply from which the mercury was purchased;
- (iv) The amount of mercury in any products sold; and
- (v) Any plans to phase out the use of mercury in the products or processes.

Each Party shall include the information obtained by it under this paragraph in its reports submitted under Article 22.]

[6. Parties should achieve the phase-out of mercury-added products through their implementation plans once economically affordable and technologically feasible alternative technologies become readily available.]

**Article 6, option 2**

1. Each Party shall not allow:

- (a) The manufacture or production of any mercury-added product, except in accordance with an allowable-use exemption listed in Annex C for which the Party is registered as provided in Article 8;
- (b) The export of any mercury-added product, except as provided in paragraph 2; or
- (c) The import of any mercury-added product from States not Parties to this Convention, unless:
  - (i) The import is in accordance with an allowable-use exemption listed in Annex C for which the Party is registered as provided in Article 8; and
  - (ii) The exporting State provides an export notification to, and receives the written consent of, the importing Party.

Parties shall assist one another as may be necessary to achieve the objectives of this subparagraph.

2. Each Party may allow the export of a mercury-added product only:

- (a) For the purpose of environmentally sound disposal as set out in Article 13; or
- (b) After:
  - (i) Providing an export notification to the importing State, which shall include a certification that the exporting Party is registered for an allowable-use exemption applicable to the product, as provided in Article 8; and

(ii) Receiving the written consent of the importing State[, which shall include the importing State's agreement that it will assume responsibility for the environmentally sound disposal of the mercury-added product at the end of its life and, in the case of an export to a State not a Party to this Convention, its agreement to apply the relevant provisions of Article 13 upon the product becoming waste].

[3. Each Party registered for an allowable-use exemption listed in Annex C shall take appropriate measures to ensure that any production or use of a mercury-added product under the exemption is carried out in a manner that prevents or minimizes mercury releases to the environment and human exposure to mercury.]

[4. Each Party shall require its manufacturers of any mercury-added product and its manufacturers using any process in which mercury is used to report at least every three years on:

- (a) The quantities of mercury used each year;
- (b) The products or processes in which mercury was used;
- (c) The sources of supply from which the mercury was purchased;
- (d) The amount of mercury in any products sold; and
- (e) Any plans to phase out the use of mercury in the products or processes.

Each Party shall include the information obtained by it under this paragraph in its reports submitted under Article 22.]

[5. Parties should achieve the phase-out of mercury-added products through their implementation plans after economically affordable and technologically feasible alternative technologies become readily available.]

### **Article 6, option 3**

1. For the purposes of this Convention, mercury-added products shall be listed in the various parts of Annex C based on the following criteria:

- (a) Products for which non-mercury alternatives are globally accessible, affordable and effective shall be prohibited and shall be listed in Part I of Annex C;
- (b) Products for which a transition period is needed to allow Parties, particularly developing countries and countries with economies in transition, to phase out their use based on their social and economic circumstances shall be listed in Part II of Annex C; and
- (c) Products for which non-mercury alternatives are unavailable or are available but not affordable globally shall be listed in Part III of Annex C under the category of "essential use."

2. Any Party may submit a proposal to the Secretariat nominating and registering the listing of products under Part I, II or III of Annex C. The rules governing the movement of products and processes between annexes shall be subject to the procedures specified in Article 8.<sup>4</sup>

3. Each Party shall not allow the manufacture, distribution in commerce, sale or international trade of mercury-added products listed in Part I of Annex C.

4. The Conference of the Parties shall:

- (a) Decide, based on proposals by Parties received from the Secretariat, on the listing or de-listing of any nominated mercury-added product in or from Part I, II or III of Annex C based on current globally accepted scientific, social and economic information. The decision of the Conference of the Parties may be informed by data provided by a Party or requested by the Conference of the Parties from any intergovernmental organization qualified in matters related to this Convention; and
- (b) Review and determine the transition period for the mercury-added products listed in Part II of Annex C.

5. Nothing in this article shall prevent a Party from imposing additional requirements to protect human health and the environment from mercury, provided that they are consistent with the provisions of this Convention and in accordance with international law.

<sup>4</sup> The current Article 8 on allowable-use exemptions may need to be amended if this approach is used.

[6. Parties should achieve the phase-out of mercury-added products through their implementation plans once economically affordable and technologically feasible alternative technologies become readily available.]

**Article 6, option 4**

*Comment: This option does not have an Annex C associated with it.*

1. Parties shall limit mercury content in mercury-added products and processes that use mercury or mercury compounds by applying the following measures as appropriate:
  - (a) Fiscal incentives or financial instruments to promote the introduction of non-mercury alternatives to the market for products or processes using mercury or mercury compounds;
  - (b) Legislation to regulate the sale of mercury for various uses;
  - (c) The dissemination of alternatives to mercury-added products that are appropriate from an environmental, social and economic viewpoint;
  - (d) Public information campaigns to raise awareness of the risks and use of mercury-containing products.
2. Within [X] years of the entry into force of this Convention, Parties may introduce measures to prohibit or restrict the import of mercury-added products from States not Parties to this Convention.
3. Parties shall discourage the export of technology for producing and using mercury and the mercury compounds listed in Annex B to any State not a Party to this Convention.

**Paragraph 4, alternative 1**

4. The implementation of measures under this article shall take into account the social and economic conditions of the Parties, and their compliance shall be subject to the mobilization of sufficient, predictable and appropriate financial resources, technology transfer and the provision of cooperation as required for capacity-building in the countries in accordance with their own assessment of their needs and priorities.

**Paragraph 4, alternative 2**

4. Parties should achieve the phase-out of mercury-added products through their implementation plans once economically affordable and technologically feasible alternative technologies become readily available.

**7. Manufacturing processes in which mercury is used**

*Comment: This article is based on element 8 of the elements paper.*

**Paragraph 1, option 1**

1. Each Party shall not allow the use of mercury or mercury compounds in the manufacturing processes listed in Annex D except in accordance with an [acceptable-use or] allowable-use exemption listed in that annex for which the Party is registered as provided in Article 8.

**Paragraph 1, option 2**

1. Each Party shall not allow the use of mercury or mercury compounds in any manufacturing processes except in accordance with an allowable-use exemption listed in Annex D for which the Party is registered as provided in Article 8.

**Paragraph 1, option 3**

1. Each Party shall permit the use of elemental mercury or mercury compounds in the manufacturing processes listed in Annex D to this Convention for which a transition period is needed only in order to allow countries, particularly developing countries and countries with economies in transition, to phase out such processes based on their social and economic circumstances.
2. Each Party shall not allow the [intentional use of mercury or mercury compounds in any other manufacturing process in which mercury or mercury compounds were not used in the territory of the Party as at the date of entry into force of this Convention for it] [introduction of new manufacturing processes in which mercury or mercury compounds are intentionally used].
3. Each Party with one or more facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex D [for which an allowable-use exemption was granted] shall:

(a) Prepare and implement a national action plan for reducing and eliminating its use of mercury or mercury compounds in such processes. The national action plan shall, no later than one year after the entry into force of this Convention for the Party, be submitted to the Secretariat for distribution to the Parties. The national action plan shall, at a minimum, include the elements listed in Part II of Annex D; and

[(b) Apply best available techniques to reduce, and where feasible eliminate, mercury emissions and releases from those facilities.]

[4. The Conference of the Parties shall at its first meeting adopt guidelines on best available techniques to reduce emissions and releases of mercury and mercury compounds from the manufacturing processes listed in Annex D.]

[5. Any Party may nominate and register the listing of a manufacturing process in which mercury is used under Annex D, subject to the procedures described in Articles 8 and 28.]

[6. Each Party shall not allow the export of equipment intended for use in any manufacturing process listed in Annex D, nor provide subsidies, aid credits, guarantees or insurance programmes for such equipment, to any State not a Party to this Convention, except for the purpose of reducing mercury emissions at existing facilities as part of a transition to non-mercury manufacturing processes.]

## 8. Allowable-use exemptions [and acceptable use]

*Comment: This article is based on element 14 of the elements paper.*

### **Article 8, option 1**

*Comment: This option is compatible with options 1 and 2 of Article 6 and options 1 and 2 of paragraph 1 of Article 7. It would probably require modification if used with other options for those articles.*

#### Paragraph 1, alternative 1 (exemptions available to a Party upon request)

1. Any State or regional economic integration organization may register for one or more allowable-use exemptions listed in Annex C or Annex D by notifying the Secretariat in writing:

(a) No later than the date upon which this Convention enters into force for it; or

(b) In the case of any mercury-added product that is added by amendment to Annex C or any manufacturing process in which mercury is used that is added by amendment to Annex D, no later than the date upon which the applicable amendment enters into force for the Party.

[Any such registration shall be accompanied by a statement explaining the Party's need for the exemption.]

#### Paragraph 1, alternative 2 (exemptions available to a Party upon request, subject to approval by the Conference of the Parties)

1. Any State may, upon becoming a Party, by means of a notification submitted in writing to the Secretariat, request one or more types of allowable-use exemptions listed in Annex C or Annex D. Each Party requesting an allowable-use exemption shall submit a report to the Secretariat justifying its need for it. The report shall be circulated by the Secretariat to all Parties. Based on this report and on all available information the Conference of the Parties shall decide whether to grant the requested exemption.

2. [Parties that have allowable-use exemptions listed in Annex C or Annex D] [Parties for which allowable-use exemptions listed in Annex C or Annex D have been granted] shall be identified in an allowable-use register. The register shall be maintained by the Secretariat and be available to the public.

3. The register shall include:

(a) A list of the allowable-use exemptions set forth in Annex C and Annex D;

(b) A list of the Parties that have [registered] [been granted] allowable-use exemptions listed in Annex C or Annex D; and

(c) A list of the expiration dates for all registered allowable-use exemptions for all Parties.

Paragraph 4, alternative 1

4. Unless an earlier date is indicated in the register by a Party at the time that it registers for an exemption, or an extension is granted pursuant to paragraph 7, all allowable-use exemptions shall expire [10] years after the date of entry into force of this Convention [with regard to a particular use] [for the Party].

Paragraph 4, alternative 2

4. Unless a shorter period is decided upon by the Parties, all allowable-use exemptions shall expire after five years.

5. The Conference of the Parties shall decide at its first meeting upon a process for reviewing allowable-use exemptions. [Criteria for the review shall include *[to be completed later in the negotiations]*, [in addition to consideration of activities planned or under way to eliminate such use as soon as feasible and to provide environmentally sound storage of mercury and disposal of mercury wastes.]]

6. Before the review of an allowable-use exemption, a Party [wishing to extend] [requesting an extension of] the exemption shall submit a report to the Secretariat justifying its continuing need for it. The report shall be circulated by the Secretariat to all Parties. The review of an allowable-use exemption shall be carried out on the basis of all available information, including the availability of alternative products and processes that are free of mercury or that involve the consumption of less mercury than does the exempt use. Thereupon, the Conference of the Parties may make such recommendations to the Party concerned as it may deem appropriate.

7. The Conference of the Parties may[, upon request from the Party concerned,] decide to extend an allowable-use exemption for [a period] [periods] of up to [five] [10] years. In making its decision, the Conference of the Parties shall take due account of the special circumstances of developing-country Parties[, especially least-developed-country Parties,] and Parties with economies in transition[,in addition to activities undertaken and planned to eliminate such use as soon as feasible, and activities planned or under way to provide environmentally sound storage of mercury and disposal of mercury wastes.] [Unless it decides otherwise, the Conference of the Parties shall take decisions pursuant to this paragraph at intervals of [10] years after the entry into force of this Convention with regard to a particular allowable use.]

8. A Party may at any time withdraw an allowable-use exemption upon written notification to the Secretariat. The withdrawal of an allowable-use exemption shall take effect on the date specified in the notification.

Paragraph 9, alternative 1

[9. [When] [If, at any time after X years after the entry into force of this Convention,] there are no longer any Parties registered for a particular type of allowable-use exemption, no new registrations may be made with regard to it.]

Paragraph 9, alternative 2

9. No exemption requests or new registrations for a particular use may be made upon determination by the Conference of the Parties that such registrations or requests are no longer needed, or when there are no longer any Parties registered for an allowable-use exemption for the particular use, whichever comes first.

[10. “Acceptable use” in this Convention means any use of mercury or mercury compounds that is generally accepted due to the special needs of one or more Parties and because cost-effective alternatives for the use are unavailable. Any mercury-added product listed in Annex C or mercury process listed in Annex D identified as an acceptable use shall be subject to the provisions on acceptable use set out in the applicable annex.]

Article 8, option 2

*Comment: This option is compatible with option 4 of Article 6. It would probably require modification if used with other options under that article or with options listed under Article 7.*

1. For the purposes of this article, “essential-use exemptions” shall mean limited exceptions designed to allow a sufficient and reasonable period of time for the adoption of alternatives to mercury use that are feasible from an environmental, social and economic standpoint.

2. Production or consumption involving mercury shall qualify as an essential use where:
  - (a) The use is necessary for health or safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and
  - (b) Restriction of the use could significantly disrupt markets because there are no alternatives or substitutes that are acceptable from an environmental, social or economic standpoint.
3. In accordance with the criteria in paragraph 2 of this article, Parties shall notify the Secretariat of essential uses at least X months before each ordinary meeting of the Conference of the Parties. Notifications must be accompanied by information on:
  - (a) The essential use (substance, quantity, quality, expected duration of essential use, duration of production or consumption necessary to meet such essential use);
  - (b) Economically feasible methods to control releases related to the proposed essential use;
  - (c) Sources of already produced controlled substances for the proposed essential use (quantity, quality, timing); and
  - (d) Steps necessary to ensure that alternative products or processes are available as soon as possible for the proposed essential use.
4. The measures envisaged in the preceding paragraphs shall be implemented taking account of Parties' social and economic conditions, particularly those of least-developed-country Parties, and compliance shall be subject to the mobilization of sufficient, predictable and appropriate financial resources, technology transfer and the provision of cooperation as required for capacity-building in the countries in accordance with their own assessment of their needs and priorities.

**[8 bis. Special situation of developing countries]**

[Any Party that is a developing country shall be entitled to delay for ten years its compliance with the control measures set out in Articles 3–14 of this Convention.]

## **F. Artisanal and small-scale gold mining**

### **9. Artisanal and small-scale gold mining**

[0. The measures in this article [and in Annex E] shall apply to artisanal and small-scale gold mining in which mercury amalgamation is used to extract gold from ore.]

1. Each Party that [has] [produces at least [X volume] of gold annually by] artisanal and small-scale gold mining [subject to this article] within its territory [at the date of entry into force of this Convention for it] shall

Alternative 1 [take steps to] [reduce, and where feasible eliminate,] [regulate] the use of mercury [and mercury compounds] in such mining[, and shall reduce releases of mercury and mercury compounds to the environment from such mining].

Alternative 2 regulate the artisanal and small-scale gold mining sector and reduce, and where feasible eliminate, the use of mercury [and mercury compounds] in such mining within 10 years of the date of entry into force of this Convention for it.

1 bis. Each Party subject to paragraph 1 shall

Alternative 1 [consider taking measures, among others,] [take measures] [take steps that at a minimum include]:

[(a) To prevent, in accordance with Article 4, the import of mercury or mercury compounds for use in artisanal and small-scale gold mining and the diversion of mercury or mercury compounds for use in that sector;]

[(b) To prevent, in accordance with Articles 13 and 14, the [use of mercury and mercury compounds from the] recovery, recycling or reclamation of mercury wastes, including wastes from sites contaminated with mercury, for use in artisanal and small-scale gold mining;]

[(c) To develop and implement[ national or regional action plans, which may include] [, in accordance with Part II of Annex E, a national action plan that includes] national objectives or [reduction targets] [targets to reduce, and where feasible eliminate, mercury use in artisanal and small-scale gold mining]; [and]

- (d) To [prohibit] [not allow the] specific practices [such as whole ore amalgamation] [listed in Part I of Annex E]; [and]
- [(e) To promote practices that reduce the release of and exposure to mercury in artisanal and small-scale gold mining]; [and]
- [(f) To consider the use or introduction of standards for mercury-free gold mining and for fair trade in gold.]

Alternative 2 develop and implement a national action plan that includes, at a minimum, the elements listed in Annex E.

2. Parties may cooperate with one another and with relevant intergovernmental organizations and other entities, as appropriate, to achieve the objectives of this article. Such cooperation may include:

Subparagraph (a), alternative 1

(a) Prevention[, in accordance with Article 4,] of the import and export of mercury or mercury compounds for use in artisanal and small-scale gold mining and the diversion of mercury and mercury compounds for use in that sector [consistent with paragraph 3 of this article];

Subparagraph (a), alternative 2

- (a) Development of strategies to prevent the diversion of mercury or mercury compounds for use in artisanal and small-scale gold mining;
- (b) Education, outreach and capacity-building initiatives; [and]
- [(b) bis Promotion of research into sustainable, non-mercury alternative practices; and]
- (c) Provision of technical and financial assistance[; and]
- [(d) Establishment of an information clearing house to promote knowledge, best environmental practices and alternative technologies that are environmentally, technically, socially and economically viable].

Paragraph 3, alternative 1

[3. For the purposes of Article 4, no Party may allow the import or export of mercury or mercury compounds listed in Annex B for use in artisanal and small-scale gold mining.]

Paragraph 3, alternative 2

3. Each Party shall not allow the export or import of mercury or mercury compounds for use in artisanal and small-scale gold mining except in accordance with an allowable-use exemption listed in Annex D for which the Party is registered or which the Party has otherwise obtained, as provided in Article 8.

## **G. Emissions and releases**

### **Option 1 (retain separate Articles 10 and 11)**

#### **10. [Unintentional] [A]tmospheric emissions**

1. Each Party shall [take steps as provided in this article to] reduce [, and where feasible eliminate,] [unintentional] atmospheric emissions of mercury from the source categories listed in Annex F, subject to the provisions of that annex.
2. For new [unintentional] emissions sources among the source categories listed in Annex F, each Party [shall] [should]:
  - (a) [Require] [Encourage] the use of best available techniques [for such sources as soon as practicable, but no later than [four] [five] years after the entry into force of the Convention for it; and
  - (b) Promote the use of best environmental practices] [; and]

[(b) bis Require that emissions from such sources not exceed the emission limit values listed in that annex].
3. For existing [unintentional] emissions sources among the source categories listed in Annex F, each Party [shall] [is encouraged to] [promote] [require] the use of best available techniques [and best environmental practices] [for such sources as soon as practicable, but no later than X years after the

entry into force of the Convention for it] [, and require that emissions from such sources not exceed the emission limit values listed in that annex as soon as practicable, but no later than X years after the entry into force of the Convention for it].

4. The Conference of the Parties shall at its first meeting [adopt] [develop] guidelines on best available techniques [and best environmental practices] for reducing [unintentional] atmospheric emissions of mercury[, and maximize potential co-benefits of such reductions,] from the source categories listed in Annex F. [The guidelines shall include emission benchmarks reflecting the reductions that can be achieved by applying the best available techniques. They shall also include an explanation of how to use the benchmarks to derive the goals referred to under subparagraph (a) of paragraph 5.] [Best available techniques should be made available free of charge to Parties.] [The guidelines may be updated as necessary by the Conference of the Parties.] Parties [shall] [are encouraged to] take the guidelines [and benchmarks] [and the guidance provided in Annex F] into account when implementing the provisions of this article.

[5. Each Party with significant aggregate mercury emissions from the source categories listed in Annex F shall, within the later of [two] years of entry into force of this Convention for it or [two] years of becoming a source of significant aggregate mercury emissions from such sources:

(a) Adopt a [numerical] [national] goal [that is at a minimum consistent with the application of best available techniques and best environmental practices] for reducing [, and where feasible eliminating,] atmospheric mercury emissions from the source categories listed in Annex F[, using the benchmarks referred to under paragraph 4];

[(a) bis Develop and maintain an initial inventory of sources and reliable emissions estimates for the source categories listed in Annex F. Thereafter, the inventory of sources and emissions estimates shall be updated no less frequently than every X years;]

(b) Submit its [initial national inventory of sources and emissions and its] [national] goal to the Secretariat for dissemination to the Parties and consideration by the Conference of the Parties at its next meeting; and

(c) Develop [and implement], in accordance with Part II of Annex F, an action plan for reducing, and where feasible eliminating, its atmospheric mercury emissions from the source categories listed in Part I of Annex F. ]

[(d) Paragraph 3 notwithstanding, for existing emission sources among the source categories listed in Annex F:

(i) Require the use of best available techniques to reduce emissions from such sources as soon as practicable, but no later than  $[4 + X]$   $[5 + X]$  years [*i.e., later than the number of years listed in paragraph 2 (a) above*] after the entry into force of the Convention for it; and

(ii) Promote the use of best environmental practices.]

[5 bis. A Party may use release limit values or performance standards to fulfil its commitments in respect of best available techniques under this article.]

6. For the purposes of this article and Annex F:

[(a) “Unintentional emissions” means atmospheric mercury emissions that result from human industrial, residential or agricultural activities in which the production of such emissions is not the main intent of such activities. For the purposes of this article and Annex F, “unintentional emissions” shall not exclude emissions and releases that may result from negligent, reckless or illegal behaviour;]

(b) “Atmospheric mercury emissions” and “atmospheric emissions of mercury” means emissions to the atmosphere of gas-phase oxidized mercury (Hg<sub>2+</sub>), gas-phase elemental mercury (Hg<sub>0</sub>) or solid-phase particulate-bound mercury (Hg<sub>p</sub>); [and]

[(c) “New emissions source” means any emissions source for which construction or substantial modification is begun one or more years after the entry into force for the Party concerned:

(i) Of this Convention; or

(ii) Of an amendment to Annex C where the emissions source becomes subject to the provisions of this Convention only by virtue of that amendment] [;]

[(d) “Existing emissions source” means any emissions source that is not a new emissions source under this article] [; and]

[(e) “Significant aggregate mercury emissions” means the annual atmospheric mercury emissions of a Party from the source categories listed in Annex F that, in total, equal [10] or more tons].

7. Each Party shall include in its reports submitted pursuant to Article 22 information sufficient to demonstrate its compliance with the provisions of this article. The scope and format of such information shall be decided by the Conference of the Parties at its first meeting.

### **Option 1, continued**

#### **[11. Releases to water and land**

1. Each Party shall reduce[, and where feasible eliminate,] releases of mercury and mercury compounds to water and land from the source categories listed in Annex G, [subject to] [as provided in] the provisions of that annex[ and the provisions of Articles 3, 6, 7, 9, 13 and 14].

##### Paragraph 2, alternative 1

2. The Conference of the Parties shall develop and adopt guidelines on best available techniques and best environmental practices for reducing releases of mercury and mercury compounds to water and land from the source categories listed in Annex G. The guidelines shall complement and avoid duplication with the provisions of Articles 3, 7, 9, 13 and 14 and any guidelines developed thereunder that are relevant to the achievement of reductions of releases of mercury and mercury compounds to water and land. Parties shall take these guidelines into account when implementing the provisions of this article.

##### Paragraph 2, alternative 2

2. Each Party shall promote the use of best available techniques and best environmental practices to reduce releases of mercury and mercury compounds to water and land from the source categories listed in Annex G, taking into account any guidelines developed under the provisions of Articles 3, 6, 7, 9, 13 and 14 that are relevant to the achievement of reductions of mercury releases to water and land.

[2 bis. A Party may use release limit values or performance standards to fulfil its commitments in respect of best available techniques under this article.]

[3. Parties may cooperate in developing and implementing strategies and methodologies for achieving the objectives of this article [, including through the provision of financial and technical assistance].]

4. Each Party shall include in its reports submitted pursuant to Article 22 information [required under the provisions of Articles 3, 6, 7, 9, 13 and 14] sufficient to demonstrate its compliance with the provisions of this article. The scope and format of such information shall be decided by the Conference of the Parties at its first meeting.]

### **Option 2 (combine Articles 10 and 11 and Annexes F and G into a single Article 11.alt and a single Annex G.alt)**

*The combined approach for Articles 10 and 11 was identified as an option by the contact group on emissions and releases at the committee’s second session and by several parties. If desired, the approach could be modified to incorporate many of the options included in the separate Articles 10 and 11 above.*

#### **11.alt Unintentional emissions and releases**

1. This article shall apply to unintentional anthropogenic emissions and releases of mercury and mercury compounds to the atmosphere, water and land. For the purposes of this article and Annex G.alt:

(a) “Unintentional emissions and releases” means atmospheric mercury emissions and releases of mercury or mercury compounds to water and land that result from human industrial, residential or agricultural activities in which the production of such emissions or releases is not the main intent of such activities. For the purposes of this article and Annex G.alt, “unintentional emissions and releases” shall not exclude emissions and releases that may result from negligent, reckless or illegal behaviour;

- (b) “Atmospheric mercury emissions” and “atmospheric emissions of mercury” mean emissions to the atmosphere of gas-phase oxidized mercury (Hg<sub>2+</sub>), gas-phase elemental mercury (Hg<sub>0</sub>) or solid-phase particulate-bound mercury (Hg<sub>p</sub>); and
- (c) “Significant aggregate mercury emissions” means the annual atmospheric mercury emissions of a Party from the source categories listed in Part I of Annex G.alt that, in total, equal [10] or more tons.
2. Each Party [shall] [may take measures to] reduce, and where feasible eliminate, atmospheric emissions of mercury and releases of mercury and mercury compounds to the water and land from the source categories listed in Annex G.alt, subject to the provisions of that annex.
3. For new emissions and release sources among the source categories listed in Annex G.alt, each Party shall:
- (a) [Require] [promote] the use of best available techniques for such sources as soon as practicable, but no later than X years after the entry into force of the Convention for it; and
- (b) [Promote] [Require] the use of best environmental practices.
4. For existing emissions and release sources among the source categories listed in Annex G.alt, each Party shall [require] [promote] the use of best available techniques and best environmental practices.
5. A Party may use release limit values or performance standards to fulfil its commitments for best available techniques under this article.
6. The Conference of the Parties shall at its first meeting adopt guidelines on best available techniques and best environmental practices for reducing atmospheric emissions of mercury and releases of mercury and mercury compounds from the source categories listed in Annex G.alt[, taking into account any guidelines developed under the provisions of Articles 3, 6, 7, 9, 13 and 14 that are relevant to the achievement of reductions of releases of mercury and mercury compounds to water and land]. Parties shall take these guidelines into account when implementing the provisions of this article.
7. Each Party [with significant aggregate mercury emissions from the source categories listed in Part I of Annex G.alt shall, within the later of X years of entry into force of this Convention for the Party or X years of becoming a source of significant aggregate mercury emissions from such sources] [may]:
- (a) Adopt a national goal for reducing, and where feasible eliminating, atmospheric mercury emissions from the source categories listed in Part I of Annex G.alt;
- (b) Submit its national goal to the Secretariat for distribution to the Parties and consideration by the Conference of the Parties at its next meeting; and
- (c) Develop, in accordance with Part III of Annex G.alt, a national action plan for reducing, and where feasible eliminating, its atmospheric mercury emissions from the source categories listed in Part I of Annex G.alt.
8. Each Party shall include in its reports submitted pursuant to Article 22 information sufficient to demonstrate its compliance with the provisions of this article. The scope and format of such information shall be decided by the Conference of the Parties at its first meeting.

## **H. Storage, wastes and contaminated sites**

### **12. Environmentally sound storage [of commodity mercury]**

*Comments:*

- A. *This article is based on element 4 of the elements paper.*
- B. *As one party suggested in its written submission, the guidance, guidelines or requirements adopted under this article could include best available techniques or best environmental practices and could address various functions or stages of storage.*
- C. *One party in its written submission suggested that the text in Article 13 on wastes should be moved to Article 12. The draft article below could be modified to accomplish this if the committee so desired.*

**Article 12, option 1**

1. Each Party shall manage

Alternative 1 mercury in a manner consistent with the guidance

Alternative 2 its surplus mercury from the supply sources listed in Annex A in an environmentally sound manner, taking into account the guidance

Alternative 3 commodity mercury in accordance with the [requirements] [guidelines]

on environmentally sound storage adopted, updated or revised by the Conference of the Parties pursuant to this article.

[1 bis. For the purposes of this article, “commodity mercury” means elemental mercury and mercury compounds that are destined for a use allowed to a Party under this Convention.]

2. The Conference of the Parties shall at its first meeting adopt [guidance] [guidelines] [, in the form of an additional annex to this Convention, requirements] on the environmentally sound storage of mercury[, with particular emphasis on mercury from the supply sources listed in Annex A]. [The ultimate objective of the [guidance] [requirements] shall be that all mercury from primary mercury mining or the supply sources listed in Annex A [intended for a use allowed to a Party under this Convention] is stored in an environmentally sound manner.] [In considering the [guidance] [requirements], the Conference of the Parties shall take into account the factors listed in Annex H

Alternative 1 and shall ensure consistency with the requirements referred to in Article 13].

Alternative 2 and shall ensure the availability of alternatives that allow for the total replacement of mercury in products and processes. The Conference shall further ensure that the guidance is consistent with other relevant multilateral environmental agreements and is subject to the availability of storage solutions that are technically and economically feasible and can be implemented by the Parties themselves].

[2 bis. Each Party shall prepare an action plan for implementing the requirements adopted pursuant to paragraph 2. The action plan shall, no later than [X year(s)] after the entry into force of this Convention for the Party, be submitted to the Secretariat for distribution to the Parties.]

[2 ter. Each Party, in the context of its national implementation plan, shall identify and assess suitable sites in its territory for the interim and permanent storage of mercury and mercury wastes, with a view to developing its own storage capacities to achieve compliance with the provisions of this article.]

[2 quater. The Secretariat shall facilitate the development of regional plans to provide for the long-term management of surplus mercury. To the maximum extent feasible, each such regional plan shall provide for establishment of at least one storage facility within the region that is available to all Parties within the region.]

3. To achieve the objectives of this article, the Conference of the Parties shall periodically review the effectiveness of the [guidance] [requirements] [guidelines] adopted under paragraph 2 and shall update or revise [it] [them] as it may deem necessary.

4. Parties [may] [are encouraged to] [shall] cooperate with one another and with relevant intergovernmental organizations and other entities, as appropriate, to develop and maintain global, regional and national capacity for the [long-term environmentally sound storage of mercury] [interim storage of commodity mercury]. [Parties that have sites, installations and infrastructure for interim or permanent storage of mercury and mercury wastes shall make that infrastructure available to the other Parties.]

**Article 12, option 2**

*Comment: This option does not have an annex associated with it.*

Each Party shall manage mercury stored on an interim basis pending recycling or a use allowed to the Party under this Convention in a manner consistent with the guidance on environmentally sound storage adopted by the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

**13. Mercury wastes**

*Comments:*

A. *Comment: This article is based on element 12 of the elements paper.*

B. One party suggested that the contents of this article could be moved into Article 12. If the committee decides to use such an approach, then Article 12 above could be modified accordingly.

1. Each Party shall [ensure] [take appropriate measures so] that mercury wastes[, including mercury-added products upon becoming wastes,] are:

(a) [Handled] [Managed], collected, transported and disposed of in an environmentally sound manner[, taking into account the guidelines developed under paragraph 2] [. For mercury-added products listed in Annex C, this subparagraph shall apply only to products that are manufactured or imported after the date on which this Convention enters into force for the Party];

[(b) Not subjected to disposal operations that may lead to recovery, recycling, reclamation, direct reuse or alternative uses of mercury or mercury compounds[, except for uses allowed to the Party under this Convention] [ that are not permitted under this Convention or relevant international rules, standards and guidelines] [ except for environmentally sound recycling processes that are socially and economically feasible, which Parties shall promote and develop with the aim of recovering mercury contained in end-of-life products];

[(c) Not transported across international boundaries except for the purpose of environmentally sound disposal in conformity with the provisions of this article

Alternative 1 and relevant international rules, standards and guidelines. [Considering the principles of common but differentiated responsibilities and environmental equity,] [S]uch transport may occur only [between developed countries or from developing countries to developed countries] after the exporting Party has received the written consent of the importing State[. Developed countries shall adopt all necessary measures so that end-of-life mercury-added products are managed in their own territories]; and]

Alternative 2 or environmentally sound storage of the mercury content of the wastes in conformity with the provisions of Article 12. Nothing in this paragraph shall authorize movement inconsistent with the obligations of a Party under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal; and]

Alternative 3 and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. For Parties that are not party to the Basel Convention, such transport may occur only after the exporting Party has received the prior informed consent of the importing State; and]

[(d) Disposed of in an environmentally sound manner when their mercury content is low, taking into account international rules, standards and guidelines, including those that may be developed pursuant to paragraph 2, and relevant global and regional regimes governing the management of hazardous wastes.]

Paragraph 1 bis., alternative 1

1 bis. For the purposes of this Convention:

(a) “Mercury waste” means:

(i) Elemental mercury that is disposed of, is intended to be disposed of or is required to be disposed of by provisions of national law or this Convention;

(ii) Mercury-added products upon becoming waste; or

(iii) Wastes contaminated with mercury in concentrations equal to or greater than [5 parts per million]; and

(b) “Environmentally sound management of mercury wastes” means taking all practicable steps to ensure that mercury wastes are managed in a manner that will protect human health and the environment against the adverse effects that may result from such wastes.

*Note: This definition of “environmentally sound management of mercury wastes” was moved here from Article 2 (b), Definitions, and was slightly revised to paraphrase more exactly paragraph 8 of Article 2 of the Basel Convention, upon which it was based.*

Paragraph 1 bis., alternative 2

1 bis. All definitions and provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal shall apply to wastes covered under this Convention. Without prejudice to the definitions set out in the Basel Convention:

- (a) “Mercury waste” under this Convention shall include:
- (i) Mercury and mercury compounds that are not intended to be sold, distributed in commerce, used or exported for the purposes of a use allowed to a Party under this Convention;
  - (ii) Mercury and mercury compounds obtained from sources from which they may not be sold, distributed in commerce, exported or used under this Convention; and
  - (iii) Waste, including mercury-added products upon becoming waste, containing [mercury concentrations above the thresholds defined by the Conference of the Parties pursuant to paragraph 2] [ more than 5 parts per million mercury or substances and objects containing less than 5 parts per million mercury but existing in large quantities as consumer products]; and
- (b) “Disposed of in an environmentally sound manner” in paragraph 1 means that:
- (i) Mercury wastes referred to in subparagraphs (a) (i) and (ii) are managed in accordance with the requirements on environmentally sound storage adopted, updated or revised by the Conference of the Parties pursuant to this article; and
  - (ii) All other mercury wastes containing mercury concentrations above the thresholds referred to in subparagraph (a) (iii) are managed in accordance with the requirements in respect of environmentally sound management adopted, updated or revised by the Conference of the Parties pursuant to this article.

*Comment: One party in its written submission proposed that the exact definition and identification of “mercury waste,” including “mercury-containing waste” and “low-mercury waste,” should be determined by the Conference of the Parties, taking into consideration the cost and availability of pre-treatment and disposal options.*

Paragraph 2, alternative 1

2. [The Conference of the Parties shall at its first meeting adopt in the form of an additional annex the requirements referred to in paragraph 1. In developing the requirements,] [T]he Parties shall cooperate with the appropriate bodies of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. The aim of such cooperation shall be, among other things:

- (a) To determine the [methods] [requirements] that constitute environmentally sound management[, environmentally sound storage] and environmentally sound disposal of mercury wastes [and mercury-added products upon becoming waste] [, taking into account:
  - (i) The objective set out in Article 12 that all mercury from primary mercury mining and the supply sources listed in Annex A is stored in an environmentally sound manner, subject to a use allowed to a Party under this Convention; and]
  - (ii) Relevant provisions of the Basel Convention and guidelines developed thereunder; and]
- [(b) To establish[, as appropriate,]

Alternative 1.1 the concentration levels of mercury that will define low mercury content as referred to in subparagraph 1 (d)].

Alternative 1.2 the level of the thresholds referred to in subparagraph 1 bis. (a)].

Paragraph 2, alternative 2

2. The Conference of the Parties shall[ develop] [, at its [X] meeting, consider devising] guidelines that describe methods that constitute environmentally sound management of mercury wastes and mercury-added products upon becoming wastes. Such guidelines shall take into account:

- (a) Guidance developed for the environmentally sound storage of surplus mercury as required by Article 12; and
- (b) Relevant provisions of the Basel Convention and guidelines developed thereunder.

[3. Each Party shall take steps to minimize the generation of mercury wastes and shall implement public awareness and education campaigns to minimize the disposal of mercury-added products in illegal dumps, sanitary landfills and other inappropriate disposal sites.]

- [4. Each Party shall prepare an action plan for implementing the requirements adopted under this article. The action plan shall, no later than [X year(s)] after the entry into force of this Convention for the Party, be submitted to the Secretariat for distribution to the Parties.]
- [5. The Parties shall adopt provisions related to liability and compensation for damage caused by transboundary movements of mercury wastes subject to this Convention.]
- [6. To achieve the objectives of this article, the Conference of the Parties shall periodically review the effectiveness of the requirements adopted under this article and shall update or revise them as it may deem necessary.]
- [7. Parties may cooperate with one another and with relevant intergovernmental organizations and other entities, as appropriate, to develop and maintain global, regional and national capacity for the environmentally sound [storage] [disposal] of mercury waste.]

#### 14. Contaminated [and polluted] sites

*Comment: This article is based on element 13 of the elements paper.*

##### **Article 14, option 1**

1. Each Party shall [endeavour to] remediate sites contaminated [or polluted] by mercury or mercury compounds in an environmentally sound manner, taking into consideration guidance developed under paragraph 3.
2. Parties [may] [shall] cooperate in developing and implementing strategies and methodologies for identifying, assessing, prioritizing and remediating contaminated [and polluted] sites, including through [the development of mechanisms for] the provision [by developed countries to developing-country Parties] of [necessary international technological,] financial and technical assistance.
3. The Conference of the Parties shall develop [guidance] [[guidelines] on [best available techniques and best environmental practices] [principles of contaminated site management] for:
  - (a) Identifying and assessing contaminated [and polluted] sites[, including through the use of reference values and concentration limits];
  - (b) Preventing mercury contamination [and pollution] from spreading; and
  - (c) Managing and[, where [feasible] [necessary to prevent damage to the environment],] remediating and rehabilitating contaminated [and polluted] sites[, especially those where the area and volume of contamination involved render this a complex task].
- [4. A Party may use release limit values or performance standards to fulfil its commitments in respect of best available techniques under this article.]

##### **Article 14, option 2**

Each Party shall endeavour to develop appropriate strategies for identifying sites contaminated by mercury and mercury compounds. Any remediation of such sites shall be performed in an environmentally sound manner.

### **I. Financial resources and technical and implementation assistance**

#### 15. Financial resources and mechanisms

##### **Article 15, option 1**

1. Each [developed-country Party [undertakes to] [shall] provide[, within its capabilities,] financial support and incentives in respect of those national activities [of developing-country Parties] that are intended to achieve the objective of this Convention[ in accordance with its national plans, priorities and programmes].

##### **Paragraph 2, alternative 1**

- [2. The ability of developing countries and countries with economies in transition to implement some legal obligations effectively under this Convention will [depend on the availability of] [require] capacity-building and technical and [adequate] financial assistance.]

##### **Paragraph 2, alternative 2**

- [2. The extent to which the developing-country Parties will effectively implement their commitments under this Convention will depend on the effective implementation by

developed-country Parties of their commitments under this Convention relating to financial resources, technical assistance and technology transfer. The fact that sustainable economic and social development and eradication of poverty are the first and overriding priorities of the developing-country Parties will be taken into full account, giving due consideration to the need for the protection of human health and the environment.

3. A mechanism for the provision of financial [and technical] cooperation[, including the transfer of technologies,] to developing-country Parties and Parties with economies in transition

Alternative 1 [ to assist [in meeting agreed incremental costs of ]their compliance with the provisions of this Convention]

Alternative 2 [ relating to the implementation of this Convention]

is hereby defined. [The mechanism shall provide assistance for agreed incremental costs of developing-country Parties and Parties with economies in transition to assist their compliance and discourage their non-compliance with the control measures set out in Articles [x] of this Convention.] [For the purposes of this Convention ] [T]he mechanism shall operate under the authority[, as appropriate,] and [policy] guidance of[, and be accountable to,] the Conference of the Parties[, which shall decide on its overall policies].

[3 bis. [The mechanism shall operate under the authority and guidance of the Conference of the Parties, which shall decide on its overall policies.] The Conference of the Parties shall at its first meeting adopt appropriate guidance to be provided to the mechanism, including an indicative list of the categories of incremental costs, and clear and detailed criteria and guidelines regarding eligibility for access to and use of financial resources, which shall include provision for regular monitoring and evaluation of such use.]

4. The mechanism shall include one or more funds and may be operated by one or more entities, including existing international entities, as [shall] [may] be decided by the Conference of the Parties. The mechanism may also include other entities providing multilateral, regional and bilateral financial and technical assistance. Contributions from other sources[, including the private sector,] are encouraged. [Contributions from industry through approaches such as cost-recovery schemes and business development could play a key role in the achievement of the objectives of this Convention and should be promoted by the Parties.]

Paragraph 5, alternative 1

[5. The Conference of the Parties shall at its first meeting [decide upon institutional arrangements for the mechanism, including its governance structure, operational policies, guidelines that it will follow and administrative arrangements] [ adopt appropriate guidance to be provided to the mechanism and shall agree with the entity or entities participating in the financial mechanism on arrangements to give effect thereto. The guidance shall address, among other things: *[to be completed later in the negotiations]*.]

Paragraph 5, alternative 2

[The financial mechanism shall be developed and established before the date on which this Convention enters into force.<sup>5</sup> The mechanism should accord highest priority to providing financial support to developing-country Parties and Parties with economies in transition for the development and implementation of their national implementation plans.]

[6. Each Party shall include in its reports submitted pursuant to Article 22 information demonstrating how it has implemented the provisions of this article.]

7. The Conference of the Parties shall review, not later than its [fourth] ordinary meeting and thereafter on a regular basis, the effectiveness of the mechanism[, its ability to meet the changing needs of the developing-country Parties and Parties with economies in transition, the level of funding made available through the mechanism,] and the effectiveness of the performance of any institutional entities entrusted with the operation of the mechanism. The Conference of the Parties shall, based upon such review, take appropriate action, if necessary, to improve the mechanism's effectiveness.

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5 Secretariat note: A multilateral environmental treaty normally cannot create obligations that are binding on States before the treaty enters into force for them. The committee may wish to consider whether a provision such as this would be more appropriate in a decision of the diplomatic conference at which the mercury instrument will be adopted, instead of in the text of the Convention.

**Article 15, option 2**

1. The Parties shall establish a mechanism for providing financial and technical cooperation, including the transfer of technologies, to developing-country Parties and Parties with economies in transition, so that these Parties may apply the control measures set forth in this Convention. The mechanism shall receive contributions from developed-country Parties and other donors and shall cover all [approved additional] [agreed incremental] costs incurred by developing-country Parties and Parties with economies in transition [in order] [to enable them] to comply with the control measures set forth in this Convention.
2. The mechanism established under paragraph 1 shall be a [stand-alone] multilateral mercury fund, which shall be funded by contributions that are additional to other financial transfers to the developing-country Parties and Parties with economies in transition specified in that paragraph and may include other forms of multilateral, regional and bilateral cooperation.
3. The multilateral mercury fund shall:
  - (a) Meet, through [donations or on a] [a grant or] concessional basis as appropriate, and in accordance with the criteria on which the Parties shall decide, [all approved additional] [the agreed incremental] costs referred to in paragraph 1;
  - (b) Finance activities:
    - (i) To assist developing-country Parties and Parties with economies in transition to develop and implement national implementation plans, including through country case studies, the [completion and expansion] [production and updating] of inventories, and other forms of technical cooperation, to formulate national strategies designed to reduce mercury usage and releases and to determine their needs for cooperation to implement those strategies;
    - (ii) To facilitate technical cooperation to meet those needs determined under subparagraph (i);
    - (iii) To distribute relevant documents and information, provide practical courses and training sessions and offer other related activities for the benefit of developing-country Parties and Parties with economies in transition; and
    - (iv) To facilitate and pursue other forms of multilateral, regional and bilateral cooperation [, which shall be made] available to developing-country Parties and Parties with economies in transition;
4. [The multilateral mercury fund shall be developed and established before the date on which this Convention enters into force.<sup>6</sup>] The mechanism shall [be subject to] [operate under] the authority of the Conference of Parties, which shall [be responsible for determining its general policy] [decide on its overall policies].
5. The Conference of Parties shall establish an executive committee to develop and monitor the implementation of administrative arrangements, guidelines and specific operational policies, including the disbursement of resources, in order to accomplish the objectives of the multilateral mercury fund. The executive committee shall undertake the duties and responsibilities specified in its terms of reference, as agreed upon by the Parties, with the cooperation and assistance of other appropriate agencies in their respective fields of competence. The members of the executive committee shall be selected to reflect a balanced representation of developing-country Parties, Parties with economies in transition and developed country Parties.
6. The multilateral mercury fund shall be financed through contributions by developed-country Parties in convertible currencies, or in specific circumstances approved by the Parties through contributions in kind or in national currencies, based on the United Nations scale of assessments. Contributions from other Parties shall be encouraged. Bilateral cooperation, and in specific cases approved by the Parties regional cooperation, may, up to a certain percentage and in compliance with the criteria specified by agreement of the Parties, be considered a contribution to the multilateral mercury fund, provided that such cooperation[, at a minimum]:
  - (a) Strictly relates to [fulfilment of] [compliance with] the provisions of this instrument;
  - (b) Provides additional resources; and
  - (c) [Corresponds to approved supplemental] [Meets agreed incremental] costs.

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6 See above, footnote 5.

7. The Parties shall determine the programme budget for the multilateral mercury fund for each fiscal period and the percentage of contributions to it of each Party.
8. Any resources made available through the multilateral mercury fund shall be provided with the [approval] [concurrence] of the benefiting Party.
9. Decisions by the Parties under this article shall be adopted [in a manner that gives priority to consensus] [by consensus wherever possible].
10. The financial mechanism established under this article [shall not exclude] [is without prejudice to] any other arrangements that may be established in future with regard to other environmental issues, provided that such arrangements do not [affect the achievement of] [hinder achievement of] the mechanism's objectives.

## 16. Technical assistance [and capacity-building]

### Article 16, option 1

1. [Developed [country] Parties [and other Parties in a position to do so] shall] [The Parties shall cooperate to] provide technical assistance to developing-country Parties and Parties with economies in transition to develop and strengthen their capacities to implement their obligations under this Convention. Parties may wish to cooperate, including at the regional and subregional levels, to provide such assistance in a timely and appropriate manner. [Intergovernmental organizations, non-governmental organizations and the private sector qualified in matters related to this Convention may be invited to participate in such cooperation.] Each Party shall include in its reports submitted pursuant to Article 22 information demonstrating how it has implemented the provisions of this article.

[1 bis. The Parties shall establish a technology transfer mechanism, taking into consideration existing regional centres for other multilateral environmental agreements, to facilitate technology transfer to, and enhance the capacity of, developing-country Parties. The Conference of the Parties shall ensure the transfer of technology from developed-country Parties to developing-country Parties free of charge. The extent to which the developing-country Parties will effectively implement their commitments under this Convention will depend on the effective implementation by developed-country Parties of their commitments under this Convention relating to technical assistance and technology transfer. The technical assistance and capacity-building mechanism shall be established before the entry into force of this Convention.<sup>7</sup>]

2. The Conference of the Parties [shall provide] [may provide] further guidance on the implementation of this article.

### Article 16, option 2

1. Developed-country Parties shall:

- (a) Provide timely and sufficient technical assistance to developing-country Parties and Parties with economies in transition to support them, giving due consideration to their special needs and national priorities, as they develop their infrastructures and strengthen the capabilities necessary to meet their obligations set forth in this Convention;
- (b) Cooperate in the development and application of new technologies that are environmentally sound and emit low levels of mercury waste and in the improvement of current technologies with a view to eliminating, to the fullest extent possible, the generation of hazardous and other types of mercury waste and to achieve more effective and efficient methods for the environmentally sound management of waste, including a study of the economic, social and environmental effects of the adoption of such new or improved technologies. This cooperation shall contribute particularly to the development of measures designed to reduce the use of mercury in artisanal and small-scale gold mining activities in the Parties' territories where that may be required; and
- (c) Cooperate actively in the transfer of technology and administration systems pertaining to the environmentally sound management of mercury.

2. The Parties shall establish arrangements for the purpose of providing technical assistance and promoting the transfer of technology to developing-country Parties and Parties with economies in transition relating to the implementation of this Convention. These arrangements shall include, as appropriate, regional and subregional centres for capacity-building and transfer of technology, including the existing regional and subregional centres of the Basel Convention and the Stockholm

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<sup>7</sup> See above, footnote 5.

Convention on Persistent Organic Pollutants, to assist developing-country Parties and Parties with economies in transition to meet their obligations under this Convention. [Intergovernmental organizations, non-governmental organizations and other private sector entities qualified in matters related to this Convention may be invited to participate in such arrangements.] Further guidance in this regard may be provided by the Conference of the Parties.

**Article 16, option 3**

Developed-country Parties shall take all necessary steps, consistent with the programmes supported by the financial mechanism established under Article 15, to promote, facilitate and fund as appropriate the transfer of the best available environmentally safe substitutes and related technologies and knowledge that do not present a hazard to the environment or human health to developing-country Parties and Parties with economies in transition to enable them to apply the provisions of this Convention. Such transfer of technologies shall be provided under fair conditions and on the most favourable terms and shall include technical assistance for the development of the necessary infrastructure and capacity to manage mercury and bilateral and multilateral support for the supply of information, equipment, installations and necessary services.

**[16 bis. Partnerships**

1. The Parties may establish partnerships to assist in the implementation of their commitments and achievement of the objectives of this Convention.
2. The Conference of the Parties shall provide further guidance on this article and shall establish a framework for partnerships at its first meeting.]

**17. [[Implementation] [Compliance] committee] [Committee[s] on financial assistance, technical support, capacity-building and implementation]**

**Article 17, option 1 (Implementation/Compliance committee)**

Paragraph 1, chapeau, alternative 1

1. The Conference of the Parties shall at its first meeting establish an implementation committee to promote compliance with the provisions of this Convention. The Conference shall also at that meeting decide on the committee's terms of reference. The Committee:

Paragraph 1, chapeau, alternative 2

1. [An implementation] [A compliance] committee to promote compliance with the provisions of this Convention is hereby established [as a subsidiary body of the Conference of the Parties.] The Committee:

Subparagraphs following chapeau:

- (a) Shall consist of [10] [15] members [with competence in the field of mercury] nominated by Parties and elected by the Conference of the Parties on the basis of equitable geographical representation [of the five regional groups of the United Nations];
- (b) May decide to examine any question of [implementation of] [compliance, including systemic issues of general non-compliance of interest to all Parties to] the Convention that come to its attention. It may consider such questions on the basis of:
  - (i) Written submissions from any Party;
  - [(ii) National reports and reporting requirements under Article 22;]
  - (iii) Requests from the Conference of the Parties; or
  - (iv) Any other relevant information that becomes available to the Committee;
- (c) May make non-binding recommendations for consideration by the [Conference of the ]Parties;[ and]
- (d) Shall make every effort to adopt its recommendations by consensus. If all efforts at consensus have been exhausted and no consensus is reached, such recommendations shall as a last resort be adopted by a [three-fourths] majority vote of the members present and voting[; and]
- [(e) Shall report at each ordinary meeting of the Conference of the Parties on the work that it has carried out since the last such meeting].

2. The Conference of the Parties may, as it considers necessary for the implementation of this Convention, adopt from time to time any further terms of reference for the committee that it deems appropriate and assign the committee responsibilities [related to implementation of this Convention] that are additional to those mandated in this article.

[3. The Conference of the Parties at its first meeting shall elect five members of the committee, one from each region, for one term [of two years], and [five] [10] members, [one] [two] from each region, for two [such] terms. The Conference of the Parties shall at each ordinary meeting thereafter elect for two full terms new members to replace those members whose terms have expired or are about to expire.]

[4. The committee shall, unless it decides otherwise, meet at least once [annually] [between ordinary meetings of the Conference of the Parties]. [The committee shall elect its own chair from among its members. It shall develop its own rules of procedure, which shall be consistent with this article and any further terms of reference adopted by the Conference of the Parties, and which shall be submitted to the Conference of the Parties for its approval.] The Secretariat shall arrange for and service the meetings of the committee.]

**Article 17, option 2 (Committee(s) on financial assistance, technical support, capacity-building and implementation)**

1. The Conference of the Parties shall at its first meeting establish a financial assistance, technical support

Alternative 1: , capacity building and

Alternative 2: and capacity-building committee and an

implementation committee to promote implementation of this Convention. The Conference shall also at that meeting decide on the terms of reference of the committee[s].

2. The committee[s] shall [each] consist of 25 members nominated by Parties and elected by the Conference of the Parties on the basis of equitable geographical representation.

3. The [mandate and tasks] [rules of procedure] of the committee[s] shall be [developed] [established] by the Conference of the Parties at its first meeting.

## **J. Awareness-raising, research and monitoring, and communication of information**

### **18. Information exchange**

1. Each Party shall facilitate the exchange of:

(a) Scientific, technical, economic and legal information concerning mercury and its compounds, including toxicological, ecotoxicological and safety information [and information concerning artisanal and small-scale gold mining];

(b) Information on the reduction or elimination of the production, use, trade and release, including from unintentional sources, of mercury and mercury compounds; and

(c) Information on [socially viable] alternatives to mercury-added products, manufacturing processes in which mercury is used and activities and processes that emit or release mercury or mercury compounds, including information on the risks and economic and social costs and benefits of such alternatives.

2. Parties shall exchange the information referred to in paragraph 1 directly or through the Secretariat.

[3. Each Party shall designate a national authority for the exchange of information under this Convention, including with regard to export notifications and the consent of importing Parties under paragraph 2 of Article 4 and paragraph 2 (b) of Article 6.]

*Comment: One party at the Committee's second session and in its written submission proposed that paragraph 3 should be moved to Article 4. The paragraph may be found in this draft text in paragraph 2 bis of that article.*

4. The Secretariat shall facilitate the exchange of information relating to the implementation of this Convention[, including information] provided by Parties, intergovernmental organizations[ and non-governmental organizations].

5. For the purposes of this Convention, information on the health and safety of humans and the environment shall not be regarded as confidential. Parties that exchange other information pursuant to this Convention shall protect any confidential information as mutually agreed.

#### 19. Public information, awareness and education

Each Party shall:

- (a) Provide the public with access to up-to-date information on:
  - (i) The health and environmental effects of mercury;
  - (ii) Alternatives to mercury;
  - [(iii) Domestically produced products that contain mercury and domestic processes that use mercury, and activities under way or planned to reduce or eliminate the same;]
  - [(iv) The topics identified for information exchange in paragraph 1 of Article 18;]
  - [(v) The results of their research, development and monitoring activities under Article 20;] [and]
  - [(vi) Their activities to meet their obligations under this Convention;]
- (b) Promote and cooperate in education, training and public awareness related to mercury and encourage the widest possible participation in the implementation of the Convention, including that of [the World Health Organization and] non-governmental organizations [and vulnerable populations] [; and]
- [(c) Give sympathetic consideration to developing mechanisms, such as pollutant release and transfer registers, for the collection and dissemination of information on estimates of the annual quantities of mercury and mercury compounds that are released or disposed of through human activities].

#### 20. Research, development and monitoring

Parties shall cooperate to develop and improve:

- (a) Inventories of national[, regional and global] use, consumption and anthropogenic releases of mercury and mercury compounds;
- (b) Monitoring of mercury levels in [geographically representative vulnerable populations and] environmental media, including biotic media such as fish and marine mammals[, taking appropriate consideration of the distinction between anthropogenic and natural releases of mercury, and remobilization of mercury from historic deposition];
- (c) Assessments of the impact of mercury and mercury compounds on human health and the environment, in addition to social, economic and cultural impacts, particularly in respect of vulnerable communities;
- [(c) bis Harmonized methodologies for:
  - [(i) Evaluating risks related to mercury and mercury compounds;]
  - [(ii) Monitoring under subparagraph (b)] [; and]
  - [(iii) Developing inventories of use, consumption and anthropogenic releases to the environment of mercury and mercury compounds;]]
- (d) Information on the environmental cycle, transport, transformation and fate of mercury and mercury compounds;
- (e) Information on commerce and trade in mercury and mercury-added products; and
- (f) The technical and economic availability of mercury-free products and processes[, and best available techniques and best environmental practices to reduce and monitor releases of mercury and mercury compounds].

#### [20 bis. Health aspects

To protect those who are most vulnerable to the health impacts of mercury, the Parties shall:

- (a) Promote health studies with risk management plans, focusing on the most vulnerable populations;

- (b) Forge closer ties with the World Health Organization and the International Labour Organization in respect of technical cooperation and capacity-building;
- (c) Promote access to health care by vulnerable populations as part of their efforts to prevent exposure to mercury pollution and rehabilitate contaminated sites;
- (d) Disseminate information on and promote awareness of the routes of exposure to mercury, including through ingestion of food, exposure to contaminated sites, occupational exposure and other means;
- (e) Consider the preventive aspects of occupational health and assistance to concerned workers;
- (f) Promote cooperation, scientific research and information exchange, including on viable social and economic alternatives to the use of mercury and mercury compounds in the health sector;
- (g) Support developing countries in the use of biomonitoring systems and harmonized systems to measure mercury accumulation; and
- (h) Provide, in the case of developed country Parties, technical and financial resources to support activities under this article.]

## 21. Implementation plans

### Article 21, option 1

[0. The Conference of the Parties at its [first] meeting shall develop a menu-based template to which Parties may refer in their development of implementation plans under this article.]

1. Each Party [in a position to do so] [may] [shall]:
  - (a) Develop and execute a plan for meeting its obligations under this Convention[, based on the template developed under paragraph 0 and according to its specific situation];
  - (b) Declare its intentions in respect of the plan referred to in subparagraph (a) by submitting a notification to the Secretariat not later than [two years after] the date of entry into force of this Convention for it;
  - (c) Transmit its implementation plan to the Conference of the Parties within [one] [three] year[s] of the date on which [this Convention enters into force for it] [it submits its notification to the Secretariat];
  - (d) Review and update its implementation plan periodically and in a manner to be specified by a decision of the Conference of the Parties; and
  - (e) Include its reviews under subparagraph (d) in its reports submitted pursuant to Article 22.
2. Parties shall, where appropriate, consult their national stakeholders to facilitate the development, implementation, review and updating of their implementation plans, and may cooperate directly or through global, regional and subregional organizations.
- [3. The Conference of the Parties shall review and evaluate implementation plans transmitted by developing-country Parties pursuant to subparagraph (c) of paragraph 1 and shall endorse the provision of financial resources through the financial mechanism of this Convention sufficient to fund those activities set out in such implementation plans that are aimed at compliance with the obligations established under this Convention. Such implementation plans may include any national action plans required under Annex D[, E] or [F] [G.alt].]

### Article 21, option 2

1. No later than five years after the entry into force of this instrument Parties shall devise implementation plans with a view to complying with their obligations under this Convention;
2. Parties shall consider updating their implementation plans taking into account, among other things, the findings of studies and scientific and technical developments;
3. The Conference of the Parties at its [X] meeting shall determine the criteria for drafting and updating implementation plans; and
4. The measures envisaged in the preceding paragraphs shall be implemented taking into account Parties' social and economic conditions, and compliance shall be subject to the mobilization of

sufficient, predictable and appropriate financial resources, technology transfer and the provision of cooperation as required for capacity-building in Parties in accordance with their own assessments of their needs and priorities.

## 22. Reporting

### Article 22, option 1

1. Each Party shall report to the Conference of the Parties on the measures that 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. Each Party shall provide to the Secretariat, where applicable:
  - (a) Mercury supply data as specified in Article 3;
  - (b) Statistical data on its total quantities of mercury and mercury compounds imported or exported under Articles 5 and 6, including the States from which it has imported mercury and mercury compounds and the States to which it has exported mercury and mercury compounds;
  - (c) Statistical data on its manufacture, distribution in commerce and sale of mercury-added products listed in Annex C, in addition to its export of such products;
 

[(c) bis Customs codes assigned by the World Customs Organization under the Harmonized Commodity Description and Coding System, where they are available, when referencing mercury and mercury compounds or mercury-added products in statistical data provided pursuant to subparagraphs (b) and (c);]
  - (d) Information on its progress in reducing, and where feasible eliminating, atmospheric emissions and releases of mercury and mercury compounds as required under [Articles 10 and 11] [Article 11.alt];
  - (e) Information on its provision of financial and technical cooperation as required under Articles 15 and 16;
  - (f) Reviews of the progress of its implementation plan under Article 21; and
  - (g) Any other information, data or reports required by the provisions of this Convention.
3. Such reporting shall be at periodic intervals and in a format to be decided by the Conference of the Parties at its first meeting, taking into account the desirability of coordinating reporting formats and processes with those of other relevant chemicals and wastes conventions.

### Article 22, option 2

1. Each Party shall prepare national reports on its progress in applying the provisions of this Convention, taking into account the contents of its implementation plan.
2. The Conference of the Parties shall determine criteria for the submission and review of implementation reports and shall identify appropriate means of implementation to enable countries to step up their efforts to apply the provisions of this Convention.
3. The measures envisaged in this article shall be implemented taking into account the Parties' social and economic conditions, and their compliance shall be subject to the mobilization of sufficient, predictable and appropriate financial resources, technology transfer and the provision of cooperation as required for capacity-building in Parties in accordance with their own assessments of their needs and priorities.

## 23. Effectiveness evaluation

1. Beginning four 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.
2. The evaluation shall be conducted on the basis of available scientific, environmental, technical[, financial] and economic information, including:
  - (a) Reports and other monitoring information provided to [or obtained by] the Conference of the Parties[, including trends in mercury levels observed in biotic media and vulnerable populations];
  - (b) National reports submitted pursuant to Article 22; [and]

(c) [Implementation] [Compliance] information and recommendations provided pursuant to Article 17[; and]

[(d) Reports and other relevant information on the operation of the financial assistance, technology transfer and capacity-building arrangements put in place under this Convention].

[3. To facilitate the evaluation, the Conference of the Parties at its first meeting shall [adopt effectiveness evaluation criteria and indicators, and shall] 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 [and mercury compounds] in the environment, in addition to their regional and global environmental transport and fate[, based on the establishment of appropriate core media]. 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 [from other multilateral environmental agreements] 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 releases and climate effects on the presence of mercury and its speciation];

[(d) Should integrate monitoring results and transport models to facilitate the interpretation of 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.

## **K. Institutional arrangements**

### **24. Conference of the Parties**

1. A Conference of the Parties is hereby established.

2. The first meeting of the Conference of the Parties shall be convened by the Executive Director of the United Nations Environment Programme no later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be decided by the Conference.

3. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party provided that the request is supported by at least one third of the Parties.

4. The Conference of the Parties shall by consensus agree upon and adopt at its first meeting rules of procedure and financial rules for itself and any subsidiary bodies, in addition to financial provisions governing the functioning of the Secretariat.

5. The Conference of the Parties shall keep under continuous review and evaluation the implementation of this Convention. It shall perform the functions assigned to it by the Convention and, to that end, shall:

(a) Establish such subsidiary bodies as it considers necessary for the implementation of the Convention;

(b) Cooperate, where appropriate, with competent international organizations and intergovernmental and non-governmental bodies;

(c) Regularly review all information made available to it and to the Secretariat pursuant to Article 22;

[(c) bis Review, evaluate and endorse the national implementation plans submitted by Parties pursuant to Article 21;]

(d) Consider any recommendations submitted to it by the [Implementation] [Compliance] Committee; [and]

(e) Consider and undertake any additional action that may be required for the achievement of the objectives of the Convention[; and]

[(f) Review Annexes C and D every [five] years, taking into account recent technical and economic developments, with a view

Alternative 1 (applying to option 2 of Article 6 and option 2 of paragraph 1 of Article 7)

to reducing within a specified time limit the number of generally applicable exemptions set out in these annexes or restricting the duration of such exemptions.

Alternative 2 (applying to options 1 and 3 of Article 6 and options 1 and 3 of paragraph 1 of Article 7)

to, within a specified time limit, adding further products and manufacturing processes to these annexes or restricting the number and duration of the exemptions set out therein.

Final sentence of subparagraph (f)

Following each such review the Conference of the Parties may decide to amend the annexes accordingly, in accordance with the provisions of Article 28.]

6. The United Nations, its specialized agencies and the International Atomic Energy Agency, in addition to any State not a Party to this Convention, may be represented at meetings of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, that is qualified in matters covered by the Convention and has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

## 25. Secretariat

1. A secretariat is hereby established.
2. The functions of the Secretariat shall be:
  - (a) To make arrangements for meetings of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;
  - (b) To facilitate assistance to Parties, particularly developing-country Parties and Parties with economies in transition, on request, in the implementation of this Convention;
  - (c) To coordinate, as appropriate, with the secretariats of relevant international bodies, particularly other chemicals and wastes conventions;
  - (d) To assist Parties in the exchange of information related to the implementation of this Convention;
  - (e) To prepare and make available to the Parties periodic reports based on information received pursuant to Articles 17 and 22 and other available information;
  - (f) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and
  - (g) To perform the other secretariat functions specified in this Convention and such other functions as may be determined by the Conference of the Parties.
3. The secretariat functions for this Convention shall be performed by the Executive Director of the United Nations Environment Programme, unless the Conference of the Parties decides, by a X majority of the Parties present and voting, to entrust the secretariat functions to one or more other international organizations.
4. [The Conference of the Parties, in consultation with appropriate international bodies, may provide for enhanced] [Building on the enhanced cooperation and coordination between the secretariats of the Basel, Rotterdam and Stockholm conventions, possibilities for] cooperation and coordination between the Secretariat and the secretariats of other chemicals and wastes conventions [and instruments shall be explored and used to the greatest extent possible. The Conference of the Parties, in consultation with appropriate international bodies, may provide further guidance on this matter].

### [25 bis. Expert bodies

*Comment: Two parties in their written submissions proposed that the new draft text should provide for the establishment of an expert body that would advise the Conference of the Parties regarding the*

implementation, review or further development of the mercury instrument. These proposals are presented below.

#### **Option 1 (Committee on technological progress)**

1. A Committee on Technological Progress is hereby established as a subsidiary body of the Conference of the Parties to provide it with assessments of existing and alternative technologies that may reduce the use of mercury in products and processes and unintended releases of mercury and mercury compounds. The Committee shall base its assessments on available scientific, health, environmental, technical and economic information. The Committee shall submit a report to the Conference of the Parties at its second meeting, and thereafter at each ordinary meeting, unless the Conference decides otherwise.
2. The Committee shall be multidisciplinary and open to the participation of all Parties. It shall comprise government representatives competent in relevant fields of expertise and observers.
3. The Conference of the Parties shall decide at its first meeting on the Committee's terms of reference.

#### **Option 2 (Expert body for scientific, environmental, technical and economic issues)**

The Conference of the Parties shall, at its first meeting, decide on an appropriate body of experts qualified to assist it in its tasks, in particular those referred to in Articles 8, 11–13, 23 and 28, by assessing the matters related to those tasks on the basis of scientific, environmental, technical and economic information. The Conference of the Parties shall determine the composition and terms of reference of the body of experts. The body of experts shall report its conclusions to the Conference of the Parties one year after having been convened, and thereafter according to its terms of reference.]

## **L. Settlement of disputes**

### **26. Settlement of disputes**

1. Parties shall seek a settlement of any dispute between them concerning the interpretation or application of this Convention through negotiation or other peaceful means of their own choice.
2. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party that is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, with regard to any dispute concerning the interpretation or application of the Convention, it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:
  - (a) Arbitration in accordance with procedures set out in Part I of Annex J; and
  - (b) Submission of the dispute to the International Court of Justice.
3. A Party that is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in paragraph 2 (a).
4. A declaration made pursuant to paragraph 2 or paragraph 3 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.
5. The expiry of a declaration, a notice of revocation or a new declaration shall in no way affect proceedings pending before an arbitral tribunal or the International Court of Justice unless the parties to the dispute otherwise agree.
6. If the parties to a dispute have not accepted the same procedure pursuant to paragraph 2 and if they have not been able to settle their dispute through the means mentioned in paragraph 1 within 12 months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted to a conciliation commission at the request of any party to the dispute. The conciliation commission shall [render a report with recommendations] [make proposals for a resolution of the dispute]. Additional procedures relating to the conciliation commission are set out in Part II of Annex J.

*Comment: Part IX of the elements paper referenced but for reasons of economy did not contain texts for the arbitration and conciliation procedures. These appear in this new draft text in Parts I and II of Annex J. They are reproduced from document UNEP(DTIE)/Hg/INC.1/7, which was prepared by the secretariat for the Committee's first session. The brackets that appear in Annex J reflect views expressed in a party's written submission.*

## **M. Further development of the Convention**

### **27. Amendments to the Convention**

1. Amendments to this Convention may be proposed by any Party[, but no earlier than X years after the entry into force of this Convention]. [Such amendments shall not prejudice the interests of any Party to this Convention.]
2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. The text of any proposed amendment shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate the proposed amendment to the signatories to this Convention and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. [If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a X majority vote of the Parties present and voting at the meeting.]
4. The adopted amendment shall be communicated by the Depositary to all Parties for ratification, acceptance or approval.
5. Ratification, acceptance or approval of an amendment shall be notified to the Depositary in writing. An amendment adopted in accordance with paragraph 3 shall enter into force for the Parties having accepted it on the ninetieth day after the date of deposit of instruments of ratification, acceptance or approval by at least [three-fourths] of the [number of] Parties[ at the time at which the amendment was adopted]. Thereafter, the amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of ratification, acceptance or approval of the amendment.

### **28. Adoption and amendment of annexes**

1. Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any annexes thereto.
2. Any additional annexes adopted after the entry into force of this Convention shall be restricted to procedural, scientific, technical or administrative matters.
3. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:
  - (a) Additional annexes shall be proposed and adopted according to the procedure laid down in paragraphs 1–3 of Article 27;
  - (b) Any Party that is unable to accept an additional annex shall so notify the Depositary, in writing, within one year from the date of communication of the adoption of the additional Annex by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous notification of non-acceptance in respect of an additional annex and the annex shall thereupon enter into force for that Party subject to subparagraph (c); and
  - (c) On the expiry of one year from the date of the communication by the Depositary of the adoption of an additional annex, the annex shall enter into force for all Parties that have not submitted a notification in accordance with the provisions of subparagraph (b).
4. The proposal, adoption and entry into force of amendments to annexes to this Convention shall be subject to the same procedures as for the proposal, adoption and entry into force of additional annexes to the Convention[, except that an amendment to [Annex X] shall not enter into force with regard to any Party that has made a declaration with regard to amendment of [that Annex] [those Annexes] in accordance with paragraph 4 of Article 31, in which case any such amendment shall enter into force for such a Party on the ninetieth day after the date it has deposited with the Depositary its instrument of ratification, acceptance, approval or accession with respect to such amendment.]
5. If an additional annex or an amendment to an annex is related to an amendment to this Convention, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention enters into force.

## **N. Final provisions**

### **29. Right to vote**

1. Each Party to this Convention shall have one vote, except as provided for in paragraph 2.
2. A regional economic integration organization, on matters within its competence, shall exercise its right to vote with a number of votes equal to the number of its member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

### **30. Signature**

This Convention shall be open for signature at \_\_\_ by all States and regional economic integration organizations from \_\_\_ to \_\_\_, and at the United Nations Headquarters in New York from \_\_\_ to \_\_\_.

### **31. Ratification, acceptance, approval or accession**

1. This Convention shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. It shall be open for accession by States and by regional economic integration organizations from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization that becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.
3. In its instrument of ratification, acceptance, approval or accession, a regional economic integration organization shall declare the extent of its competence in respect of the matters governed by this Convention. Any such organization shall also inform the Depositary, who shall in turn inform the Parties, of any relevant modification of the extent of its competence.
4. States and regional economic integration organizations shall include in their instruments of ratification, acceptance, approval or accession a declaration identifying the legislation or other measures that permit them to implement the obligations set forth in Articles 3–14 of this Convention.]
5. In its instrument of ratification, acceptance, approval or accession, any Party may declare that, with regard to it, any amendment to [Annex X] shall enter into force only upon the deposit of its instrument of ratification, acceptance, approval or accession with respect thereto.

### **32. Entry into force**

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the [thirtieth] [fiftieth] instrument of ratification, acceptance, approval or accession.
2. For each State or regional economic integration organization that ratifies, accepts or approves this Convention or accedes thereto after the deposit of the [thirtieth] [fiftieth] instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.
3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of that organization.
4. All legal obligations under this Convention shall be applicable to developing-country Parties on the condition that the stand-alone multilateral fund has been established and provides substantial assistance.]

**33. Reservations**

[No reservation] [Reservations] may be made to this Convention.

**34. Withdrawal**

1. At any time after [[three] [one] year[s] from the date on which] this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depository.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depository of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

**35. Depository**

The Secretary-General of the United Nations shall be the Depository of this Convention.

**36. Authentic texts**

1. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.
3. Done at \_\_\_\_\_ on this \_\_ day of \_\_, two thousand and thirteen.

## Annex A

### Sources of mercury supply

*Comments:*

A. *This Annex A is associated with Article 3, option 1. Article 3, option 2, does not include an annex; there is therefore no Annex A, option 2.*

B. *Under Article 3, option 1, paragraphs 1 and 2 apply to primary mercury mining and paragraph 3 applies to other mercury supply sources, which could be listed in Annex A. If the Committee decided that primary mining should continue to be allowed as a source for mercury, then it could include such mining among the supply sources listed in Annex A, as has been proposed under the eighth listing entry below.*

C. *One party in its written submission stated that the listing for private mercury stocks should define thresholds at which it would apply.*

Supply source	[Phase-out date]
1. Mercury recovery[, recycling,] and reprocessing operations[, including mercury and mercury compounds recovered from pollution controls for the source categories listed in Annex G.alt].	
2. Mercury and mercury compounds produced as a by-product of non-ferrous metals mining and smelting.	[2025]
3. Mercury from government reserve stocks and inventories.	[2020]
4. Mercury stocks from decommissioned chlor-alkali [and vinyl chloride monomer] plants.	[2020]
[5. Other private stocks of mercury or mercury compounds.]	[2020]
[6. Recycling of mercury-added products, including medical and measurement devices]	
[7. Mercury and mercury compounds produced as a by-product of natural gas production.]	
[8. Mercury produced from extraction operations and treatment of minerals such as cinnabar.]	

## Annex B

### Mercury and mercury compounds subject to international trade measures

- [1. Elemental (metallic) mercury(0).]
2. Mercury(I) chloride or calomel.
3. Mercury(II) oxide.
4. Mercury(II) sulfate.
5. Mercury(II) nitrate.
6. Cinnabar ore [(including artificially synthesized mercury sulphide)].
- [7. Mixtures of elemental mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95 per cent by weight.]

Notes:

- (i) Except as otherwise provided in this Convention, this annex shall not apply to quantities of mercury or mercury compounds to be used for laboratory-scale research or as a reference standard.
- [(ii) Except as otherwise provided in this Convention, this annex shall not apply to naturally occurring trace quantities of mercury or mercury compounds present in mineral products.]

Comments:

A. *The 95 per cent mercury concentration figure in paragraph 7 of Annex B appeared in the elements paper and was based upon a similar provision in the European Union mercury ban of 2008 (Regulation (EC) No. 1102/2008 of the European Parliament and of the Council of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury). The intention of the European Union mercury ban provision was to discourage the dilution of elemental mercury as a way to evade the requirements of the regulation. The committee may wish to consider whether a similar or different approach may be appropriate in the mercury instrument.*

B. *One party in its written submission proposed that the specification of thresholds for other mercury compounds listed in Annex B should also be considered.*

C. *The former Part II of Annex B, "Guidance on environmentally sound storage," has been renamed "Annex H" and may be found below.*

## Annex C

### Annex C, option 1

*Comments:*

A. This Annex C option is associated with Article 6, option 1.

B. If no exemption is indicated in the allowable-use exemption column, then the listed mercury-added product would be prohibited. Alternatively, prohibited products could be indicated by inserting “none” in the allowable-use exemption column.

### Mercury-added products

Mercury-added product not allowed under Article 6	Allowable-use exemption	[Expiration date for exemption]
1. Batteries <ul style="list-style-type: none"> <li>• [Mercuric oxide</li> <li>• Button, mercuric oxide</li> <li>• Alkaline manganese</li> <li>• Button, alkaline manganese</li> <li>• Button, silver oxide</li> <li>• Zinc carbon</li> <li>• Button, zinc air]</li> </ul>	[Alkaline manganese button cell batteries until [date certain or date after entry into force].  Silver oxide button cell batteries [or specific varieties] until [date certain or date after entry into force].]	[insert expiration date for exemption]
2. Measuring devices <ul style="list-style-type: none"> <li>• [Barometers</li> <li>• Flow meters</li> <li>• Manometers</li> <li>• Psychrometers/hygrometers</li> <li>• Pyrometers</li> <li>• Sphygmomanometers</li> <li>• Thermometers]</li> </ul>	[[Specific product] for calibration purposes. Sphygmomanometers as needed for special patient groups, such as patients with arrhythmias.]	[insert expiration date for exemption]
3. Electric switches and relays <ul style="list-style-type: none"> <li>• [Tilt switch</li> <li>• Float switch</li> <li>• Pressure switch</li> <li>• Temperature switch</li> <li>• Displacement relay</li> <li>• Wetted reed relay</li> <li>• Contact relay</li> <li>• Thermostat</li> <li>• Flame sensor]</li> </ul>	[Switches [or specific variety] used as replacement for equipment in use, medical diagnostic equipment, electricity generating facilities.  Relays [or specific variety – to be determined] used as replacement for equipment in use, medical diagnostic equipment, electricity generating facilities.  Thermostats [or specific variety – to be determined] used as replacement for equipment in use, custom-designed and/or associated with industrial applications.  Flame sensors [or specific variety – to be determined] used as replacement for equipment in use.]	[insert expiration date for exemption]
4. Mercury-containing lamps [containing more than 5 mg of mercury] [*]	[Potential content limits and/or de minimis threshold]	[insert expiration date for exemption]
[5. Dental amalgam]	[Potential or gradual phase-down] <sup>8</sup>	[insert expiration date for exemption]
[6. Soaps and cosmetics]		[31 December 2020]

<sup>8</sup> An alternative to listing dental amalgam in Annex C could be to consider addressing it within an appropriate operative paragraph of the agreement itself.

Mercury-added product not allowed under Article 6	Allowable-use exemption	[Expiration date for exemption]
[7. Paints]		[31 December 2020]
[8. Pesticides]		[31 December 2020]
[9. Topical antiseptics]		[31 December 2020]
[10. Pharmaceutical products (human and veterinary uses)]		[31 December 2020]

Notes:

(i) This annex shall not apply to the personal use of products that are not intended for resale.

[(ii) This note shall apply to any mercury-added product that has an asterisk following its name in the mercury-added product column of this annex. Manufacture and production of any such product shall be considered an acceptable use until five years after the Conference of the Parties determines that a mercury-free technology for the product is available.]

**Annex C, option 2:**

*Comment: This Annex C option is associated with Article 6, option 2. Unlike Annex C, option 1, above, this option does not list the names of possible exempted products because no party has yet proposed any specific product for inclusion.*

**Allowable-use exemptions for mercury-added products**

Mercury-added product with allowable-use exemption	Scope of allowable-use exemption
[insert name of exempted product]	[insert scope of exemption, including any applicable time or mercury content limits]

Note: This annex shall not apply to the personal use of products that are not intended for resale.

**Annex C, option 3:**

*Comment: This Annex C option is associated with Article 6, option 3. Similarly to Annex C, option 2, above, this option does not list the names of possible exempted products because no party has yet proposed any specific product for inclusion.*

**Mercury-added products****Part I: Prohibited**

Mercury-added product
[insert name of prohibited product]

**Part II: Phase-out**

Mercury-added product	Transition period
[insert name of product to be phased-out]	[insert transition period]

**Part III: Essential use**

Mercury-added product
[insert name of essential use product]

## Annex D

### Manufacturing processes in which mercury or mercury compounds are used

#### Part I

##### **Part I, option 1**

*Comments:*

A. *This Annex D, Part I, option 1 is associated with Article 7, paragraph 1, option 1.*

B. *If no exemption is indicated in the allowable-use exemption column, then the listed mercury process would be prohibited (subject to acceptable uses, if any). Alternatively, prohibited processes could be indicated by inserting "none" in the allowable-use exemption column.*

Manufacturing process not allowed under Article 7	Allowable-use exemption	[Expiration date]
1. Chlor-alkali production	[describe allowable-use exemption]	[31 December 2020]
2. [Acetylene-based] vinyl chloride monomer production[*]		[20xx]
[3. Production processes in which mercury or mercury compounds are used as catalysts]		[20xx]
[4. Artisanal and small-scale gold mining]		[20xx]

[Note: This note shall apply to any manufacturing process that has an asterisk following its name in the manufacturing process column of Part I of this annex. Use of any such process shall be considered an acceptable use until five years after the Conference of the Parties determines that a mercury-free acetylene-based technology for the process is available. The Parties shall encourage development of low-mercury production processes until such mercury-free technology is available.]

##### **Part I, option 2**

*Comment: This option is associated with Article 7, paragraph 1, option 2.*

Manufacturing process	Allowable-use exemption	[Expiration date]
[insert exempted manufacturing process]	[describe allowable-use exemption]	[insert expiration date for exemption, if any]

**Part I, option 3 (including Parts I bis and I ter)**

*Comment: This option is associated with Article 7, paragraph 1, option 3.*

**Part I: Prohibited**

Mercury process
[insert name of prohibited process]

**Part I bis: Phase-out**

Mercury process	Transition period
[insert name of process to be phased out]	[insert transition period]

**Part I ter: Essential use**

Mercury process
[insert name of essential-use process]

**Part II: National action plans**

Each Party required to prepare a national action plan under Article 7 shall include in its plan, at a minimum:

(a) An inventory of the number and types of facilities that use mercury or mercury compounds in the manufacturing processes listed in Part I, including estimates of the amount of mercury that they consume annually;

(b) Strategies for achieving a transition by the facilities referred to in subparagraph (a) to the use of non-mercury production processes or for replacing them with facilities that employ such processes;

(c) Strategies for [promoting or requiring] [ensuring] the reduction of mercury releases [and the prevention of human exposure to mercury] from facilities identified in subparagraph (a) until such time as they achieve a transition to the use of non-mercury production processes or are replaced by facilities that employ such processes;

[(c) bis Strategies for the environmentally sound management of surplus mercury and mercury waste from the closure and decommissioning of facilities that use mercury in the manufacturing processes listed in Part I, including recycling, treatment or placement in environmentally sound storage facilities if applicable;]

(d) Targets and timetables for achieving the strategies referred to in the preceding subparagraphs;

(e) A review, every five years, of the Party's strategies and their success in enabling the Party to meet its obligations under Article 7; such reviews shall be included in reports submitted pursuant to Article 22; and

(f) A schedule for implementation of the action plan.

## Annex E

### Artisanal and small-scale gold mining

#### **Annex E, option 1**

*Comment: This option is associated with Article 9, paragraph 1 bis, alternative 1.*

#### **Part I: Prohibited practices**

1. Whole ore amalgamation
2. Open burning of amalgam or processed amalgam
3. Burning of amalgam in residential areas
4. Cyanide leaching in sediment, ore or tailings to which mercury has been added.

#### **Part II: National action plans**

Each Party required to prepare a national action plan under Article 9 shall submit its plan to the Secretariat no later than [X] years after entry into force of the Convention for it, and shall include in its plan, at a minimum, the following:

- (a) National objectives and reduction targets;
- (b) Identification and description of the measures that the Party will take to ensure that the practices listed in Part I are not allowed;
- (c) Strategies to promote the reduction of emissions and other releases of, and exposure to, mercury in artisanal and small-scale gold mining, including mercury-free methods;
- (d) Timetables for achieving the strategies referred to in subparagraph (c); and
- (e) A schedule for implementation of the action plan.]

#### **Annex E, option 2**

*Comment: This option is associated with Article 9, paragraph 1 bis, alternative 2.*

Each Party required to prepare and implement a national action plan under Article 9 shall include in its plan, at a minimum:

- (a) Strategies for preventing specific practices such as whole ore amalgamation, the burning of amalgam without a vapour capture method, and the use of cyanide after mercury amalgamation or for processing mercury-contaminated tailings without first removing the mercury in the short-term;
- (b) Other strategies for controlling domestic use of mercury and mercury compounds in artisanal and small-scale gold mining;
- (c) Strategies for providing information to small-scale gold miners and affected communities;
- (d) Strategies for controlling mercury and mercury compounds recovered from artisanal and small-scale gold mining, including from sites contaminated with mercury;
- (e) Strategies for achieving the longer term objective of eliminating the use of mercury and mercury compounds in small-scale gold mining;
- (f) Strategies for identifying and addressing highly contaminated sites;
- (g) Strategies for involving stakeholders in the development and implementation of the action plan;
- (h) Strategies for preventing, in accordance with Article 9, the import of mercury and mercury compounds for use in artisanal and small-scale gold mining and the diversion of mercury and mercury compounds for use in that sector;

- (i) Strategies for encouraging the reduction of mercury use in artisanal and small-scale gold mining through the development of legal and just supply chains and market-based mechanisms such as fair trade approaches;
- (j) Targets, timetables and mercury reduction goals for achieving the strategies referred to in this annex;
- (k) A review every three years of the Party's strategies and their success in enabling the Party to meet its obligations under Article 9; such reviews shall be included in reports submitted pursuant to Article 22; and
- (l) A schedule for implementation of the action plan.]

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**Option 1 (retain separate Annexes F and G)****Annex F****[Unintentional] Atmospheric emissions**

*Comment: This annex is based on Annex E to the elements paper.*

**Part I: Source categories**

*Comment: In its written submission, one party proposed that Part I of Annex F should be revised so that all of the source categories would appear in a column on the left and mandatory emissions limit values for each source would appear in a column on the right. The Committee may wish to consider the addition of such a column to the annex.*

1. Coal-fired power plants.
- 1 bis. Coal-fired industrial boilers [that exceed a minimum capacity of X].[\*]
- [1 ter. Process heaters in industrial institutional and commercial use.<sup>9</sup>]
2. [Non-ferrous metals] [Lead, zinc, copper] [, industrial gold] [, manganese] production facilities.
3. Waste incineration facilities [that exceed a minimum capacity of X].
4. Cement production factories.
- [5. Iron and steel manufacturing facilities] [, including secondary steel plants].
- [6. Artisanal and small-scale gold mining.]
- [7. Oil and gas production and processing facilities.]
- [8. Residential combustion of coal.\*]

[Note: This note shall apply to any atmospheric emissions source category that has an asterisk following its name in Part I of this Annex. Paragraphs 2–5 of Article 10 notwithstanding, best available techniques and best environmental practices shall be encouraged, rather than required, for any such source category.]

**Part II: Action plans**

Each Party [with significant aggregate mercury emissions from the source categories listed in Part I] [shall] [should on a voluntary basis] develop and implement an action plan for reducing[, and where feasible eliminating,] its atmospheric mercury emissions from [those] [the] source categories [listed in Part I] [taking into account the impacts of mercury emissions and emission reductions on human health and the environment within its territory]. The action plan shall [take into consideration the Party's specific situation and] include, [at a minimum] [as appropriate]:

- (a) [An evaluation of current and projected atmospheric mercury emissions from the source categories listed in Part I, including the development and maintenance of source inventories and emissions estimates;]
- (b) Strategies [and timetables] for achieving the Party's national atmospheric mercury emissions reduction goal [adopted pursuant to paragraph 5 of Article 10];
- (c) [Consideration of the use of ] [E]missions limit values for new[,] and [where feasible] existing[,] emissions sources[, taking into account the emission benchmarks specified in paragraph 4 of Article 10];
- (d) Application of best available techniques [and best environmental practices], as specified in paragraphs 2–5 of Article 10, including the consideration of substitute or modified fuels, materials and processes;
- [(e) Provision for monitoring and quantifying emissions reductions achieved under the action plan;]

<sup>9</sup> Secretariat note: A process heater is an enclosed device using controlled flame, the primary purpose of which is to transfer heat to a process fluid or other material. See [www.epa.gov/ttnatw01/combust/heater/heatback.html](http://www.epa.gov/ttnatw01/combust/heater/heatback.html).

(f) A review every five years of the Party's emissions reduction strategies and their success in enabling the Party to meet its obligations under Article 10; such reviews shall be included in reports submitted pursuant to Article 22[, or, if applicable, in reviews of the Party's implementation plan pursuant to that article and paragraph 1 of Article 21]; and

[(g) A schedule for implementation of the action plan.]

### **Option 1, continued**

## **[Annex G**

*Comment: This annex is based on Annex F to the elements paper.*

### **Sources of mercury releases to water and land**

1. Facilities that manufacture mercury-added products.
2. Facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex D.
3. Facilities for mercury recovery, recycling and reprocessing and facilities where mercury is produced as a by-product of non-ferrous metals mining and smelting, as listed in Annex A.
4. Artisanal and small-scale gold mining.
5. Facilities for the disposal of mercury wastes.
- [6. Each Party shall ensure the installation of amalgam separators at dental practices within its territory at the latest by 20[xx]. The separators shall have an efficiency of no less than [xx] per cent.]

### **Option 2 (combine Annexes F and G into a single Annex G.alt)**

*Comment: This option is associated with Article 11.alt, which is a combination of Articles 10 and 11.*

## **Annex G.alt**

### **Unintentional emissions and releases**

#### **Part I: Atmospheric emissions source categories**

1. Coal-fired power plants.
- 1 bis. Coal-fired industrial boilers [that exceed a minimum capacity of X].[\*]
- [1 ter. Process heaters in industrial institutional and commercial use.]
2. [Non-ferrous metals] [Lead, zinc, copper] [, industrial gold] [, manganese] production facilities.
3. Waste incineration facilities [that exceed a minimum capacity of X].
4. Cement production factories.
- [5. Iron and steel manufacturing facilities] [, including secondary steel plants].
- [6. Artisanal and small-scale gold mining.]
- [7. Oil and gas production and processing facilities.]
- [8. Residential combustion of coal.]

#### **Part II: Mercury releases to water and land source categories**

1. Facilities that manufacture mercury-added products.
2. Facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex D.
3. Facilities for mercury recovery, recycling and reprocessing and facilities where mercury is produced as a by-product of non-ferrous metals mining and smelting, as listed in Annex A.

4. Artisanal and small-scale gold mining.
5. Facilities for the disposal of mercury wastes.
- [6. Each Party shall ensure the installation of amalgam separators at dental practices within its territory at the latest by 20[xx]. The separators shall have an efficiency of no less than [xx] per cent.]

### **Part III: Action plans**

Each Party [with significant aggregate mercury emissions from the source categories listed in Part I ] [shall] [may] develop and implement an action plan for reducing, and where feasible eliminating, its atmospheric mercury emissions from those source categories. The action plan [shall] [should] include, at a minimum:

- (a) An evaluation of current and projected atmospheric mercury emissions from the source categories listed in Part I, including the development and maintenance of source inventories and emissions estimates;
- (b) Strategies and timetables for achieving the Party's national atmospheric mercury emissions reduction goal adopted pursuant to paragraph 5 of Article 10;
- (c) Consideration of the use of emissions limit values for new, and where feasible existing, emissions sources;
- (d) Application of best available techniques and best environmental practices, as specified in paragraphs 2–4 of Article 10, including the consideration of substitute or modified fuels, materials and processes;
- (e) Provision for monitoring and quantifying emissions reductions achieved under the action plan;
- [(e) bis Measures to promote education, training and awareness-raising with regard to the action plan];
- (f) A review, every five years, of the Party's emissions reduction strategies and their success in enabling the Party to meet its obligations under Article 10; such reviews shall be included in reports submitted pursuant to Article 22; and
- (g) A schedule for implementation of the action plan.

## Annex H

### **[Guidance] [Development of requirements] on environmentally sound storage**

*Comment: This annex was formerly Part II of Annex B. It is associated in this new draft text with Article 12, option 1. Please note that Article 12, option 2, has no corresponding annex.*

In developing the [guidance required] [requirements] under paragraph 2 of Article 12 on the environmentally sound storage of [commodity] mercury, the Conference of the Parties shall take into account, among other things:

- (a) Relevant provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and guidelines developed thereunder;
- (b) The respective advantages and disadvantages of global, regional and national approaches;
- (c) The need for flexibility, including through interim measures, until such time as facilities for long-term environmentally sound storage may become available to the Parties; and
- (d) The geographic, social and economic factors that may affect Parties' ability to achieve environmentally sound storage of mercury, taking particular account of the capacities and needs of developing-country Parties and Parties with economies in transition.

## Annex J

### Arbitration and conciliation procedures

*Comment: Part IX of the elements paper referred to, but did not contain, texts for arbitration and conciliation procedures. These texts appear below in Parts I and II of Annex J. They are reproduced from document UNEP(DTIE)/Hg/INC.1/7, which was prepared by the secretariat for the Committee's first session. The brackets that appear in Parts I and II reflect views expressed in a party's written submission.*

#### Part I: Arbitration procedure

The arbitration procedure for purposes of paragraph 2 (a) of Article 26 of the Convention shall be as follows:

##### Article 1

1. A Party may initiate recourse to arbitration in accordance with Article 26 of the Convention by written notification addressed to the other Party to the dispute. The notification shall be accompanied by a statement of the claim, together with any supporting documents, and state the subject matter of arbitration and include, in particular, the articles of the Convention the interpretation or application of which are at issue.
2. The claimant Party shall notify the Secretariat that the Parties are referring a dispute to arbitration pursuant to Article 26. The notification shall be accompanied by the written notification of the claimant Party, the statement of claim and the supporting documents referred to in paragraph 1 above. The Secretariat shall forward the information thus received to all Parties.

##### Article 2

1. If a dispute is referred to arbitration in accordance with Article 1 above, an arbitral tribunal shall be established. It shall consist of three members.
2. Each Party to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the President of the tribunal. The President of the tribunal shall not be a national of one of the Parties to the dispute, nor have his or her usual place of residence in the territory of one of these Parties, nor be employed by any of them, nor have dealt with the case in any other capacity.
3. In disputes between more than two Parties, Parties in the same interest shall appoint one arbitrator jointly by agreement.
4. Any vacancy shall be filled in the manner prescribed for the initial appointment.
- [5. If the Parties do not agree on the subject matter of the dispute before the President of the arbitral tribunal is designated, the arbitral tribunal shall determine the subject matter.]

##### Article 3

1. If one of the Parties to the dispute does not appoint an arbitrator within two months of the date on which the respondent Party receives the notification of the arbitration, the other Party may inform the Secretary-General of the [United Nations] [Permanent Court of Arbitration], who shall make the designation within a further two-month period.
2. If the President of the arbitral tribunal has not been designated within two months of the date of the appointment of the second arbitrator, the Secretary-General of the [United Nations] [Permanent Court of Arbitration] shall, at the request of a Party, designate the President within a further two-month period.

##### Article 4

The arbitral tribunal shall render its decisions in accordance with the provisions of the Convention and international law.

##### Article 5

Unless the Parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

**Article 6**

The arbitral tribunal may, at the request of one of the Parties, [recommend] [impose] essential interim measures of protection.

**Article 7**

The Parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

- (a) Provide it with all relevant documents, information and facilities; and
- (b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

**Article 8**

The Parties and the arbitrators are under an obligation to protect the confidentiality of any information that they receive in confidence during the proceedings of the arbitral tribunal.

**Article 9**

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the Parties to the dispute in equal shares. The tribunal shall keep a record of all its costs and shall furnish a final statement thereof to the Parties.

**Article 10**

A Party that has an interest of a legal nature in the subject matter of the dispute which may be affected by the decision in the case may intervene in the proceedings with the consent of the tribunal.

**Article 11**

The tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

**Article 12**

Decisions of the arbitral tribunal on both procedure and substance shall be taken by a majority vote of its members.

**Article 13**

1. If one of the Parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other Party may request the tribunal to continue the proceedings and to make its award. Absence of a Party or a failure of a Party to defend its case shall not constitute a bar to the proceedings.
2. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

**Article 14**

The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time limit for a period which should not exceed five more months.

**Article 15**

The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

**Article 16**

The award shall be binding on the Parties to the dispute. The interpretation of the Convention given by the award shall also be binding upon a Party intervening under Article 10 above insofar as it relates to matters in respect of which that Party intervened. The award shall be without appeal unless the Parties to the dispute have agreed in advance to an appellate procedure.

**Article 17**

Any controversy which may arise between those bound by the final decision in accordance with Article 16 above, as regards the interpretation or manner of implementation of that decision, may be submitted by any of them for decision to the arbitral tribunal which rendered it.

## Part II: Conciliation procedure

The conciliation procedure for purposes of paragraph 6 of Article 26 of the Convention shall be as follows:

### Article 1

1. A request by a Party to a dispute to establish a conciliation commission pursuant to paragraph 6 of Article 26 shall be addressed in writing to the Secretariat. The Secretariat shall forthwith inform all Parties to the Convention accordingly.

2. The conciliation commission shall, unless the Parties to the dispute otherwise agree, comprise three members, one appointed by each Party concerned and a President chosen jointly by those members.

### Article 2

In disputes between more than two Parties, Parties in the same interest shall appoint their members of the commission jointly by agreement.

### Article 3

If any appointments by the Parties are not made within two months of the date of receipt by the Secretariat of the written request referred to in Article 1, the Secretary-General of the United Nations shall, upon request by any Party to the dispute, make those appointments within a further two-month period.

### Article 4

If the President of the conciliation commission has not been chosen within two months of the second member of the commission being appointed, the Secretary-General of the United Nations shall, upon request by any Party to the dispute, designate the President within a further two-month period.

### Article 5

1. The conciliation commission shall, unless the Parties to the dispute otherwise agree, determine its own rules of procedure.

2. The Parties to the dispute and the members of the conciliation commission are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the commission.

#### [Article 5 bis

1. The conciliation commission shall assist the Parties in an independent and impartial manner in their attempt to reach an amicable resolution of their dispute.

2. The conciliation commission may conduct the conciliation proceedings in such a manner as it considers appropriate, taking into account the circumstances of the case and the wishes the Parties may express, including any requested need for a swift resolution.

3. The conciliation commission may, at any time of the proceedings, make proposals for a resolution of the dispute.]

#### [Article 5 ter

The Parties shall cooperate with the conciliation commission. In particular, they shall endeavour to comply with requests by the commission to submit written materials, provide evidence and attend meetings.]

### Article 6

The conciliation commission shall take its decisions by a majority vote of its members.

### Article 7

The conciliation commission shall render a report with recommendations for resolution of the dispute within 12 months of being established, which the Parties to the dispute shall consider in good faith.

**Article 8**

Any disagreement as to whether the conciliation commission has competence to consider a matter referred to it shall be decided by the commission.

**Article 9**

The costs of the conciliation commission shall be borne by the Parties to the dispute in shares agreed by them. The commission shall keep the record of all its costs and shall furnish a final statement thereof to the Parties.

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## Annex II

**Table cross-referencing new draft text article numbers with numbers used in the draft elements paper**

<b>New draft text: Part or article designation/annex letter</b>	<b>Draft elements paper: Part or element designation/annex letter</b>
<b>A. Preamble</b>	<b>Preamble</b>
<b>B. Introduction</b>	<b>Part I: Introduction</b>
1. Objective	1. Objective
1 bis. Relationship with other international agreements	(not in elements paper)
2. Definitions	2. Definitions
<b>C. Supply</b>	<b>Part II: Measures to reduce the supply of mercury</b>
3. Mercury supply sources	3. Mercury supply sources
<b>D. International trade in mercury [and mercury compounds]</b>	
4. International trade [with Parties] in mercury [or mercury compounds]	5. International trade with Parties in mercury or mercury compounds
5. International trade with non-Parties in mercury [or mercury compounds]	6. International trade with non-Parties in mercury or mercury compounds
<b>E. Products and processes</b>	<b>Part III: Measures to reduce intentional use of mercury</b>
6. Mercury-added products	7. Mercury-added products
7. Manufacturing processes in which mercury is used	8. Manufacturing processes in which mercury is used
8. Allowable-use exemptions [and acceptable use]	14. Allowable-use exemptions
8 bis. Special situation of developing countries	(not in elements paper)
<b>F. Artisanal and small-scale gold mining</b>	
9. Artisanal and small-scale gold mining	9. Artisanal and small-scale gold mining
<b>G. Emissions and releases</b>	<b>Part IV: Measures to reduce releases of mercury to air, water and land</b>
10. [Unintentional] Atmospheric emissions	10. Atmospheric emissions
11. Releases to water and land	11. Releases to water and land
11 alt. Unintentional emissions and releases (arts. 10 and 11 combined)	(not in elements paper)
<b>H. Storage, wastes and contaminated sites</b>	
12. Environmentally sound storage [of commodity mercury]	4. Environmentally sound storage
13. Mercury wastes	12. Mercury wastes
14. Contaminated [and polluted] sites	13. Contaminated sites
<b>I. Financial resources and technical and implementation assistance</b>	<b>Part VI: Financial resources and technical and implementation assistance</b>
15. Financial resources and mechanisms	15. Financial resources and mechanisms
16. Technical assistance [and capacity building]	16. Technical assistance
16 bis. Partnerships	(not in elements paper)
17. [[Implementation] [Compliance] committee] [Committee[s] on financial assistance, technical support, capacity building and implementation]	17. Implementation committee
<b>J. Awareness-raising, research and monitoring, and communication of information</b>	<b>Part VII: Awareness-raising, research and monitoring, and communication of information</b>
18. Information exchange	18. Information exchange

<b>New draft text: Part or article designation/annex letter</b>	<b>Draft elements paper: Part or element designation/annex letter</b>
19. Public information, awareness and education	19. Public information, awareness and education
20. Research, development and monitoring	20. Research, development and monitoring
20 bis. Health aspects	(not in elements paper)
21. Implementation plans	21. Implementation plans
22. Reporting	22. Reporting
23. Effectiveness evaluation	23. Effectiveness evaluation
<b>K. Institutional arrangements</b>	<b>Part VIII: Institutional arrangements</b>
24. Conference of the Parties	24. Conference of the Parties
25. Secretariat	25. Secretariat
25 bis. Expert bodies	(not in elements paper)
<b>L. Settlement of disputes</b>	<b>Part IX: Settlement of disputes</b>
26. Settlement of disputes	26. Settlement of disputes
<b>M. Further development of the Convention</b>	<b>Part X: Further development of the Convention</b>
27. Amendments to the Convention	27. Amendments to the Convention
28. Adoption and amendment of annexes	28. Adoption and amendment of annexes
<b>N. Final provisions</b>	<b>Part XI: Final provisions</b>
29. Right to vote	29. Right to vote
30. Signature	30. Signature
31. Ratification, acceptance, approval or accession	31. Ratification, acceptance, approval or accession
32. Entry into force	32. Entry into force
33. Reservations	33. Reservations
34. Withdrawal	34. Withdrawal
35. Depositary	35. Depositary
36. Authentic texts	36. Authentic texts
<b>Annexes</b>	<b>Annexes</b>
Annex A: Sources of mercury supply	Annex A: Sources of mercury supply
Annex B: Mercury and mercury compounds subject to international trade measures	Annex B (Part I): Mercury and mercury compounds subject to international trade measures
Annex C: Mercury-added products	Annex C: Mercury-added products
Annex D: Manufacturing processes in which mercury is used	Annex D: Manufacturing processes in which mercury is used
Annex E: Artisanal and small-scale gold mining	(not in elements paper)
Annex F: [Unintentional] Atmospheric emissions	Annex E: Atmospheric emissions
Annex G: Sources of mercury releases to water and land	Annex F: Sources of mercury releases to water and land
Annex G.alt: Unintentional emissions and releases (combined Annexes F and G)	(not in elements paper)
Annex H: [Guidance] [Development of requirements] on environmentally sound storage	Annex B (Part II): Mercury and mercury compounds subject to environmentally sound storage measures
<i>Note: there is no Annex "I"</i>	
Annex J: Arbitration and conciliation procedures	(not in elements paper)