

**Submission by the Government of Japan
for the third session of the intergovernmental negotiating committee
to prepare a global legally binding instrument on mercury**

April 28 2011

The basic position of the Government of Japan is that mercury management should be enhanced globally, taking account of the experience of Minamata disease in which severe health damage was caused by mercury pollution. We are committed to contribute actively in developing a legally binding instrument on mercury, so that health damage and environmental destruction like Minamata disease would not be repeated in any other country. We would like to express our appreciation to Governments and the UNEP secretariat for their support in hosting the Diplomatic Conference scheduled for 2013 in Japan.

In response to the invitation from the secretariat to Governments to submit their views regarding the development of a draft text of a comprehensive and suitable approach to a legally binding instrument on mercury, the Government of Japan herewith submits its views.

In our view, the approach to restrict and, when feasible, eliminate the supply, demand and trade of mercury and mercury compounds, except for (i) environmentally sound disposal or storage, (ii) uses where mercury-free alternatives do not yet exist or are not yet available, or (iii) uses where mercury-free alternatives need certain transition period for their full replacement, should be considered as the basic framework. We recognize that the draft elements paper (UNEP(DTIE)/Hg/INC.2/3) generally follows this approach. However, we believe more specific consideration of each element is necessary to make it effective and feasible. Our specific views on each element are as follows.

1. Definitions (Element 2)

- The details of the definitions for the terms listed in the draft elements paper, and the criteria for specific contents in the annexes need further clarification.
- (b) “Environmentally sound management of mercury wastes”:

The draft elements paper notes that this definition is based on the one for “environmentally sound management of hazardous wastes and other wastes” in the Basel Convention article 2 para8. However, the words used for the definition in the draft elements paper are not exactly the same with the definition in the Basel Convention. If the definitions are meant to be the same as a whole, it would be more appropriate to quote accurately and ensure consistency with the Basel Convention.

- (d) “Mercury”:

In the draft elements paper, mixtures of elemental mercury with other substances, including

alloys of mercury, with a mercury concentration of at least 95 percent by weight are defined as mercury. We believe it is necessary to further clarify the intention of setting a threshold for mercury concentration percentage and the rationale for using the figure of 95 per cent concentration.

- (e) “Mercury and mercury compounds”:

1. Duplication between the contents of Annex B and the definition for “mercury” should be sorted out.
2. In Annex B, “cinnabar ore” is included as a mercury compound. We suggest this Annex should also include artificially synthesized “mercury sulphide”.
3. According to para(d) in this element, it is described that those with a mercury concentration of at least 95 per cent elemental mercury by weight are regarded as “mercury”. Based on the intention and rationale for setting a threshold of concentration for “mercury”, we suggest that specification of thresholds for mercury compounds listed in Annex B should also be considered.
4. In Annex B, there is a note stating that “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 reference standards”. We suggest that a provision regarding exemptions for mercury or mercury compounds to be used for laboratory-scale research, analysis or as reference standards and measurement standards should be included in the body of the Convention, as in the case with Stockholm Convention article3 para5 and Rotterdam Convention article3 para2 (h) (i). Further consideration would be necessary on which measures they should be exempted from, including measures to reduce the supply and intentional use of mercury.

- (f) “Mercury-added product”:

In the draft elements paper, mercury-added product is defined as “a product or product component that contains mercury or a mercury compound intentionally added”. We believe it is necessary to clarify whether finished and/or assembled goods which use 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 this definition. This should be considered taking into account the effectiveness and feasibility of the control measures in the draft elements paper.

- (i) “Primary mercury mining”:

In the draft elements paper, the definition for “mercury-containing ore” is unclear. It should be clearly specified that the target is mining of mercury-containing ore for the purpose of producing mercury.

2. Mercury supply sources (Element 3)

➤ *paragraph 1,2*

Measures to reduce primary mining of mercury should be a priority in order not to add new mercury to global supply for intentional use. From this viewpoint, we support the basic direction of paragraph 1 and 2 in the draft elements paper.

➤ *paragraph 3*

- It is necessary to allow mercury supply for uses where mercury-free alternatives do not yet exist, are not yet available, or need certain transition period for their full replacement, as uses allowed under the Convention. From this view point, we support the approach in the draft elements paper which restricts the supply of mercury except for uses allowed under the Convention.

- *paragraph 3 (b):*

In the draft elements paper, the “sale”, “distribution in commerce” and “use” of mercury from supply sources listed in Annex A are not allowed as a measure to reduce the supply of mercury. In the Stockholm Convention, the “production and use” of POPs is restricted as a measure to reduce or eliminate releases from their intentional production and use, but there are no restrictions of “sale” or “distribution in commerce”. Nevertheless, we believe this approach has been effective in ensuring POPs not to be distributed in commerce. In our view, therefore, it is necessary to fully examine the appropriateness of restricting “sale” and “distribution in commerce” in addition to “use” in the case of mercury, taking into account whether there are any different situations between POPs and mercury, and whether such restrictions would be effective and practicable in terms of implementation in each Party.

➤ *Annex A*

- We believe the sources of mercury supply listed in Annex A should be further considered, including the types of sources to be listed, the definitions and the criteria.
- *1. Mercury recovery, recycling and reprocessing operations, including mercury recovered from pollution controls from the source categories listed in Annex E*

It is necessary to examine whether the inclusion of mercury recovered from pollution controls from the source categories listed in Annex E is appropriate. The technologies for control measures to be applied to these sources and the feasibility of recovery from these sources should be further examined.

- *4. Mercury stocks from decommissioned chlor-alkali plants*

In Annex D, vinyl chloride monomer production is included together with chlor-alkali production as manufacturing processes in which mercury is used. Therefore, mercury stocks from decommissioned vinyl chloride monomer plants should also be included in Annex A.

- *5. Other private mercury stocks*

It is necessary to clarify the scope of this source category, by such measures as defining thresholds for mercury stocks to be included. Currently, it is unclear whether “mercury-added products that are distributed, used or stored in market”, or “small amounts of temporary mercury stocks for manufacturing mercury-added products” will be included in this source

category. Regarding mercury-added products in market, the feasibility of collecting, recycling and reprocessing these products should be taken into account, when considering their inclusion.

3. Environmentally sound storage (Element 4)

- Following restrictions on intentional use and international trade of mercury, environmentally sound management of excess mercury will be necessary. When considering this, it would be appropriate to distinguish “storage of mercury for allowable uses” and “permanent storage or permanent disposal of mercury as waste”. In this case, the scope of element 4 could be limited to storage of mercury for allowable uses, while permanent storage or permanent disposal of mercury as waste could be addressed under element 12 as mercury wastes. However, further discussion will be necessary on how to distinguish “storage of mercury for allowable uses” and “permanent storage of mercury as waste”.
- It is our view that application of BAT/BEP and international cooperation would be effective for the promotion of environmentally sound storage. Preliminary studies on environmentally sound storage have been conducted by UNEP secretariat, such as the supply and storage partnership area of the UNEP Global Mercury Partnership and relevant workshops. However, international experience with storage of mercury is still limited and the development of technology may be insufficient. We believe further discussion is necessary, including possible approaches for storage in developing countries.
- *paragraph 2*

When developing the guidance for environmentally sound storage, there could possibly be various stages to consider, such as storage while distribution and sale, even if the guidance is limited to “storage of mercury for allowable uses”. We believe the scope of the guidance including which stage of storage should be addressed under this element, and how these stages should be addressed in the guidance, should be clarified in the provisions and Annex. The guidance should allow Parties to choose from various options for storage which meet different situations and technical levels of each country and region. The effectiveness and feasibility of implementation should be considered in the guidance.

4. International trade in mercury or mercury compounds (Element 5 and 6)

- Japan believes that international trade of mercury and mercury compounds should be allowed only for the purposes of environmentally sound storage, disposal or for uses allowed under the Convention. International trade for the purpose of environmentally sound storage or disposal would need to be fully considered in consistency with element 4 and 12.
- It is important to ensure that mercury and mercury compounds traded under the Convention for allowed uses are not diverted to inappropriate uses such as ASGM in the importing country. Provisions to address this should be further considered in the framework of element 9, taking

into account whether it would be effective and practicable in terms of implementation in each country.

➤ ***International trade with Parties in mercury or mercury compounds (Element 5)***
paragraph 2

We believe appropriate procedures for mercury trade with Parties should be considered from the perspectives of whether they would be (i) effective, and (ii) practicable for all Parties, in terms of implementation of the mercury instrument.

Other than the approach in the draft elements paper, which requires the prior informed consent from the importing Party in written form, we suggest that the approach taken by the Stockholm Convention should also be considered (Under this approach, the importing Party allows import of chemicals only for environmentally sound disposal or uses permitted under the Convention. The exporting Party allows export of chemicals for uses permitted under the Convention by confirming them based on the Register maintained by the Secretariat).

➤ ***International trade with non-Parties in mercury or mercury compounds (Element 6)***

We believe appropriate procedures for mercury trade with non-Parties should be considered from the perspectives of effectiveness and feasibility.

If export of mercury and mercury compounds from a Party to a non-Party is not allowed under a certain condition, non-Parties may rather depend on primary mining or international trade between other non-Parties to satisfy its demand of mercury and mercury compounds. Therefore, we believe that the export of mercury and mercury compounds from a Party to a non-Party should be considered to be allowed not only for the purpose of environmentally sound storage, but also for a use allowed under the Convention. When considering this, we believe it would be necessary to develop a mechanism to seek that a non-Party would not conduct any activity that would contradict the objectives of the Convention, by undertaking procedures such as acquiring certification from the non-Party, as in the case with the Stockholm Convention article 3 para 2 (b) (iii).

5. Mercury-added products (Element 7)

➤ The reduction of mercury-added products as measures to reduce intentional use of mercury is basically essential to reduce the release of mercury into the environment. Taking into account that there are products where mercury-free alternatives do not yet exist, are not yet available, or need certain transition period for their full replacement, certain exemptions should be allowed as the uses allowed under the Convention. In the long term, promoting the development and usage of mercury-free alternatives to reduce these exemptions would be important, keeping in mind the need to avoid the outbreak of new environmental risks.

➤ We believe it is necessary to clarify the following points, through the establishment of a contact group at INC3 or inter-sessional expert meetings.

1. Product categories which will be subject to requirements for mercury reduction in the

Convention and the selection criteria of these categories.

2. Product categories which mercury-free alternatives do not yet exist, are not yet available, or need certain transition period for their full replacement and the selection criteria of these categories.

3. How these product categories should be addressed in the Convention.

- Considering that the amount of mercury contained in each product varies widely, and that manufacture, distribution, trade of various mercury-added products could continue as the uses allowed under the Convention, mercury-added products should be treated differently from metal (or elemental) mercury provided from supply sources, from the viewpoint of effectiveness and feasibility of the measures.

- *paragraph 1(a)*

In the draft elements paper, the “manufacture”, “distribution in commerce” and “sale” of mercury-added products is not allowed as a measure to reduce intentional use of mercury. In the Stockholm Convention, the “production and use” of POPs is restricted as a measure to reduce or eliminate releases from their intentional production and use, but there is no restriction of the “sale” or “distribution in commerce”. In our view, therefore, it is necessary to fully examine the appropriateness of restricting “sale” and “distribution in commerce” in addition to “manufacture” in the case of mercury-added products, taking into account whether such restrictions would be effective and practicable in terms of implementation in each Party.

- *paragraph 1(b), 1(c), 2*

It is necessary to consider appropriate procedures for trade of mercury-added products from the perspectives of whether they would be (i) effective, and (ii) practicable for all Parties, in terms of implementation of the mercury instrument.

The approach in the draft element paper could be interpreted to require prior informed consent for each export contract. However, this procedure may not be practicable in terms of implementation, considering that even though trade is to be limited to allowable uses under the Convention, there could be a large number of export contracts, given that there are numerous types and quantities of products and various trading countries. Therefore, we suggest that the approach taken in the Stockholm Convention should be considered (Under this approach, the importing Party allows import of chemicals only for environmentally sound disposal or uses permitted under the Convention. The exporting Party allows export of chemicals for use permitted under the Convention based on the exemptions listed in the Register maintained by the Secretariat).

Especially, paragraph 1(c) needs further examination from the perspective of feasibility.

- *paragraph 3*

In order to implement this provision, Parties will need to have full grasp of the uses of mercury and the amount of mercury contained in all mercury-added products in their countries at the time when the Convention enters into force. In our view, this is very difficult to realize. It is

necessary to consider the appropriateness of the procedures from the perspectives of whether they would be (i) effective, and (ii) practicable for all Parties, in terms of implementation of the mercury instrument. In the draft elements paper, a new product containing less mercury than an existing mercury-added product is to be exempted. However, there could be products and technologies, such as long lasting fluorescent lamps, which reduce mercury use in the market as a whole in the long term. A provision that could take into account these points should be considered.

➤ *Annex C*

Japan understands that the five product categories listed in Annex C are product categories which account for a large amount of mercury demand, according to the UNEP report of global mercury demand. While we agree that efforts should be made to reduce mercury demand in mercury-added products, the amount of mercury used in each product is very small and there is a wide variety of products in each product category. In our view, therefore, it could be realistically difficult to decide allowable use exemptions with a certain criteria. It is necessary to further consider how mercury-added products should be addressed in the Convention and which product categories should be included in the list, through contact groups or inter-sessional experts meetings.

6. Manufacturing processes in which mercury is used (Element 8)

- Restrictions on manufacturing processes in which mercury is used are essential to reduce the release of mercury into the environment. We believe that the use of mercury in manufacturing processes, such as chlor-alkali production and vinyl chloride monomer production should be decommissioned as soon as possible. As it is shown in experience of Minamata disease in Japan, mercury releases from these processes could result in the expansion of pollution at the regional level. We support the direction of the draft elements paper.
- Chlor-alkali plants which use mercury should be decommissioned, considering that alternative technologies for mercury use in chlor-alkali production are fully available. The use of mercury in vinyl-chloride monomer production should also be reduced by promoting the installation of alternative technologies.
- We suggest that provisions should be included which require environmentally sound management of mercury during the period while allowable use exemptions of manufacturing processes are available to Parties.
- Mercury stocks from decommissioned vinyl-chloride monomer plants should also be included in Annex A as a mercury supply source which will be subject to mercury supply reduction (Element 3) and environmentally sound storage (Element 4).

7. Artisanal and small-scale gold mining (Element 9)

- It is important to ensure that mercury and mercury compounds imported according to the

procedures under the Convention for allowed uses or those recovered and recycled from mercury wastes are not diverted to inappropriate uses such as ASGM. Therefore, we support the basic direction of paragraph 1.

8. Atmospheric emissions (Element 10)

- As technology levels of air pollution control measures are different from country to country, Japan believes that the BAT/BEP approach is effective for the global reduction of mercury emissions to air. In this regard, we generally support the direction of the draft elements paper, which applies the BAT/BEP approach as the basic requirement. We also believe that it would be necessary to clarify the definition of BAT/BEP, in parallel with the negotiation of the text of the Convention.
- In order to decide whether the approach under which Parties with significant aggregate mercury emissions are required to develop a national emissions reduction goal and national action plans would be effective, it is necessary to further discuss and clarify in the future negotiation, points such as; (i) how to decide the level of significant aggregate mercury emissions, (ii) the specific level of “significant aggregate mercury emissions”, and (iii) specific contents to be required for national emission reduction goals.

When discussing this, consideration should be given also to approaches other than the approach under which threshold will be applied to annual atmospheric emissions, taking into account (i) the fact that atmospheric emissions could depend on factors such as economic scale (volume of production) and quality of available resources, and (ii) the levels of technologies which are currently adopted.

It would be also important to try to streamline the burden of Parties with significant aggregate emissions, for example by allowing them to substitute national action plans with some parts of the implementation plans regarding atmospheric emission which are required under Element 21.

- *paragraph 2-4*
 - BAT/BEP guidelines should enable Parties to utilize various measures, taking into account cost effectiveness. Existing air pollution control measures, such as dust collectors and desulfurization systems, are considerably effective in reducing mercury emission. We believe that promoting the installation of these existing measures before applying new measures specialized for mercury, would be more cost effective. It is important to further discuss this while gathering knowledge and information from various countries.
 - Stockholm Convention Article 5(g) states that release limit values or performance standards may be used by a Party to fulfill its commitments for best available techniques. We suggest considering a similar provision regarding the use of BAT/BEP for atmospheric emissions, in order not to limit the measures Parties can take to implement the Convention in advance.
- *Annex E*
 - We believe the source categories of atmospheric emission listed in Annex E should be further

considered, including the types of source categories to be listed, the definitions and the criteria. Future consideration should be based on scientific information, including the “Paragraph 29 study”.

- Inclusion of emission from small scale industrial boilers and residences need to be considered from the perspective of feasibility of implementation of the mercury instrument. For example, conditions based on scale should be applied for industrial boilers.

9. Releases to water and land (Element 11)

- Taking account of our lessons learned from Minamata disease, we believe mercury releases to water and land could cause high risks to human health and the environment, even if the pollution is limited to regional level. Japan supports the direction of the draft elements paper, which includes provisions to reduce releases to water and land.

- *paragraph 2*

As technology levels of measures for water and land pollutants are different from country to country, Japan believes that the BAT/BEP approach is effective for the global reduction of mercury release to water and land. We generally support the approach of the draft elements paper which applies the BAT/BEP approach as the basic requirement. Measures to reduce mercury releases to water and land, should focus on avoiding effects to human health and the environment, especially at the regional level. The BAT/BEP guideline needs to be developed at the level sufficient to reduce such risks for human health and the environment at the regional level, and this should be clearly stated in the Convention. In addition, it is necessary to clarify the developing process of the guideline, the definition of BAT/BEP, and the specific contents to be included in the guideline, in parallel with the negotiation of the Convention text.

- *paragraph 4*

If requirements for information regarding the compliance with the provisions of this article are to be included, it would be necessary to clarify the specific scope of the reporting obligation during the negotiation process. The requirement for this specific article should be included in the requirements for reporting under Element 22.

- *Annex F*

- 5. Facilities for the disposal of mercury-containing wastes

The term “mercury-containing wastes” should be amended to “mercury waste”.

- 6. Sites contaminated by mercury and mercury compounds

If this source category is to be included in Annex F, it would be necessary to clarify what this source category specifically refers to.

- Stockholm Convention Article 5(g) states that release limit values or performance standards may be used by a Party to fulfill its commitments for best available techniques. We suggest considering a similar provision regarding the use of BAT/BEP for mercury releases to water and land, in order not to limit the measures Parties can take to implement the Convention in advance.

10. Mercury wastes (Element 12)

- Provisions to address mercury wastes, especially transboundary movement of mercury wastes, should be closely linked with the provisions under the Basel Convention. Management of mercury and mercury compounds which are no longer in use, should not be limited only to storage but also disposal, in which mercury is stabilized as a specific mercury compound and land-filled at a final disposal site, should be considered.
- The draft elements paper takes an approach similar to that of the Stockholm Convention, in which the Conference of the Parties engages closely with the appropriate bodies of the Basel Convention. Japan basically supports this approach.
- We believe it would be necessary to consider the definition of mercury wastes and the threshold of mercury concentration levels in mercury containing wastes, in consistency with the Basel Convention and the national laws of the Parties. In the “Technical Guidelines for the Environmentally Sound Management of Waste Consisting of Elementary Mercury and Wastes Containing or Contaminated with Mercury- 6th draft” under the Basel Convention, mercury wastes are categorized as follows.
 - A. Wastes consisting of mercury waste
(Elementary mercury waste, stabilized or solidified elementary mercury waste)
 - B. Wastes containing mercury
(Wastes of mercury-added products)
 - C. Wastes contaminated with mercury

11. Contaminated sites (Element 13)

- Japan basically supports the direction of the draft elements paper, which applies the BAT/BEP approach as the basic requirement. However, it would be necessary to clarify points such as; the definition of BAT/BEP, the developing process of the guidance and the specific contents of the guidance, in parallel with the negotiation of the Convention text.
- The scope of contaminated sites, including bottom sediments, should be considered broadly. In our view, it would be more appropriate to consider “management” measures in accordance with the level of risks for human health and the environment. Therefore, we suggest that the words “remediate” and “rehabilitate” should be amended to words such as “manage” and “take measures”. The contents of specific measures should be clarified in future discussions.

12. Allowable-use exemptions (Element 14)

- Allowable-use exemptions would be necessary as transition measures, considering that there would be products and processes where mercury-free alternatives do not yet exist, are not yet available, or need certain transition period for their full replacement.
- In the draft elements paper, there are no specific requirements regarding how Parties should

register exemptions. We believe the criteria for allowing exemptions, the length of exemptions and the process for extending exemptions should be decided based on feasibility and scientific discussion. These points should be further considered from the perspective of risk reduction in such fora as contact groups.

13. Financial resources and mechanisms (Element 15)

- Japan recognizes that financial and technical assistance are important for the implementation of the Convention after its entry into force. However, it would be difficult to consider the necessity for establishing a new financial mechanism unless specific needs for financial assistance and the scope of demand are clarified to a certain degree, based on the discussions on control measures.
- Generally speaking, an establishment of a new financial mechanism is not desirable, considering that it would lead to new administrative costs and unnecessarily increase the secretariat budget.
- To this end, utilization of existing financial mechanisms and programmes should be encouraged. There are numerous measures that could also be effective for mercury management such as measures to reduce air pollution, waste management and global warming. Even if there may be a need for additional funding, voluntary contribution should be the principle, considering the financial constraint of each country.
- *paragraph 2*

Japan proposes to delete this paragraph. The provision of financial assistance should not be seen as a precondition of compliance.
- *paragraph 3-5*

We suggest that these paragraphs should be amended so that they will not preempt the establishment of a new mechanism. The utilization of existing mechanisms would be the prerequisite.
- *paragraph 6*

If requirements for information regarding financial assistance are to be included, it would be necessary to clarify the specific scope of the reporting obligation during the negotiation process.

14. Technical assistance (Element 16)

Japan believes that it would not only be developed-country parties that will have the technologies to provide as technical assistance. We suggest using the terms “The Parties shall cooperate to provide technical assistance”, similar to the provision of the Stockholm Convention article 12 para 2.

15. Research, development and monitoring (Element 20)

Japan believes that the development of emission inventories, material flows and monitoring of mercury levels in environmental media could be effective for understanding and verifying the effectiveness of the Convention in reducing mercury emission.

16. Reporting (Element 22)

➤ *paragraph 2*

Further consideration should be given to whether all the data and information listed in the draft elements paper are (i) available, or (ii) necessary and effective to verify the progress in achieving the objectives of the Convention.

- Regarding statistical data for imports and exports of mercury, mercury compounds and mercury-added products, it is necessary to harmonize the statistics, for example, by identifying specific Harmonized System custom codes. We suggest that a provision similar to Rotterdam Convention article 13 para 1 should be included, which encourages the World Customs Organization to assign specific HS codes to the individual chemicals or groups of chemicals.

17. Disposal and recovery of mercury stocks and by-product mercury (New additional element)

By-product mercury produced from mining of non-ferrous metals, mercury-added products becoming waste, and mercury-stocks from decommissioned plants could cause environmental pollution, if treated inappropriately. Japan would like to reiterate the importance of promoting recovery and sound disposal of mercury from these sources. Since there appears to be no provisions in the draft elements paper that addresses the need to promote recovery of mercury, we believe it would be necessary to further consider how this could be addressed in the Convention, as well as which mercury supply sources should be covered by this provision. Upon this consideration, international trade for the purpose of recovery of mercury from non-ferrous metal mining by-products and mercury-added products becoming waste should also be included.

18. Other point

The draft elements paper states that using the term “not allow” instead of “ban” or “prohibit”, requires Parties the implementation of obligations while ensuring flexibility by not limiting the measures to specific legal and administrative ones to ban or prohibit certain activities. We support this direction of the draft elements paper. However, we believe it is necessary to consider the appropriateness of using the term “not allow”, based on clearer understanding of the scope of measures that Parties will be required to implement in the context of “not allowing” specific activities.