



GUIDE TO THE NEW MERCURY TREATY



IPEN Heavy Metals
Working Group

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IPEN is a leading global organization working to establish and implement safe chemicals policies and practices that protect human health and the environment around the world. IPEN's mission is a toxics-free future for all.

IPEN brings together leading public interest groups working on environmental and public health issues in developing countries and countries in transition. It helps build the capacity of its member organizations to implement on-the-ground activities, learn from each other's work, and work at the international level to set priorities and achieve new policies.

IPEN's global network is comprised of more than 700 public-interest non-governmental organizations in 116 countries. Working in the international policy arena and in developing countries, with international offices in the US and in Sweden, IPEN is coordinated via eight IPEN Regional Offices in Africa, Asia & the Pacific, Central/Eastern Europe, Latin America & the Caribbean, and the Middle East.

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IPEN's Mercury-Free Campaign is a response to growing knowledge about the alarming scale of human and environmental health harms caused by global mercury pollution. The campaign promotes initiatives by national and local NGOs and civil society organizations in all regions of the world to:

- Raise public awareness about the harms caused by mercury pollution and exposure
- Undertake targeted campaigns aimed at reducing and eliminating sources of mercury pollution and exposure
- Promote mercury-free alternatives
- Build support among government officials, political leaders and opinion leaders for the adoption and enforcement of national mercury control laws and policies
- Build public and political support for national ratification of the global mercury treaty
- Mobilize human and financial resources to reduce and eliminate harm caused by mercury pollution

For more information about IPEN's Mercury-Free Campaign see:
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CONTENTS

Introduction	1	Article 18 Public information, awareness, and education.....	18
Treaty Preamble.....	2	Article 19 Research, development and monitoring.....	18
Article 1 Objective.....	2	Article 20 Implementation plans.....	19
Article 2 Definitions.....	2	Article 21 Reporting.....	19
Article 3 Mercury supply sources and trade.....	4	Article 22 Effectiveness evaluation...	19
Article 4 Mercury-added products	5	Article 23 Conference of the Parties .	20
Article 5 Manufacturing processes in which mercury or mercury compounds are used.....	7	Article 24 Secretariat	20
Article 6 Exemptions available to a Party upon request.....	9	Article 25 Settlement of disputes	20
Article 7 Artisanal and small-scale gold mining (ASGM)	9	Article 26 Amendments to the Convention	21
Article 8 Emissions (air)	11	Article 27 Adoption and amendment of annexes	21
Article 9 Releases (land and water) ..	12	Article 28 Right to vote.....	21
Article 10 Environmentally sound interim storage of mercury, other than waste mercury	13	Article 29 Signature.....	21
Article 11 Mercury wastes.....	13	Article 30 Ratification, acceptance, approval, or accession	22
Article 12 Contaminated sites	14	Article 31 Entry into force.....	22
Article 13 Financial resources and mechanisms.....	15	Article 32 Reservations.....	22
Article 14 Capacity-building, technical assistance, and technology transfer	16	Article 33 Withdrawal	22
Article 15 Implementation and compliance committee.....	16	Article 34 Depositary	22
Article 16 Health aspects.....	17	Article 35 Authentic texts.....	23
Article 17 Information exchange.....	17	Acknowledgements	23

INTRODUCTION

The final intergovernmental negotiating meeting on the new mercury treaty was held in Geneva in January 2013 and reached final agreement on the text of the new treaty. The treaty will be adopted in October of 2013 at a diplomatic conference in Japan.

Overall, the mercury treaty seeks to reduce mercury supply and trade, phase-out or phase-down certain products and processes that use mercury, and control mercury emissions and releases. Many of the treaty's articles contain a mixture of obligatory and voluntary measures. However, some articles are completely voluntary including Contaminated sites (Article 12); Health aspects (Article 16); Research, development and monitoring (Article 19); and Implementation plans (Article 20).

Financial support to assist governments and others in implementing the treaty is likely to be prioritized to obligatory measures. Actions under these articles and the voluntary components of other articles may or may not qualify for financial assistance.

IPEN has held that, at a minimum, a global treaty on mercury should be expected to incorporate provisions that if taken together and fully implemented, will actually reduce total anthropogenic mercury emissions and releases to the global environment. In our view, the present treaty is not sufficient to do this. The new treaty does, however, represent a global consensus that mercury pollution represents a serious threat to human health and the environment, and that action is needed to minimize and eliminate mercury emissions and releases in order to reduce that threat.

The treaty does contain provisions that may be used to positive effect by governments, NGOs, and others that wish to undertake mercury minimization and reduction efforts. IPEN plans to make use of these provisions in projects and campaigns in the countries where we are active. IPEN also plans to intervene in treaty Conferences of the Parties and Expert Groups with efforts to strengthen the treaty where this can be done.

A decision was taken to name the new treaty the *Minamata Convention* despite the objections from organizations that represent Minamata disease victims because the new treaty does not include mandatory provisions that are sufficient to prevent future outbreaks of Minamata disease. IPEN supports these organizations because mercury poisoning reminiscent of Minamata disease is already occurring in and around many artisanal and small-scale gold mining sites. Nor does the new treaty contain provisions that require the cleanup of mercury-polluted sites

where mercury poisoning outbreaks occur, or provisions to compensate the victims. Nonetheless, the name can serve as a reminder of the serious human health consequences of mercury exposure, and of the long history of corporate and government connivance to deny their responsibilities and fail in their obligations to Minamata disease's many victims.

TREATY PREAMBLE

- The preamble notes health concerns especially in vulnerable populations and concern for future generations.
- It notes the "particular vulnerabilities of Arctic ecosystems and indigenous communities" due to biomagnification of mercury in the food chain and contamination of traditional foods.
- It mentions Minamata Disease "and the need to ensure proper management of mercury and the prevention of such events in the future."
- It notes that nothing in the treaty "prevents a Party from taking additional domestic measures consistent with the provisions of this Convention in an effort to protect human health and the environment from exposure to mercury."
- The word precaution and the polluter pays principle do not appear. Instead, they are lumped in with "reaffirmation" of the Rio Principles. In contrast the Stockholm Convention says that "precaution underlies the concerns of all the Parties and is embedded within this Convention..."

ARTICLE 1 OBJECTIVE¹

- The objective of this Convention is to protect the human health and the environment from anthropogenic releases of mercury and mercury compounds.

ARTICLE 2 DEFINITIONS

- (a) "Artisanal and small-scale gold mining" means gold mining conducted by individual miners or small enterprises with limited capital investment and production.
- (b) "Best available techniques" means those techniques that are the most effective to prevent and, where that is not practicable, to reduce emissions and releases of mercury to air, water, and land and the impact of such emissions

¹ Note: an additional article followed this one in the draft text: Article 1bis Relationship with other international agreements. Fortunately this proposal was defeated. The clause would have given decisions of the World Trade Organization supremacy over the provisions of the treaty. This was previously attempted (and rejected) in the negotiations of both the Stockholm and Rotterdam Conventions.

and releases on the environment as a whole, taking into account economic and technical considerations for a given Party or a given facility within the territory of that Party. In this context

“Best” means most effective in achieving a high general level of protection of the environment as a whole.

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

“Techniques” means technologies used, operational practices and the ways in which installations are designed, built, maintained, operated, and decommissioned.;

- (c) “Best environmental practices” means the application of the most appropriate combination of environmental control measures and strategies.
- (d) “Mercury” means elemental mercury (Hg (0), CAS No. 7439-97-6).
- (e) “Mercury compound” means any substance consisting of atoms of mercury and one or more atoms of other chemical elements that can be separated into different components only by chemical reactions.
- (f) “Mercury-added product” means a product or product component that contains mercury or a mercury compound that was intentionally added.
- (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.
- (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.

- (k) “Use allowed” means any use by a Party of mercury or mercury compounds consistent with this Convention, including, but not limited to, uses consistent with Articles 3, 4, 5, 6, and 7. Note: this proposal makes artisanal small-scale gold mining (ASGM) an allowed use under the Convention without additional warning or caution and approves the use of a toxic substance in a sector that is illegal in most countries. Fortunately, some countries have already banned or prohibited the use of mercury in mining/ ASGM.

ARTICLE 3 MERCURY SUPPLY SOURCES AND TRADE

- New primary mining is banned as of the entry into force by a government. However, a government may permit new mercury mines before then; and if a government postpones ratification, then it has a longer window of time.
- Pre-existing primary mercury mining is banned after 15 years as of date of entry into force for a government. If a government postpones ratification, then it can mine mercury from pre-existing mines for a longer period.
- Mercury from primary mining after ratification can only be used for making permitted products or used in permitted processes (such as VCM, etc., described below in Articles 4 and 5), or disposed according to treaty requirements. This implies that mercury from primary mining shall not be available for use in ASGM once a country ratifies the treaty.
- Identifying stocks of mercury greater than 50 metric tons is optional but countries “shall endeavor” to do it. This paragraph is actually linked to Article 10 regarding Interim Storage. Note: this paragraph could also be relevant for identifying ASGM activities within a country since stocks greater than 10 metric tons may signal ASGM activity. Parties could make identification of stocks more comprehensive and useful by including information about the annual capacity of the interim storage/stocks facility, explaining what the stocks are for and plans for them in the future.
- Since ASGM is an allowed use, trade of mercury for ASGM is allowed. However, countries that have already prohibited the use of mercury in mining and ASGM should strengthen their commitment to prohibiting trade of mercury for this use as well.
- Countries are required to “take measures” to ensure that when a chlor-alkali plant closes, the excess mercury is disposed of according to treaty requirements and not subject to recovery, recycling, reclamation, direct re-use, or alternative uses. This is good because it should prevent this mercury from re-entering the market. However, good mechanisms are still needed to ensure this. Note: countries are to take measures to ensure that these wastes

are treated in an environmentally sound manner according to Article 11 and future guidelines developed by the Conference of the Parties and added to the treaty.

- Trade of mercury, including recycled mercury from non-ferrous metal smelting and mercury-containing products, is permitted if it is for an “allowed use” under the treaty.
- The treaty contains a “prior informed consent” procedure for mercury trade that requires the importing country to provide the exporting party with its written consent to the import and then to ensure that the mercury is only used for the allowed uses under the treaty or for interim storage.
- A public register maintained by the Secretariat will contain consent notifications.
- If a non-party exports mercury to a party, it has to certify that it is not from prohibited sources.
- The article does not apply to trade of “naturally occurring trace quantities of mercury or mercury compounds” in mining ores, coal, or “unintentional trace quantities” in chemical products or any mercury-containing product.
- The COP can later evaluate if trade in specific mercury compounds is undermining the objective of the treaty and decide if a specific mercury compound should be added to the article.
- Each Party has to report to the Secretariat (Article 21), showing that it has complied with the requirements of this article.

ARTICLE 4 MERCURY-ADDED PRODUCTS

- Product prohibition occurs by “taking appropriate measures” to “not allow” the manufacture, import, or export of new mercury-containing products. Note: the sale of existing stocks is permitted.
- The treaty uses a so-called “positive list” approach. This means that the products to be phased out are listed in the treaty; others are presumably not addressed by the treaty.
- Parties are to discourage the manufacture and distribution in commerce of new mercury-added products before the treaty enters into force for them unless they find that a risk and benefits analysis shows environmental or human health benefits. These “loophole” products are to be reported to the Secretariat, which will make the information publicly available.
- There is a list of products that are scheduled to be phased out by 2020. However (see Article 6), countries can apply for a five-year exemption to the

phase-out date and this can be renewed for a total of 10 years, making the effective phase-out date for a product, 2030.

- Products to be phased out by 2020 include batteries (except for button zinc silver oxide batteries with a mercury content < 2%, button zinc air batteries with a mercury content < 2%); most switches and relays; CFL bulbs equal to or less than 30 watts containing more than 5 mg mercury per bulb (an unusually high amount); linear fluorescent bulbs - triband lamps less than 60 watts and containing greater than 5 mg mercury and halophosphate lamps less than 40 watts and containing greater than 10 mg mercury; high pressure mercury vapor lamps; mercury in a variety of cold cathode fluorescent lamps and external electrode fluorescent lamps; cosmetics including skin lightening products with mercury above 1 ppm except mascara and other eye area cosmetics (because the treaty claims that no effective safe substitute alternatives are available); pesticides, biocides, and topic antiseptics; and non-electronic devices such as barometers, hygrometers, manometers, thermometers, and sphygmomanometers (to measure blood pressure).
- A product to be “phased down” is dental amalgam and countries are supposed to pick two measures from a list of nine possibilities taking into account “the Party’s domestic circumstances and relevant international guidance.” The possible actions include picking two items from a list that includes establishing prevention programs to minimize the need for fillings, promoting use of cost-effective and clinically effective mercury-free alternatives, discouraging insurance programs that favor mercury amalgam over mercury-free alternatives, and restricting the use of amalgam to its encapsulated form.
- Products excluded from treaty include products essential for civil protection and military uses; products for research and calibration of instruments for use as a reference standard; switches and relays, CCFL and EEFL for electronic displays, and measuring devices, if no mercury-free alternative available; products used in traditional or religious practices; vaccines containing thiomersal as preservatives (also known as thimerosal); and mercury in mascara and other eye area cosmetics (as noted above).
- Note: some products listed for prohibition in previous drafts such as paints were excluded during the negotiation process.
- Secretariat will receive information from Parties on mercury-added products and make the information publicly available along with any other relevant information.

- Parties can propose additional products to be phased-out including information on technical and economic feasibility and environmental and health risks and benefits.
- The list of prohibited products will be reviewed by the Conference of the Parties five years after the treaty enters into force; this could be approximately 2023.

ARTICLE 5 MANUFACTURING PROCESSES IN WHICH MERCURY OR MERCURY COMPOUNDS ARE USED

- Phased-out processes using mercury include chlor-alkali production (2025) and acetaldehyde production using mercury or mercury compounds as a catalyst (2018).
- Note: Article 5 specifies that countries can apply for a five-year exemption to the phase-out date under Article 6, renewable for a total of 10 years, making the effective phase-out dates for the processes above 2035 and 2028 respectively.
- Restricted processes allow continued use of mercury with no current phase-out date. These include the production of vinyl chloride monomer (VCM), sodium or potassium methylate or ethylate, and polyurethane. Note: VCM production does not appear in UNEP air emission inventories due to lack of data. VCM production using coal and a mercury catalyst is unique to China and a potentially enormous source of mercury releases. According to the UNEP/AMAP Technical Background Report to the Global Atmospheric Mercury Assessment completed in 2008: “Investigations in China confirmed the demand of an estimated 620 tonnes of mercury in 2004 or this application. This use of mercury has been increasing by 25 to 30% per year as the Chinese economy booms...”
- For VCM and sodium or potassium methylate or ethylate production, Parties are to reduce mercury per unit production by 50% in 2020 compared to 2010 use. Note: since this is calculated on a “per facility” basis, total mercury use and release can rise as new facilities are built.
- Additional measures for VCM include promoting measures to reduce use of mercury from primary mining, supporting research and development of mercury-free catalysts and processes, and prohibiting the use of mercury within five years after the COP establishes that mercury-free catalysts based on existing processes are technically and economically feasible.
- For sodium or potassium methylate or ethylate, Parties have to aim to phase out this use as fast as possible and within 10 years of entry into force of

the treaty, prohibit the use of fresh mercury from primary mining, support research and development of mercury-free catalysts and processes, and prohibit the use of mercury within five years after the COP establishes that mercury-free catalysts based on existing processes are technically and economically feasible.

- For polyurethane, Parties are to aim “at the phase out of this use as fast as possible, within 10 years of the entry into force of the Convention.” However, the treaty exempts this process from paragraph 6 which prohibits Parties from using mercury in a facility that did not exist prior to the date of entry into force. This implies that new polyurethane production facilities using mercury can be operated after the treaty comes into force for a Party.
- Parties have to “take measures” to control emissions and releases as outlined in Articles 8 and 9, and report to the Conference of the Parties (COP) on implementation, and try to identify facilities that use mercury for the processes in Annex B and submit information on estimated amounts of mercury used by them to the Secretariat three years after entry into force for the country.
- Exempted processes not covered by the article include processes using mercury-added products, processes for manufacturing mercury-added products, or processes that process mercury-containing waste.
- Parties are not allowed to permit the use of mercury in new chlor-alkali plants and acetaldehyde production facilities after the treaty comes into force (estimated to be approximately 2018).
- The regulated processes are the ones listed above (and in Annex B). However, Parties are supposed to “discourage” the development of new processes using mercury. Note: Parties can allow these mercury-using processes if the country can demonstrate to the COP that it “provides significant environmental and health benefits and that there are no technically and economically feasible mercury-free alternatives available providing such benefits.”
- Parties can propose additional processes to be phased-out, including information on technical and economic feasibility as well as environmental and health risks and benefits.
- The list of prohibited and restricted processes will be reviewed by the Conference of the Parties five years after the treaty enters into force; this could be approximately 2023.

ARTICLE 6 EXEMPTIONS AVAILABLE TO A PARTY UPON REQUEST

- Parties can register for a five-year exemption from the phase-out dates for products or processes (listed in Annexes A and B) when they become a Party or when new products or processes are added to the treaty. Parties do need to explain why they need the exemption.
- Like the Stockholm Convention, the mercury treaty will establish a publicly available register of exemptions that will include a list of which countries have requested which exemptions and the expiry date of each one.
- The five-year exemption period can be extended for another five years if the COP agrees to a request from a Party. To make this decision, the COP is supposed to take into account a report from the requesting Party justifying the extra time, information on availability of alternatives, circumstances of developing and transition countries, and activities to provide environmentally sound storage and disposal. An exemption can only be extended once per product per phase-out date.
- No exemptions are permitted after the 10-year period has expired from the phase-out date listed in Annex A or B.

ARTICLE 7 ARTISANAL AND SMALL-SCALE GOLD MINING (ASGM)

- The objective is to “take steps to reduce, and where feasible eliminate, the use of mercury and mercury compounds in, and the releases to the environment of mercury from, such mining and processing.” The ASGM activity is defined as, “mining and processing in which mercury amalgamation is used to extract gold from ore.”
- It applies to countries that admit that ASGM is “more than insignificant.” The treaty gives no further guidance on the definition of this term.
- ASGM is an allowed use under the treaty. This qualifies it for mercury trade without any specific import limits – either in quantities or in time. However, paragraph 1f in Annex C on the ASGM national action plan states that in their national action plan, countries are required to include a section on “[s]trategies for managing trade and preventing the diversion of mercury and mercury compounds from both foreign and domestic sources to use in artisanal and small scale gold mining and processing.” Note: in some countries (or parts of countries), such as Indonesia, Malaysia, and the Philippines, the use of mercury in ASGM and mining is already prohibited. These and other countries that have already prohibited the use of mercury in mining and ASGM should strengthen their commitment to prohibiting trade of mercury for this use as well.

- According to the trade provisions (Article 3) mercury from primary mercury mines and chlor-alkali facilities cannot be used for ASGM after the treaty enters into force. Monitoring measures and public participation can help insure that this provision is enforced.
- If the country notifies the Secretariat that Article 7 applies to it (by indicating that the activity is “more than insignificant”), then it is required to develop a national action plan and submit it to the Secretariat by three years after entry into force with a review every three years.
- Plan requirements include a national objective and reduction target, and actions to eliminate the following worst practices: whole ore amalgamation; open burning of amalgam or processed amalgam; amalgam burning in residential areas; and cyanide leaching in sediment, ore, or tailings to which mercury had been added without first removing the mercury. Unfortunately, the treaty does not contain a sunset date or reduction target for countries to use as a reference. However, countries should work to establish these milestones in their national objectives.
- Other plan components include steps to facilitate formalization or regulation of ASGM; baseline estimates of amounts of mercury used in the practice; strategies for promoting the reduction of emissions and releases of and exposure to mercury; strategies for managing trade and preventing the diversion of mercury into ASGM; strategies for involving stakeholders in the implementation and continuing development of the national action plan; a public health strategy on the exposure of ASGM miners and their communities to mercury, including the gathering of health data, training for health-care workers, and awareness-raising through health facilities; strategies to prevent the exposure of vulnerable populations, particularly children and women of child-bearing age, especially pregnant women, to mercury used in artisanal and small-scale gold mining; strategies for providing information to ASGM miners and affected communities; and a schedule for implementation of the national action plan. Note: while cleaning up the mercury-contaminated sites is not included in the treaty text, the proposed action plan can include this important component of addressing mercury pollution.
- Optional activities include the “[u]se of existing information exchange mechanisms to promote knowledge, best environmental practices and alternative technologies that are environmentally, technically, socially and economically viable.”
- Although mercury use is allowed for the ASGM sector, there is no phase-out date for ASGM in Article 7. In addition, ASGM is not covered by Article 5 (mercury added-processes). However, countries can establish phase-out

dates in their national action plans and address ASGM in other articles as described.

ARTICLE 8 EMISSIONS (AIR)

- The objective is “controlling and where feasible reducing emissions of mercury and mercury compounds...” Note: emissions mean air emissions from point sources in Annex D and country discretion decides what is feasible.
- For existing sources, the objective of the article is “for the measures applied by a party to achieve reasonable progress in reducing emissions over time.”
- Air emission sources included in the treaty are coal-fired power plants and industrial boilers; smelting and roasting processes used in production of non-ferrous metals (only lead, zinc, copper, and industrial gold); waste incineration; and cement clinker production facilities.
- Emission sources that were deleted from the treaty during negotiation were oil and gas; facilities in which mercury-added products are manufactured; facilities that use mercury in manufacturing processes identified in Annex D; iron and steel manufacturing including secondary steel; and open burning.
- Negotiators at INC5 did not find it necessary to set threshold limit values for emission sources retained in Annex F, leaving the possibility to develop emission limit values at the discretion of the Parties.
- Preparing a national plan to control emissions is optional. If one is created, it is submitted to the COP within four years of entry into force for the Party.
- New sources have stronger control measures than existing sources.
- For new sources BAT/BEP is required to “control and where feasible reduce” emissions and BAT/BEP is to be implemented no later than five years after the treaty enters into force for that Party. Emission limit values can substitute for BAT/BEP if they are consistent with its application.
- If a government postpones ratification, then it has a longer window of time to construct new sources without requiring BAT/BEP.
- BAT/BEP Guidance will be adopted at COP1. Presumably an expert group will develop the guidance before then during intercessional periods between future INCs.
- A new source can be either new construction one year after entry into force for the country or a substantially modified facility within category sources listed in Annex D. The language specifies that to “convert” an existing source to a new source through modification there must be a “significant increase in mercury emissions, excluding any change in emissions resulting

from by-product recovery.” The Party gets to choose whether any existing source is subject to the more stringent requirements of new sources.

- Measures on existing sources are to be implemented as soon as practicable but no later than 10 years after the treaty enters into force for that Party.
- Measures on existing sources can take into account “national circumstances, and the economic and technical feasibility, and affordability of the measures.”
- There is no requirement for an existing facility to apply BAT/BEP. Instead, countries can choose one item from a menu that includes a quantified goal (could be any goal), emission limit values, BAT/BEP, multi-pollutant control strategy, and alternative measures.
- All reductions are taken on a “per facility” basis, so an increased number of facilities will increase total mercury emissions.
- Parties have to establish an inventory of emissions from relevant sources (Annex D) as soon as possible and not later than five years after entry into force for the country.
- The COP has to adopt, as soon as possible, guidance on methods to prepare the inventories and criteria that Parties can develop to identify sources within a category.
- Parties have to report on their actions under this article according to the requirements in Article 21.

ARTICLE 9 RELEASES (LAND AND WATER)

- The objective is “controlling and where feasible reducing emissions of mercury.” Note: releases means mercury releases to land and water from point sources that are not covered in other provisions of the treaty. Country discretion decides what is feasible.
- Sources included in the treaty are defined by countries. During the negotiations, Annex G in the draft text contained a list of possible sources but negotiators deleted the annex at INC5 so that there are no guidelines for countries to know what sources might release mercury to land and water. Annex G contained the following sources: facilities in which mercury-added products are manufactured; facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex D; and facilities in which mercury is produced as a by-product of non-ferrous metals mining and smelting.
- The article controls “relevant sources” – those are point sources identified by countries that release “significant” amounts of mercury.

- Preparing a national plan to control emissions is optional. If one is created, it is submitted to the COP within four years of entry into force for the Party.
- As for control measures, Parties are to apply one of the following “as appropriate”: release limit values, BAT/BEP, multi-pollutant control strategy, or alternative measures.
- Parties are to identify sources of mercury releases to land and water no later than three years after entry into force for the country, and on a regular basis thereafter.
- Parties are to establish an inventory of releases from relevant sources as soon as possible and no later than five years after entry into force for the country.
- COP “as soon as practicable” is to develop guidance on BAT/BEP and a method for preparing inventories of releases.
- Parties have to report on their actions under this article according to the requirements in Article 21.

ARTICLE 10 ENVIRONMENTALLY SOUND INTERIM STORAGE OF MERCURY, OTHER THAN WASTE MERCURY

- Interim storage of mercury can only be for a use allowed under the treaty. The interim storage has a similar function as the storage of mercury stocks.
- Parties must “take measures” to ensure that interim storage mercury is carried out in an environmentally sound manner and ensure that these facilities do not become mercury hotspots.
- The COP is to adopt guidelines on storage taking Basel Convention Guidelines into account but the treaty does not specify when these guidelines have to appear. These guidelines should address various types of interim storage, including national or regional interim storage.
- The guidelines on storage may be added as an annex to the treaty.

ARTICLE 11 MERCURY WASTES

- The treaty applies the Basel definitions of waste to the mercury treaty: wastes consisting of or containing mercury compounds or contaminated with mercury or mercury compounds.
- The COP in collaboration with the Basel Convention will decide the relevant thresholds for determining the relevant quantities of mercury in wastes that make it hazardous.

- The treaty specifically excludes tailings from mining (except primary mercury mining) unless the wastes contain mercury above the thresholds defined by the COP. This covers tailings containing mercury from all types of mining operations.
- Parties are to “take measures” so that mercury waste is managed in an environmentally sound manner according to Basel Convention guidelines and future guidelines which will be added to the treaty.
- No corporate or polluter responsibility is identified in the article, however national governments may wish to make use of these economic instruments.
- In developing waste guidelines, the COP must take national waste management programs and regulations into account.
- Mercury waste can only be recovered, recycled, reclaimed, or directly used for a use allowed under the treaty. Note: mercury from decommissioned chlor-alkali plants is regulated separately under Article 3 (Supply and Trade).
- Basel Convention Parties are not permitted to transport waste across international boundaries except for environmentally sound disposal.
- Non-Basel Parties are to take into account relevant international rules, standards and guidelines.

ARTICLE 12 CONTAMINATED SITES

- Action on contaminated sites is voluntary: Parties “shall endeavor...”
- A clause requiring funding was removed by negotiators at INC5.
- Possible voluntary actions include developing strategies for identifying and assessing contaminated sites and actions to reduce risks, incorporating “where appropriate” an assessment of risks to human health and the environment.
- There is no mention of a role for polluters to contribute financially to the cleanup of sites or any requirement to compensate the victims.
- The COP is to develop guidance on managing contaminated sites but the treaty does not provide a deadline for the guidance.
- The guidance on managing contaminated sites includes topics such as site identification and characterization; engaging the public; human health and environmental risk assessments; options for managing the risks posed by contaminated sites; evaluation of benefits and costs; and validation of outcomes.

ARTICLE 13 FINANCIAL RESOURCES AND MECHANISMS

- The article confirms that the overall effectiveness of treaty implementation by developing countries is related to effective implementation of the financial mechanism.
- The article commits each Party to allocating resources for treaty implementation taking into account national policies, priorities, plans, and programs.
- A variety of funding sources are encouraged, including multilateral, regional, and bilateral sources.
- “The Mechanism shall encourage the provision of resources from other sources, including the private sector, and shall see to leverage such resources for the activities it supports.”
- Actions on funding must take full account of the specific needs and special circumstances of Small Island Developing States and Least Developed Countries.
- Characteristics of the mechanism to support implementation of the treaty by developing and transition countries include the provision of “adequate, predictable, and timely financial resources.”
- The financial mechanism includes a GEF trust fund and a “special international program” that will provide capacity building and technical assistance.
- Obligations of the GEF trust fund include providing “new, predictable, adequate and timely financial resources to meet costs in support of implementation of the Convention.”
- GEF trust fund will operate under guidance of the COP and be accountable to it.
- GEF trust fund will provide resources to meet agreed incremental costs of global environmental benefits and agreed full costs of some enabling activities.
- GEF takes into account the potential mercury reductions of a proposed activity relative to its costs.
- COP guidance to the GEF trust fund includes strategies, policies, priorities, eligibility, and an indicative list of categories of activities that could receive support from the GEF.
- The international program will be operated under the guidance of the COP and accountable to it.
- The international program will be hosted at an existing entity decided by COP1.

- The international program will be funded on a voluntary basis.
- COP will review the financial mechanism no later than COP3 and afterwards on a regular basis.

ARTICLE 14 CAPACITY-BUILDING, TECHNICAL ASSISTANCE, AND TECHNOLOGY TRANSFER

- The article obligates Parties to “cooperate” to provide timely and appropriate capacity-building and technical assistance “within their respective capabilities.”
- Least Developed Countries and Small Island Developing States are highlighted as recipients of tech transfer.
- A variety of arrangements are mentioned as possibilities: regional, sub-regional, and national.
- Synergies with other agreements are encouraged.
- Developed country Parties, and others within their capabilities, are obligated to promote and facilitate development, transfer, and diffusion of and access to “up-to-date environmentally sound alternative technologies.” The private sector and other stakeholders are supposed to support them in this effort.
- By COP2, and regularly thereafter, governments will evaluate the success of this article by considering progress on alternative technologies and initiatives, needs of Parties, and challenges in technology transfer. The COP will make recommendations on how capacity building, technical assistance and technology transfer could be further enhanced.

ARTICLE 15 IMPLEMENTATION AND COMPLIANCE COMMITTEE

- The objective of the committee is to “promote implementation of, and review compliance with, all provisions of the Convention.”
- In this work, the committee is to examine both individual and systemic issues of implementation and compliance and make recommendations to the COP.
- The committee is obligated to be “facilitative in nature and shall pay particular attention to the respective national capabilities and circumstances of Parties.”
- The committee will be a subsidiary body of the COP.
- The committee has 15 members (three from each UN region) elected at COP1 and thereafter according to the upcoming Rules of Procedure.

- The COP can adopt further terms of reference for the committee.
- Members must have “competence in a field relevant to this Convention and reflect an appropriate balance of expertise.”
- In its operation, the committee can consider written submissions from a Party about its own compliance; national reports; and requests from the COP.
- The committee will make every effort to operate by consensus. If that fails then it can adopt recommendations by a three-fourths majority vote of the members present and voting based on a quorum of two-thirds of its members.

ARTICLE 16 HEALTH ASPECTS

- This article is voluntary and contains a series of optional activities. The treaty text states that “Parties are encouraged to...”
- Optional activities include strategies and programs to identify and protect populations at risk; development and implementation of science-based educational and preventive programs on occupational exposure to mercury; promoting appropriate health-care services for prevention, treatment, and care of populations affected by mercury exposure; and establishing and strengthening institutional and health professional capacities for prevention, diagnosis, treatment, and monitoring of health risks related to mercury exposure.
- The COP should consult with WHO, ILO, and other relevant intergovernmental organizations as appropriate.
- The COP should promote cooperation and exchange of information with WHO, ILO, and other relevant intergovernmental organizations.

ARTICLE 17 INFORMATION EXCHANGE

- The article obligates parties to facilitate the exchange of various types of information including scientific, technical, economic, legal, ecotoxicological, and safety information; information on reduction or elimination of production, use, trade, emissions, and releases of mercury; information on technically and economically viable alternatives to mercury-added products, manufacturing processes using mercury, and activities and processes that release mercury; information on alternatives, including health and environmental risks, and economic and social costs and benefits of such alternatives; and epidemiological information.

- Information can be exchanged through the Secretariat, through other organizations, or directly.
- The Secretariat is obligated to facilitate cooperation in the exchange of information.
- Parties have to establish a national focal point for the exchange of information.
- Delegates agreed that “information on the health and safety of humans and the environment shall not be regarded as confidential.”
- Other types of information involving the treaty that is exchanged “shall protect any confidential information as mutually agreed.”

ARTICLE 18 PUBLIC INFORMATION, AWARENESS, AND EDUCATION

- This article obligates Parties to promote and facilitate providing information to the public “within its capabilities.”
- Information includes health and environmental effects of mercury, alternatives to mercury, results of research and monitoring activities, activities to meet obligations under the treaty, and the activities referred to in Articles 17 and 19.
- Parties are also supposed to promote and facilitate “[e]ducation, training and public awareness related to the effects of exposure to mercury and mercury compounds on human health and the environment in collaboration with relevant intergovernmental and nongovernmental organizations and vulnerable populations, as appropriate.”
- Parties are supposed to use existing mechanisms or give consideration to the development of mechanisms such as PRTR, “or the collection and dissemination of information on estimates of its annual quantities of mercury and mercury compounds that are released or disposed of through human activities.”

ARTICLE 19 RESEARCH, DEVELOPMENT AND MONITORING

- This article is voluntary and contains a series of optional activities. The treaty text state that “Parties shall endeavour to cooperate to develop and improve, taking into account their respective circumstances and capabilities....”
- Optional activities to develop and improve include inventories, modelling, impact assessments on human health and the environment, methods devel-

opment, information on environmental fate and transport, information on commerce and trade, information on alternatives, and information on BAT/BEP.

- Parties are encouraged to use existing monitoring networks and research programs if appropriate.

ARTICLE 20 IMPLEMENTATION PLANS

- Developing and executing an implementation plan is optional.
- If a plan is developed, it should follow an initial assessment and be transmitted to the Secretariat.
- In developing an implementation plan, Parties should “consult national stakeholders to facilitate the development, implementation, review and updating of their implementation plans.”
- Parties can also coordinate on regional plans to facilitate treaty implementation.
- NGOs can participate in the consultation with national stakeholders in developing, implementing, reviewing, and updating the NIP.

ARTICLE 21 REPORTING

- Each Party must report to the COP through the Secretariat on the measures that it has taken to implement the treaty and on the effectiveness of its measures in meeting the treaty’s objectives.
- COP1 decides the timing and format of the reporting, taking into account coordinating reporting on the mercury treaty with reporting required by other relevant chemicals and wastes conventions.

ARTICLE 22 EFFECTIVENESS EVALUATION

- The COP evaluates the effectiveness of the treaty no later than six years after it enters into force and periodically thereafter.
- COP1 will initiate arrangements for providing comparable monitoring data on the “presence and movement of mercury and mercury compounds in the environment as well as trends in levels of mercury and mercury compounds observed in biotic media and vulnerable populations.”
- Evaluation will be conducted using available scientific, environmental, technical, financial, and economic information including reports and monitoring information provided to the COP, national reports, information and recom-

mendations from the implementation and compliance committee, and other reports on the operation of the financial and technical assistance mechanism.

ARTICLE 23 CONFERENCE OF THE PARTIES

- COP1 will be convened by the Executive Director of UNEP no later than one year after the treaty enters into force.
- The COP will meet regularly in a schedule that it decides.
- The COP can have extraordinary meetings as decided by the COP or at written request of a Party if at least one-third of the Parties support the proposal within six months.
- COP1 will adopt Rules of Procedure by consensus along with financial rules for itself and provisions governing the functioning of the secretariat.

ARTICLE 24 SECRETARIAT

- Secretariat functions performed by the Executive Director of UNEP unless the COP decides by the three-fourths vote to change the secretariat to a different international organization.
- Secretariat functions include making arrangement for meetings of the COP and subsidiary bodies; facilitate assistance to Parties, especially those from developing and transition countries; coordinate with Secretariats of relevant international bodies such as chemicals and waste conventions; assist in exchange of information; prepare periodic reports; and undertake other duties assigned to it by the COP.

ARTICLE 25 SETTLEMENT OF DISPUTES

- Parties are obligated to settle any dispute regarding interpretation or application of the treaty through negotiation or peaceful means.
- When ratifying, accepting, approving, or acceding to this Convention, any Party may give written notice that it recognizes one or both of the following means of dispute settlement: Arbitration in accordance with the procedure set out in Part I of Annex E or submission of the dispute to the International Court of Justice.
- If the parties have not accepted a specific means of settlement described above and if they have not settled the dispute within 12 months, then the dispute will be submitted to a conciliation commission at the request of any party to the dispute and be governed under Annex E.

ARTICLE 26 AMENDMENTS TO THE CONVENTION

- Any Party can propose an amendment.
- Amendments are adopted at a meeting of the COP by consensus.
- If consensus cannot be reached, then, as a last resort, the amendment can be adopted by a three-fourths majority vote of the parties present and voting.
- The amendment enters into force 90 days after three-fourths of the Parties signal agreement with deposits of instruments of ratification, acceptance, or approval. After that, it enters into force for a party 90 days after it signals agreement.

ARTICLE 27 ADOPTION AND AMENDMENT OF ANNEXES

- Annexes are an official part of the treaty.
- Additional annexes can only concern procedural, scientific, technical, or administrative matters.
- Annexes are proposed according to Article 26.
- After one year, the annex enters into force for most Parties.
- If a Party cannot accept an Annex, it has to notify the Depositary within one year. A Party can reverse this decision.
- Amendments are handled like annexes including the opt-in procedure described below in Article 30.

ARTICLE 28 RIGHT TO VOTE

- Each party has one vote. The EU gets the number of votes equal to the number of its members (currently 27). The EU cannot vote if any of its member states decides to vote on its own behalf and vice versa.

ARTICLE 29 SIGNATURE

- The mercury treaty is open for signature at Kumamoto, Japan, from 10 October 2013 for one year.
- Note: signature means that a country gives preliminary and general endorsement of the treaty. Signature is not legally binding and does not commit the country to proceed to ratification. However, countries that sign the treaty should not take actions to defeat the treaty or undermine it in any way.

ARTICLE 30 RATIFICATION, ACCEPTANCE, APPROVAL, OR ACCESSION

- Ratification creates legally binding obligations and often results in amending national legislation to comply with treaty provisions.
- The treaty is open for ratification from the day the convention is closed for signature.
- When they ratify, countries are encouraged to provide information to the Secretariat on their measures to implement the treaty.
- A country can declare in its instrument of ratification that any amendment only enters into force for it when it deposits its instrument of ratification for it. As a result, a new amendment is not automatically in force for countries that make this declaration unless they signal in writing that they accept the amendment. This is the “opt-in” procedure that is also used by 20 countries of the Stockholm Convention.

ARTICLE 31 ENTRY INTO FORCE

- The convention enters into force 90 days after the 50th country ratifies the treaty.
- For countries that ratify after the 50th country, the treaty enters into force for them 90 days after depositing their ratification.

ARTICLE 32 RESERVATIONS

- No reservations may be made to the convention.
- Note: a “reservation” is a statement by a country when ratifying that excludes or modifies certain parts of the treaty as it applies to them. The Stockholm Convention also does not permit reservations.

ARTICLE 33 WITHDRAWAL

- Three years (or later) after the treaty enters into force for a government, it can withdraw from the treaty by giving written notification.
- The withdrawal enters into force one year after official notice is given or later if specified by the country.

ARTICLE 34 DEPOSITARY

- UN Secretary-General is the depositary of the convention. A depositary is an institution to which a multilateral treaty is entrusted and its functions are outlined in Article 77 of the Vienna Convention on the Law of Treaties. These

include having custody of the original text, preparing further text of the treaty, receiving signatories, informing governments about matters related to the treaty, and notifying when the treaty enters into force.

ARTICLE 35 AUTHENTIC TEXTS

- The text of the convention is equally authoritative in each of the six UN languages: Arabic, Chinese, English, French, Russian, and Spanish.

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