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on mercury**

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

**Draft elements of a comprehensive and suitable approach to a
global legally binding instrument on mercury**

Note by the secretariat

1. At its first session, held in Stockholm from 7 to 11 June 2010, 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 next session draft elements of the comprehensive and suitable approach to mercury called for by [the Governing Council of the United Nations Environment Programme in its] decision 25/5, including the provisions referred to in paragraph 27 of the decision and taking into consideration the matters listed in paragraph 28 of the decision. The elements prepared by the secretariat could include both binding and voluntary measures and would be presented as a means of facilitating the committee's work without in any way prejudging what the committee might decide regarding the mercury instrument. The secretariat would base its work on the views expressed by parties during the current session and any views submitted by parties to the secretariat in writing by 31 July 2010.¹

2. Accordingly, the secretariat has prepared for the committee's consideration draft elements of a comprehensive and suitable approach to mercury, as set out in the annex to the present note. The secretariat presents the draft elements solely as a means of facilitating the committee's work, recognizing that it is the committee's prerogative to decide what the content of the mercury instrument should be.

3. As requested by the committee the draft elements are based upon the views expressed by parties at the committee's first session and on written views submitted afterwards. The great majority of parties which submitted their written views did so in narrative form. A very few parties, however, submitted actual draft text for provisions of a mercury instrument. As the quoted passage above shows, the committee requested the secretariat to prepare draft elements based on the parties' views but did not request it to prepare a compilation of suggested draft text. In the light of that, and to adhere as closely as

* UNEP(DTIE)/Hg/INC.2/1.

¹ Report of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury on the work of its first session (UNEP(DTIE)/Hg/INC.1/21), para. 171.

possible to its mandate from the committee, the secretariat did not attempt to integrate all of the legal text suggestions into this draft elements document, so as not to prejudice the majority of parties that did not submit proposed legal text. Nevertheless, the secretariat carefully took into account all party views that were expressed and submitted.

4. The draft elements contain all the provisions required under paragraph 27 of decision 25/5 and take into consideration all the matters listed in paragraph 28 of that decision. Both binding and voluntary draft elements are included. The secretariat has sought to present draft elements that are comprehensive, coherent, workable and comprehensible. In doing so the secretariat has endeavoured to use the simplest constructions possible to achieve the desired results, avoiding high levels of technical detail. Furthermore, it has attempted to avoid elements that could leave a Party to the mercury instrument, through no fault of its own, in non-compliance with the instrument upon its entry into force. The draft elements contain no bracketed text, although some as yet undefined dates, numbers and fractions are represented by the letter "X."

5. For the purpose of presentation only, the draft elements are arranged using a "control measures plus annexes" structure, as described in paragraph 5 (a) of the note on options for the structure of a mercury instrument prepared by the secretariat for the committee's first session (UNEP(DTIE)/Hg/INC.1/4). All major multilateral agreements of global scope, including conventions with protocols, use the control measures plus annexes structure to some extent. If the committee decides to use an alternative structure, however, the draft elements can readily be rearranged to accommodate it.

6. The draft elements are grouped under headings such as "Measures to reduce the supply of mercury", "Measures to reduce intentional use of mercury" and "Transitional measures". These groupings and headings are used only to enhance the clarity and readability of the draft elements and could be retained or discarded in the final text of the mercury instrument, depending on the committee's preference.

7. Most of the draft elements are accompanied by comments that explain their aims, how they might work, why they are proposed, their linkages and relevance to other elements, implementation aspects and additional issues that the committee may wish to consider. The secretariat includes these comments, in part, to respond to the committee's request at its first session that the secretariat should prepare a "report that addresses the issues that arise from the implementation of the options for control measures listed in paragraph 27 of Governing Council decision 25/5 with a focus on their inter-linkages."² All comments appear in italics and should not be considered to be part of the draft elements.

8. The committee may wish to use the draft elements set out in the annex to the present note as the basis for its work in developing a global legally binding instrument on mercury.

2 Ibid. at annex II, part A, para. (n).

Annex

Draft elements of a comprehensive and suitable approach to a global legally binding instrument on mercury

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Draft elements of a comprehensive and suitable approach to a global legally binding instrument on mercury

Preamble

Comment: The committee may wish to consider preambular recitals at a later time in its deliberations.

Part I: Introduction

1. Objective

Comment: At its first session, the committee generally agreed that negotiation of the objectives of the instrument should await further discussion of control measures and financial and technical assistance. The objective set out below is therefore presented as a placeholder only. It is a shortened version of the sample objective contained in the elements of a comprehensive mercury framework set out in the appendix to annex I of the report of the Open-ended Working Group on the work of its second meeting (UNEP(DTIE)/Hg/OEWG.2/13), which took place from 6 to 10 October 2008.

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

2. Definitions

Comment: The committee may wish to consider whether all the terms defined below should be included in this draft element and whether any additional terms should be defined. It may be useful, for example, to consider definitions for terms such as “mercury wastes” or “environmentally sound disposal of mercury wastes”. Alternatively, these and other terms might be defined by the Conference of the Parties after the convention’s entry into force, as the need to clarify them arises, pursuant to requirements or authorities established under the convention.

Regarding the placement of definitions, the committee may wish to consider whether some terms may best be defined within the substantive or procedural provisions to which they are relevant rather than in a stand-alone article as in this draft element.

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;³
- (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 4;
- (d) “Mercury” means elemental mercury (Hg(0)) 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 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;
- (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;

³ Based on the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, art. 2, para. 8, definition of “environmentally sound management of hazardous wastes or other wastes”.

(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;

(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; or
- (iii) Listed in Annex C or Annex D for which the Party is registered for an allowable-use exemption, as provided in Article 14.

Part II: Measures to reduce the supply of mercury

3. Mercury supply sources

Comment: This draft element would prohibit or restrict the production and export of mercury from identified supply sources. Paragraphs 1 and 2 deal with primary mercury mining, while paragraph 3 focuses on other sources, which are listed in Annex A.

Governments have generally concurred that primary mining is the least desirable source of mercury for continuing uses. Paragraphs 1 and 2 would therefore treat primary mining differently from other supply sources.

In defining the obligations that it imposes, this draft element, like several others, uses the term “not allow” instead of “ban” or “prohibit”. “Not allow” focuses the obligation on outcomes, rather than on specific legal measures. This flexible, outcome-oriented approach is consistent with paragraph 28 (a) of Governing Council decision 25/5 and could be especially appropriate for situations in which the specified activity does not occur in a Party’s territory and the Party may therefore not need to adopt a law or regulation to address it.

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 the export of any mercury or mercury compounds produced from primary mercury mining;
- (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 produced annually by such mining; and
- (c) Eliminate such mining within X years of the date of entry into force of this Convention for it.

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

Comment: The goal of paragraph 3 below is that, in the long term, all mercury from all major supply sources should be put into environmentally sound storage. Nevertheless, paragraph 3 recognizes that there will need to be some continued use of mercury in the intermediate term. Thus, paragraph 3 would allow mercury from the sources listed in Annex A to continue to be available for uses that are allowed (i.e., not prohibited) under the convention. Such uses, as defined in paragraph (k) of draft element 2, would include any uses that are not listed in Annex C or D and any uses listed in Annex C or D for which a Party has registered for an allowable-use exemption, as provided in draft element 14.

3. Each Party shall:
- (a) Identify the mercury supply sources listed in Annex A that are located within its territory;
 - (b) Not allow the sale, distribution in commerce, or use of mercury from supply sources listed in Annex A except for a use allowed to the Party under this Convention;
 - (c) Not allow the export of mercury from supply sources listed in Annex A, except as provided in Article 5;
 - (d) Ensure that all mercury from supply sources listed in Annex A that is not sold, distributed in commerce, used or exported pursuant to subparagraph (b) or (c) is stored in an environmentally sound manner as set out in Article 4; and
 - (e) Include in its reports submitted pursuant to Article 22 information on the quantities of mercury:
 - (i) Produced from each category of supply source identified pursuant to subparagraph (a); and
 - (ii) Sold, distributed, used, exported or stored pursuant to subparagraphs (b), (c) and (d).

4. Environmentally sound storage

Comment: The long-term goal of this draft element is that all elemental mercury from all major supply sources, including mercury compounds that can easily be converted to elemental mercury, should be put into environmentally sound storage. Such mercury would be neither considered to be nor treated as waste. This approach may be appropriate because use of elemental mercury under the allowable-use exemptions of draft element 14 may continue for a significant period, making all elemental mercury a potential commodity. Under this approach, the environmentally sound storage provisions of draft element 4 would apply to elemental mercury and mercury compounds that can be easily converted to elemental mercury, while the waste provisions of draft element 12 would apply to mercury-containing materials for which long-term storage may not be feasible, such as mercury-added products that have become wastes or fly ash from coal-fired power plants. Elemental mercury recovered from such materials would ultimately be put into environmentally sound storage pursuant to this draft element.

While the long-term goal would be for all mercury from major supply sources to be put into environmentally sound storage, this draft element recognizes that affordable, feasible means of achieving environmentally sound storage may not be available to many Parties when the convention enters into force. Accordingly, the draft element would require the Parties to develop guidance on environmentally sound storage that would take into account the need for flexibility and interim measures and, in particular, the capacities and needs of developing-country Parties and Parties with economies in transition.

1. Each Party shall manage mercury and the mercury compounds listed in Annex B in a manner consistent with the guidance on environmentally sound storage adopted, updated or revised by the Conference of the Parties pursuant to this article.
2. The Conference of the Parties shall at its first meeting adopt guidance on the environmentally sound storage of mercury and the mercury compounds listed in Annex B. The ultimate objective of the guidance shall be that all mercury from primary mercury mining or the supply sources listed in Annex A shall be stored in an environmentally sound manner. In considering the guidance, the Conference of the Parties shall take into account the factors listed in Part II of Annex B.
3. To achieve the objectives of this article, the Conference of the Parties shall periodically review the effectiveness of the guidance adopted under paragraph 2 and shall update or revise it as it may deem necessary.
4. 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 long-term environmentally sound storage of mercury and mercury compounds.

5. International trade with Parties in mercury or mercury compounds

Comment: This draft element addresses trade in "commodity" mercury between Parties (draft element 6 addresses trade with non-Parties). Under the element mercury and the mercury compounds listed in

Annex B could be traded between Parties only for the purpose of environmentally sound storage or for a use allowed to the importing Party under the convention. The mercury compounds and mixtures listed in Annex B are suggested for inclusion because they can profitably be converted to elemental mercury and could present a potential loophole were their export not controlled.

During the transitional period when Parties may continue to use mercury for which they have allowable-use exemptions under draft element 14, the import and export provisions of this draft element 5 could allow them to satisfy their demand for mercury by importing it from existing stocks instead of producing it through primary mining in their own territories. Such an approach could yield local and global environmental benefits by preventing the release of significant amounts of mercury to the environment from the mining process and by preventing the addition of new, virgin mercury to the global mercury supply.

By specifically stating that the use of mercury for artisanal and small-scale gold mining is not an allowed use under the convention, this draft element would not allow the import or export of mercury for artisanal and small-scale gold mining. Such a provision would not require Parties to ban or restrict artisanal and small-scale gold mining in their territories; it would, however, require them to take steps to prevent any mercury permissibly exported or imported under other provisions of the convention from being diverted to use in artisanal and small-scale gold mining.

In the situation of mercury trade for an allowed use, the prior informed consent of the importing Party would be required, including a statement from the Party that the import would be limited to a use allowed to the Party. If the committee decides to include such a prior informed consent procedure in the convention it may also wish to consider whether to specify how that procedure would work or to leave that task to the Conference of the Parties or the convention secretariat. The committee might also wish to consider whether and to what extent a prior informed consent procedure could be administered in collaboration with the appropriate bodies of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, or whether it might be necessary to allow Parties time to prepare for their implementation of the procedure after the entry into force of the convention.

The prior informed consent procedure would impose obligations beyond those of Parties to the Rotterdam Convention that have taken national actions to ban or severely restrict mercury. The provisions of the Rotterdam Convention require such Parties to provide export notifications, but do not require written consent from importing Parties.

1. Each Party shall allow the import of mercury or the mercury compounds listed in Annex B only:
 - (a) For the purpose of environmentally sound storage as set out in Article 4; or
 - (b) For a use allowed to the Party under this Convention.

Comment: As defined in paragraph (k) of draft element 2, a “use allowed to the Party under this Convention” would include any use that is not listed in Annex C or Annex D and any use listed in either of those annexes for which a Party has registered for an allowable-use exemption as provided in draft element 14.

2. Each Party shall allow the export of mercury or mercury compounds listed in Annex B only after the Party has:
 - (a) Provided an export notification to the importing Party; and
 - (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 as set out in Article 4; or
 - (ii) For a use allowed to the importing Party under the Convention.

3. For the purposes of this article, and paragraphs 1 and 2 notwithstanding, the use of mercury or mercury compounds in artisanal and small-scale gold mining shall not be considered a use allowed to any Party under this Convention.

Comment: Please refer to the comment about artisanal and small-scale gold mining included in the introductory comments to draft element 5. While paragraph 3 would not allow the import or export of mercury for use in artisanal and small-scale gold mining, neither would it require Parties to ban or eliminate such mining; the question of whether to ban or eliminate mercury use in artisanal and small-scale gold mining would be for individual Parties to decide at their own discretion.

6. International trade with non-Parties in mercury or mercury compounds

Comment: This draft element would prevent the export of commodity mercury to non-Parties and would allow imports from them only for the purpose of environmentally sound storage. By being stricter than the element governing trade between Parties, this draft element, like its counterpart in the Montreal Protocol on Substances that Deplete the Ozone Layer, would serve as an incentive for States to become Parties to the convention.

In the case of exports to non-Parties for the purpose of environmentally sound storage, the committee may wish to consider whether it would be desirable to include a certification requirement for non-Parties comparable to that set out in paragraph 2 (b) (iii) of Article 3 of the Stockholm Convention on Persistent Organic Pollutants or a compliance requirement for non-Parties comparable to that set out in paragraph 8 of Article 4 of the Montreal Protocol.

Each Party shall allow:

(a) The export of mercury or mercury compounds listed in Annex B to any State not Party to this Convention only for the purpose of environmentally sound storage as set out in paragraph 1 of Article 4; and

(b) The import of mercury or mercury compounds listed in Annex B from a State not Party to this Convention only for the purpose of environmentally sound storage as set out in paragraph 1 of Article 4.

Part III: Measures to reduce intentional use of mercury

7. Mercury-added products

Comment: In paragraph (f) of draft element 2 a “mercury-added product” is defined as “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”. This draft element 7 would thus apply to products or their components to which mercury has been intentionally added; it would not apply to products such as fish, in which mercury may be present solely because of environmental contamination or exposure.

Mercury-added products might be addressed by the convention in one of two ways. In the first, all mercury-added products would be allowed unless they were listed in an annex (what is known as the “positive list” approach). In the second, no mercury-added products would be allowed unless they were listed in the annex (the “negative list” approach). In both approaches, Parties may have time to make the transition away from mercury-added products through the use of exemptions. (For more information on these two approaches, please refer to the report exploring the advantages and disadvantages of the two approaches for regulating mercury in products (UNEP(DTIE)/Hg/INC.2/13).)

This draft element takes the positive list approach based on the assumption that Parties know exactly what kinds of mercury-added products must be regulated under the convention and therefore do not need to focus on minor or insignificant uses. Under this approach, mercury-added products listed in Annex C would not be allowed, except as provided in the annex, which could include allowable-use exemptions. A consequence of this approach is that new types of mercury-added products could be introduced into commerce unless they were added to the annex. This risk gives rise to a need to restrict the introduction of such products, which is the aim of paragraph 3.

In the case of exports of listed products, Parties could export products if they were registered for allowable-use exemptions and the importing Parties had given prior informed consent. As in the case of draft element 5, the prior informed consent procedure in paragraph 2 would impose obligations additional to those imposed on Parties to the Rotterdam Convention that have taken national actions to ban or severely restrict mercury. Moreover, mercury-containing pesticides covered under the Rotterdam Convention are not among the mercury-added products suggested for listing in Annex C (please refer to the comment for draft element 5 for additional discussion of this issue).

1. Each Party shall not allow:

(a) The manufacture, distribution in commerce or sale of mercury-added products listed in Annex C, except in accordance with an allowable-use exemption listed in that annex for which the Party is registered as provided in Article 14;

- (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 Party to this Convention except where the 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 12; 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 14; and
 - (ii) Receiving the written consent of the importing State.
3. Each Party shall not allow the production, sale or distribution in commerce of any variety, type or category of mercury-added product that was not produced, sold or distributed 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.

8. Manufacturing processes in which mercury is used

Comment: Similarly to the preceding draft element on mercury-added products, this draft element takes a positive list approach for manufacturing processes in which mercury is used. This approach would focus on the major mercury uses rather than on minor or trivial uses. Under this approach, a use would be restricted when listed in Annex D and allowable-use exemptions would be available to Parties to help them to make the transition away from the use in question. Those Parties that continue to use listed manufacturing processes would be asked to prepare national action plans for drawing up inventories of the facilities using such processes and for developing and implementing strategies for phasing out the mercury use.

Artisanal and small-scale gold mining would not be listed in Annex D and would therefore not be subject to this draft element 8. Artisanal and small-scale gold mining would instead be addressed in draft element 9.

1. Each Party shall not allow the use of mercury in the manufacturing processes listed in Annex D except in accordance with an allowable-use exemption listed in that annex for which the Party is registered as provided in Article 14.
2. Each Party shall not allow the introduction of manufacturing processes or facilities in which mercury is intentionally used that were not used or present in the territory of the Party as at the date of entry into force of this Convention for it, except in the case of any new process or facility that achieves reductions in mercury use by replacing an existing process or facility.
3. Each Party with one or more facilities that use mercury in the manufacturing processes listed in Annex D shall prepare a national action plan to reduce and eliminate its use of mercury 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. Each national action plan shall, at a minimum, include the elements listed in Part II of Annex D.

9. Artisanal and small-scale gold mining

Comment: At the committee's first session, a number of Parties expressed the view that the mercury instrument should deal with artisanal and small-scale gold mining separately from other industrial processes in which mercury is used. This draft element focuses primarily on establishing a framework to allow Parties to cooperate in addressing and preventing mercury pollution from artisanal and small-scale gold mining. It is premised on the understanding that many countries in which artisanal and small-scale mining takes place may require flexibility and non-binding approaches. One of the most important provisions related to the control of mercury use in artisanal and small-scale gold mining is the prevention of the import and export of mercury for use in such mining. This provision appears in paragraph 3 of this draft element and also in paragraph 3 of draft element 5.

1. Each Party that has artisanal and small-scale gold mining within its territory at the date of entry into force of this Convention for it shall reduce and, where possible, eliminate the use of mercury in such mining. Such Parties shall consider taking measures, among others:

(a) To prevent, in accordance with Article 5, the import of mercury for use in artisanal and small-scale gold mining and the diversion of mercury for use in that sector;

(b) To prevent, in accordance with Articles 12 and 13, 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 national or regional action plans, which may include national objectives or reduction targets; and

(d) To prohibit specific practices such as whole ore amalgamation.

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:

(a) Prevention, in accordance with Article 5, of the import and export of mercury for use in artisanal and small-scale gold mining and the diversion of mercury for use in that sector;

(b) Education, outreach and capacity-building initiatives; and

(c) Provision of technical and financial assistance.

3. For the purposes of Article 5, the use of mercury or mercury compounds in artisanal and small-scale gold mining shall not be considered a use allowed to any Party under this Convention.

Comment: Please refer to the comment about artisanal and small-scale gold mining included in the introductory comments to draft element 5. Paragraph 3 above would not allow the import or export of mercury for use in artisanal and small-scale gold mining. Nevertheless, it would not require Parties to ban or eliminate such mining in their countries; the question of whether to ban or eliminate mercury use in such mining would be for individual Parties to decide at their own discretion.

Part IV: Measures to reduce releases of mercury to air, water and land

10. Atmospheric emissions

Comment: This draft element would address the major anthropogenic sources of atmospheric mercury emissions listed in Annex E. It would have two sets of requirements. The first would be a best available techniques and best environmental practices requirement patterned after Article 5 of the Stockholm Convention. Applicable to all Parties, it would require the use of best available techniques and the promotion of best environmental practices for new mercury emissions sources and the promotion of both best available techniques and best environmental practices for existing sources.

The second set of requirements would apply only to Parties with “significant aggregate mercury emissions” from the listed atmospheric emissions source categories. Such Parties would, in addition to the best available techniques and best environmental practices requirements, be asked to adopt a national emissions reduction goal, which they would develop and decide upon themselves. They would also develop national action plans that would include emissions inventories and estimates, consideration of the use of emissions limit values and provisions for monitoring and quantifying emissions reductions that might be achieved under the plan.

Paragraph 6 of this draft element contains a suggested definition of “significant aggregate mercury emissions”. If the committee decides that it would like to use this approach it may need to describe in more detail how the approach would be undertaken.

This draft element on atmospheric emissions responds to the mandate set out in paragraph 27 (e) of Governing Council decision 25/5. It therefore does not address mercury releases to water and land, which are addressed under draft element 3 on mercury supply sources, draft element 8 on mercury-added processes, draft element 9 on artisanal and small-scale gold mining, draft element 12 on mercury wastes and draft element 13 on contaminated sites. In addition, a specific draft element on mercury releases to water and land follows as element 11.

1. Each Party shall reduce and, where feasible, eliminate atmospheric emissions of mercury from the source categories listed in Annex E, subject to the provisions of that annex.
2. For new emissions sources among the source categories listed in Annex E, each Party shall:
 - (a) Require 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 the use of best environmental practices.
3. For existing emissions sources among the source categories listed in Annex E, each Party shall promote the use of best available techniques and best environmental practices.
4. The Conference of the Parties shall at its first meeting adopt guidelines on best available techniques and best environmental practices to reduce atmospheric emissions of mercury from the source categories listed in Annex E. Parties shall take these guidelines into account when implementing the provisions of this article.
5. Each Party with significant aggregate mercury emissions from the source categories listed in Annex E shall, within the later of X years of entry into force of this Convention for that Party or X years of becoming a source of significant aggregate mercury emissions from such sources:
 - (a) Adopt a national goal for reducing and, where feasible, eliminating atmospheric mercury emissions from the source categories listed in Annex E;
 - (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 II of Annex E, a national action plan to reduce and, where feasible, eliminate its atmospheric mercury emissions from the source categories listed in Part I of Annex E.
6. For the purposes of this article and Annex E, “significant aggregate mercury emissions” means the annual atmospheric mercury emissions of a Party from the source categories listed in Annex E that, in total, equal X 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.

11. Releases to water and land

Comment: This draft element responds to the wishes of Parties that would like the mercury instrument to contain an element that explicitly addresses mercury releases to water and land.

1. Each Party shall reduce and, where feasible, eliminate releases of mercury to water and land from the source categories listed in Annex F, subject to the provisions of that annex.
2. The Conference of the Parties shall develop and adopt guidelines on best available techniques and best environmental practices to reduce releases of mercury to water and land from the source categories listed in Annex F. The guidelines shall complement and avoid duplication with the provisions of Articles 3, 8, 9, 12 and 13 and any guidelines developed thereunder that are relevant to the achievement of reductions of releases of mercury to water and land. Parties shall take these guidelines into account when implementing the provisions of 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 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.

12. Mercury wastes

Comment: Based upon the views expressed by Parties during the committee’s first session and views submitted by Parties to the secretariat, this draft element takes an approach similar to that of the Stockholm Convention, in which the authority to make decisions about persistent organic pollutant wastes is vested in the Conference of the Parties but is exercised in close consultation with the appropriate bodies of the Basel Convention.

As is noted in the comment to draft element 2 (definitions), the committee may wish to consider developing definitions for some of the terms that appear in this draft element 12, such as “mercury wastes” and “environmentally sound disposal of mercury wastes”, bearing in mind the relationship that such definitions could have to the provisions for environmentally sound storage of mercury contained in draft element 4. The committee may also wish to consider determining when a mercury-added product becomes waste. Alternatively, these terms might be defined by the Conference of the Parties pursuant to paragraph 2 (a) of this draft element after the entry into force of the convention.

Under the approach suggested here, “mercury wastes” would not include elemental mercury or mercury compounds that can easily be converted to elemental mercury; instead, the environmentally sound storage provisions of draft element 4 would apply to such substances. The waste provisions of this draft element 12 would apply to mercury-containing materials for which long-term storage might not be feasible, such as mercury-added products that have become wastes or fly ash from coal-fired power plants. Elemental mercury recovered from such materials would ultimately be put into environmentally sound storage pursuant to draft element 4. For additional discussion of this issue, please refer to the comment for draft element 4.

1. Each Party shall ensure that mercury wastes, including mercury-added products upon becoming wastes, are:

- (a) Handled, collected, transported and disposed of in an environmentally sound manner;
- (b) Not subjected to disposal operations that may lead to recovery, recycling, reclamation, direct reuse or alternative uses that are not permitted under this Convention or relevant international rules, standards and guidelines;
- (c) Not transported across international boundaries except for the purpose of environmentally sound disposal in conformity with the provisions of this article and relevant international rules, standards and guidelines. Such transport may occur only after the exporting Party has received the written 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.

2. The Conference of the 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 that constitute environmentally sound management and environmentally sound disposal of mercury wastes and mercury-added products upon becoming waste, taking into account:
 - (i) The objective set out in Article 4 that all mercury from primary mercury mining and the supply sources listed in Annex A shall be stored in an environmentally sound manner; and
 - (ii) Relevant provisions of the Basel Convention and guidelines developed thereunder; and
- (b) To establish, as appropriate, the concentration levels of mercury that will define low mercury content as referred to in paragraph 1 (d).

13. Contaminated sites

Comment: This draft element is based upon text that appeared in a note on options for substantive provisions that might be included in the mercury instrument prepared by the secretariat for the committee’s first session (UNEP(DTIE)/Hg/INC.1/5).

1. Each Party shall endeavour to remediate sites contaminated by mercury and mercury compounds in an environmentally sound manner, taking into consideration guidance developed under paragraph 3.

2. Parties may cooperate in developing and implementing strategies and methodologies for identifying, assessing, prioritizing and remediating contaminated sites, including through the provision of financial and technical assistance.

3. The Conference of the Parties shall develop guidance on best available techniques and best environmental practices for:

- (a) Identifying and assessing contaminated sites;
- (b) Preventing mercury contamination from spreading; and
- (c) Managing and, where feasible, remediating and rehabilitating contaminated sites.

Part V: Transitional measures

14. Allowable-use exemptions

Comment: Draft elements 7 and 8 and their corresponding Annexes C and D are premised on the expectation that, in the long term, the use of mercury in the products and processes listed in those annexes will be reduced to zero but that the process will be a gradual one during which Parties may need to make use of exemptions. This draft element 14 would establish an allowable-use register to provide for such a transition.

Allowable-use exemptions would be available to Parties on demand before the entry into force of the convention for them. The exemptions would last for five years and could be renewed, subject to review by the Conference of the Parties.

It is anticipated that over time the need for allowable-use exemptions for a given product or process would diminish so that some or all of them would no longer be needed. The committee may wish to consider whether provision should be made to allow the adjustment of Annexes C and D by decision of the Conference of the Parties to eliminate allowable-use exemptions from the annexes as they become obsolete and unnecessary.

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.

2. Parties that have allowable-use exemptions listed in Annex C or Annex D shall be identified in an allowable-use register. The register shall be maintained by the Secretariat and shall 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 allowable-use exemptions listed in Annex C or Annex D; and
- (c) A list of the expiry dates for all registered allowable-use exemptions for all Parties.

4. Unless an earlier date is indicated in the register by a Party, or an extension is granted pursuant to paragraph 7, all allowable-use exemptions shall expire X years after the date of entry into force of this Convention with regard to a particular use.

5. The Conference of the Parties shall decide at its first meeting upon a process for reviewing allowable-use exemptions.

6. Prior to the review of an allowable-use exemption, a Party wishing to extend 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 mercury-free 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 of up to X years. In making its decision, the Conference of the Parties shall take due account of the special circumstances of developing-country Parties and Parties

with economies in transition. Unless it decides otherwise, the Conference of the Parties shall take decisions pursuant to this paragraph at intervals of X 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.

9. When 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.

Part VI: Financial resources and technical and implementation assistance

Comment: There was general agreement at the committee's first session and in the subsequent country submissions that strong linkages existed between the provision of financial and technical assistance and achieving compliance with a mercury instrument. Consequently, the draft elements for these issues are grouped together.

15. Financial resources and mechanisms

Comment: This draft element is intended to reflect the apparent consensus among Parties that a financial mechanism for the mercury convention will be needed, but also to reflect the fact that there is as yet no agreement on the form that the mechanism should take, whether the Global Environment Facility, a "stand-alone" fund modelled on the Multilateral Fund for the Implementation of the Montreal Protocol or an alternative approach or combination. Paragraph 4 of this draft element is intended to avoid prejudicing Parties' negotiating positions on this question. Paragraph 5 is provided to maintain the coherence of this draft element; it is recognized, however, that the committee may decide to resolve some or all of these questions in the convention text rather than delegate them to the Conference of the Parties for resolution after the entry into force of the convention. Paragraph 2 is based on paragraph 27 (h) of Governing Council decision 25/5.

1. Each Party undertakes to provide, within its capabilities, financial support and incentives in respect of those national activities that are intended to achieve the objective of this Convention in accordance with its national plans, priorities and programmes.
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 capacity-building and technical and adequate financial assistance.
3. A mechanism for the provision of financial and technical cooperation to developing-country Parties and Parties with economies in transition to assist their compliance with the measures of this Convention is hereby defined. The mechanism shall operate under the authority and guidance of the Conference of the Parties, which shall decide on its overall policies.
4. The mechanism shall include one or more funds and may be operated by one or more entities, including existing international entities, as shall 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.
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.
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 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 to operate the mechanism. The Conference of the Parties shall, based upon such review, take appropriate action, if necessary, to improve the mechanism's effectiveness.

16. Technical assistance

1. Developed-country Parties and other Parties in a position to do so shall 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. Each Party shall include in its reports submitted pursuant to Article 22 information demonstrating how it has implemented the provisions of this article.
2. The Conference of the Parties shall provide further guidance on the implementation of this article.

17. Implementation committee

Comment: There was general agreement at the committee's first session and in the subsequent country submissions that strong linkages exist between the provision of financial and technical assistance and achieving compliance under the convention; many Parties also noted the desirability of adopting provisions on these issues together, as a package. Moreover, most Parties expressed the view that compliance should be promoted by an approach that is facilitative and not confrontational or punitive.

This draft element would support a package approach by establishing an implementation committee. The draft element is intended to present the minimum provisions needed to allow adoption as part of a package. The approach stresses implementation rather than non-compliance and focuses on facilitation and transparency rather than on confrontational features that have proved to be contentious under other multilateral environmental agreements.

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, which shall include the following elements:
 - (a) The committee shall consist of X members nominated by Parties and elected by the Conference of the Parties on the basis of equitable geographical representation;
 - (b) The committee may decide to examine any questions of implementation of 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) The committee may make non-binding recommendations for consideration by the Parties; and
 - (d) The committee 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 X majority vote of the members present and voting.
2. The Conference of the Parties may, as it considers necessary for the implementation of this Convention, assign the implementation committee responsibilities that are additional to those mandated in this article.

Part VII: 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;
 - (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 alternatives to mercury-added products, manufacturing processes in which mercury is used, and activities and processes that emit or release mercury, including information relating to the risks, economic and social benefits and costs of such alternatives.

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

Comment: The provision about export notifications and consent of the importing Party in the following paragraph would be needed only if the committee decided to establish the prior informed consent requirements described in draft elements 5 and 7. The committee may wish to consider whether additional provisions defining a designated national authority might be useful.

3. Each Party shall designate a national authority for the exchange of information under this Convention, including with regard to export notifications and consent of importing Parties under paragraph 2 of Article 5 and paragraph 2 (b) of Article 7.

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.

Comment: The following paragraph on confidential information is based on paragraph 5 of Article 9 of the Stockholm Convention.

5. For the purposes of this Convention, information on 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 the health and environmental effects of mercury and on alternatives to mercury; and

(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 non-governmental organizations.

20. Research, development and monitoring

Comment: The following provisions are based upon the elements of a comprehensive mercury framework set out in the report of the Ad Hoc Open-ended Working Group on Mercury on the work of its second meeting (UNEP(DTIE)/Hg/OEWG.2/13, appendix to annex I, paragraph 11).

Parties shall cooperate to develop and improve:

(a) Inventories of national use, consumption and environmental releases of mercury;

(b) Monitoring of mercury levels in environmental media, including biotic media such as fish and marine mammals;

(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;

(d) Information on the environmental cycle, transport, transformation and fate of mercury;

(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.

21. Implementation plans

Comment: At the committee's first session there was broad recognition of the potential value of national implementation plans, although some participants cautioned that it might not be necessary or cost-effective to require all Parties to prepare and submit them. This draft element would make the development and submission of an implementation plan discretionary rather than mandatory. The draft element would not affect the preparation of separate national action plans under draft elements 8–10, which are proposed as distinct obligations from those contained in this draft element 21.

If the committee supports the use of implementation plans it may wish to recognize the value of countries beginning work on their plans as early as possible. The committee may also wish to acknowledge the need for developing countries and countries with economies in transition that choose to develop plans to receive timely financial assistance to support their efforts.

The need for financial assistance could present a timing challenge for those developing countries and countries with economies in transition that would like to begin to develop their implementation plans before the convention enters into force. The convention's financial mechanism might not be a viable source of financial assistance during the period between the adoption of the convention and the first meeting of the Conference of the Parties; this is simply because the financial mechanism would not be established until the convention entered into force and the Conference of the Parties would not be able to adopt the mechanism's operational procedures and guidance until its first meeting. If Governments believe that implementation plans will be useful and that countries should begin to develop them before the first meeting of the Conference of the Parties, they may wish to consider the need for interim financial measures to that end. Parties may wish to consider making provision for this in a decision to be taken at the diplomatic conference at which the convention would be adopted.

1. Each Party may:
 - (a) Decide to develop and execute a plan for the implementation of its obligations under this Convention;
 - (b) Declare its decision under subparagraph (a) by submitting a notification to the Secretariat not later than the date of entry into force of this Convention for it;
 - (c) Transmit its implementation plan to the Conference of the Parties within one year of the date on which this Convention enters into force for it;
 - (d) Review and update its implementation plan on a periodic basis 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.

22. Reporting

Comment: The committee has recognized that regular, comprehensive reporting by Parties will be a key factor in achieving transparency and effectiveness under the convention. Several of the preceding draft elements contain proposed reporting requirements. This draft element links to all those earlier references, authorizes the Conference of the Parties to determine the intervals and format for reporting and, in paragraph 3, requires the Conference to take into account the desirability of coordinating mercury reporting formats and processes with those of other relevant chemicals and wastes conventions.

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 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;
 - (d) Information on its progress in reducing and, where feasible, eliminating atmospheric emissions of mercury as required under Article 10;
 - (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.

23. Effectiveness evaluation

Comment: The scope of effectiveness evaluation under this draft element could be comprehensive, including a review of administration and management aspects of the convention. The committee may wish to consider the extent to which the scope should be specified here or determined later by the Conference of the Parties.

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 and economic information, including:
 - (a) Reports and other monitoring information provided to the Conference of the Parties;
 - (b) National reports submitted pursuant to Article 22; and
 - (c) Implementation information and recommendations provided pursuant to Article 17.

Part VIII: Institutional arrangements

Comment: The mercury instrument will require appropriate institutional arrangements, which might include a conference of the Parties, subsidiary bodies and a secretariat. The provisions for such institutional arrangements could be similar to analogous provisions under other multilateral environmental agreements, as draft elements 24 and 25 propose. For the draft element establishing the secretariat, an additional provision, paragraph 4 of element 25, would authorize the Conference of the Parties to consult the appropriate bodies of other conventions of the chemicals cluster in respect of the continuing synergies process elaborated in Bali, Indonesia, in February 2010 at the extraordinary meetings of the conferences of the Parties to the Basel, Rotterdam and Stockholm conventions.

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;

- (d) Consider any recommendations submitted to it by the implementation committee; and
- (e) Consider and undertake any additional action that may be required for the achievement of the objectives of the Convention.

6. The United Nations, its specialized agencies and the International Atomic Energy Agency, in addition to any State not 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 cooperation and coordination between the Secretariat and the secretariats of other chemicals and wastes conventions.

Part IX: Settlement of disputes

26. Settlement of disputes

Comment: This draft element is reproduced from the note on draft final provisions prepared by the secretariat for the committee's first session (UNEP(DTIE)/Hg/INC.1/7). The annex referred to in the element is omitted here for reasons of economy but is available in the original note.

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 respect 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 Annex __, part I; 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 not in any 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. Additional procedures relating to the conciliation commission are set out in Annex __, Part II.

Part X: Further development of the Convention

27. Amendments to the Convention

Comment: This draft element is reproduced from the note on draft final provisions prepared by the secretariat for the committee's first session (UNEP(DTIE)/Hg/INC.1/7). As some Parties at the committee's first session observed, some of the provisions of this draft element will depend on the final structure of the instrument and the terms of its control measures. Thus, this draft element is presented as a placeholder only.

1. Amendments to this Convention may be proposed by any Party.
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 X of the Parties. 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

Comment: This draft element is reproduced from the note on draft final provisions prepared by the secretariat for the committee's first session (UNEP(DTIE)/Hg/INC.1/7). As some Parties at the committee's first session observed, some provisions of this draft element will depend on the final structure of the instrument and the terms of its control measures. Thus, this draft element is presented as a placeholder only.

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.

Comment: The committee may wish to consider whether it would be desirable for paragraph 4 to authorize expedited decision-making when an allowable-use exemption listed in Annex C or Annex D is no longer available to any Party. For example, Article 28 might provide that the Conference of the Parties could decide by consensus or super-majority vote to adjust these annexes to remove allowable-use exemptions that are no longer available.

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.

Part XI: Final provisions

Comment: The remaining draft elements 29–36 are reproduced from the note on draft final provisions prepared by the secretariat for the committee's first session (UNEP(DTIE)/Hg/INC.1/7).

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 ___.⁴

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.

⁴ The name of the place where the instrument to be adopted by a conference of plenipotentiaries may be signed and the period during which it will be open for signature will be inserted.

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 in the extent of its competence.

32. Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the X⁵ 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 X 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.

33. Reservations

No reservation may be made to this Convention.

34. Withdrawal

1. At any time after three years 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 Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

35. Depositary

The Secretary-General of the United Nations shall be the Depositary 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.

⁵ For the Rotterdam Convention, the Stockholm Convention and the United Nations Framework Convention on Climate Change, the required number of instruments of ratification, acceptance, approval or accession for the Convention to enter into force is 50. For the Vienna Convention on the Protection of the Ozone Layer, the Basel Convention and the Convention on Biological Diversity, the number of ratification and other relevant instruments required for entry into force is 11, 20 and 30, respectively.

Annex A

Sources of mercury supply

1. Mercury recovery, recycling, and reprocessing operations, including mercury recovered from pollution controls for the source categories listed in Annex E.
2. Mercury produced as a by-product of non-ferrous metals mining and smelting.
3. Mercury from government reserve stocks and inventories.
4. Mercury stocks from decommissioned chlor-alkali plants.
5. Other private mercury stocks.

Annex B

Mercury and mercury compounds subject to international trade and environmentally sound storage measures

Part I

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.
7. Mixtures of elemental mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95 per cent by weight.

Note: 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.

Part II: Guidance on environmentally sound storage

In developing the guidance required under paragraph 2 of Article 4 on the environmentally sound storage of mercury and mercury compounds, the Conference 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 C

Mercury-added products

Comment: The product types listed in this draft annex collectively account for about 80 per cent of the mercury consumption for all mercury-added products. Thus, they would be the most important products to address under the mercury instrument. Allowable-use exemptions, if available, could be specified in the right-hand column, in a similar manner to that of Stockholm Convention annexes A and B. Their use would be subject to the requirements of draft element 14.

In considering these products, the committee may wish to discuss whether some should include minimum mercury content values, or whether they may require further definition or specification.

Mercury-added product	Allowable-use exemption
1. Batteries	
2. Measuring devices	
3. Electric switches and relays	
4. Mercury-containing lamps	
5. Dental amalgam	

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

Annex D

Manufacturing processes in which mercury is used

Comment: The manufacturing processes listed below account for most mercury consumption for all manufacturing processes in which mercury is used other than artisanal and small-scale gold mining, which is dealt with separately. Allowable-use exemptions for these manufacturing processes could be specified in the right-hand column, in a manner similar to that of annexes A and B of the Stockholm Convention. Use of these exemptions would be subject to the requirements of draft element 14.

In considering these processes, the committee may wish to discuss whether some may require further definition or specification.

Part I

Manufacturing process	Allowable-use exemption
1. Chlor-alkali production	
2. Vinyl chloride monomer production	

Part II: National action plans

Each Party required to prepare a national action plan under Article 8 shall include in its plan, at a minimum:

- (a) An inventory of the number and type of facilities that use mercury 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 the reduction of mercury releases 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;
- (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 8; such reviews shall be included in reports submitted pursuant to Article 22; and
- (f) A schedule for implementation of the action plan.

Annex E

Atmospheric emissions

Part I: Source categories

Comment: The source categories listed here account for most atmospheric mercury emissions from anthropogenic sources. The committee may wish to discuss whether other source categories should be included or whether the listed source categories may require further definition or specification. For example, the committee may wish to consider whether “non-ferrous metals production facilities” should include artisanal and small-scale gold mining.

1. Coal-fired power plants and industrial boilers.
2. Non-ferrous metals production facilities.
3. Waste incineration facilities.
4. Cement production factories.

Part II: National action plans

Comment: The term “significant aggregate mercury emissions” is defined in paragraph 6 of draft element 10.

Each Party with significant aggregate mercury emissions from the source categories listed in Part I shall develop a national action plan to reduce and, where feasible, eliminate its atmospheric mercury emissions from those source categories. The action plan shall 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;
- (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 F

Sources of mercury releases to water and land

1. Facilities that manufacture mercury-added products.
 2. Facilities that use mercury 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-containing wastes.
 6. Sites contaminated by mercury and mercury compounds.
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