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**United Nations
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**Intergovernmental negotiating committee
to prepare a global legally binding instrument
on mercury
Sixth session**

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Item 3 (c) of the provisional agenda*

**Work to prepare for the entry into force of the Minamata Convention
on Mercury and for the first meeting of the Conference of the Parties:
items to be adopted by the committee on a provisional basis pending
formal adoption by the Conference of the Parties at its first meeting**

**Draft proposal on the provision of written consent or general
notification for the import of mercury under the Minamata
Convention on Mercury**

Note by the secretariat

1. In paragraph 6 of the resolution on arrangements in the interim period (UNEP(DTIE)/Hg/CONF/4, annex I), the Conference of Plenipotentiaries on the Minamata Convention requested the intergovernmental negotiating committee to focus its efforts on those matters required by the Convention to be decided upon by the Conference of the Parties at its first meeting. In paragraph 7 of the same resolution, the Conference of Plenipotentiaries further requested the committee to adopt, on a provisional basis pending formal adoption by the Conference of the Parties at its first meeting, procedures for the export and import of mercury, including the required content for certification (article 3 of the Convention, paras. 6, 8 and 12).
2. In article 3, paragraph 12, the Minamata Convention stipulates that, at its first meeting, in addition to developing and adopting the required content of the certification referred to in paragraphs 6 (b) and 8 of article 3, the Conference of the Parties shall provide further guidance in regard to the paragraphs relating to import and export.
3. One central element of the export and import provision under article 3 is the requirement for consent by the importing party or non-party. A proposal regarding the content for certification is set out in the note by the secretariat on that issue (UNEP(DTIE)/Hg/INC.6/5). The present note sets out a proposal by the secretariat on how importing parties and non-parties may provide their written consent or general notification (see annex II).
4. Article 3 of the Minamata Convention provides that import and export of mercury between parties may only occur following provision of written consent by the importing party to the exporting party and only for the purpose of a use allowed to the importing party under the Convention or for environmentally sound interim storage as set out in article 10. The exporting party may rely on a general notification to the secretariat by the importing party as the written consent required.

* UNEP(DTIE)/Hg/INC.6/1.

5. Export of mercury from a party to a non-party may only occur following the provision of written consent by the non-party that includes certification demonstrating that the non-party has measures in place to ensure the protection of human health and the environment and to ensure its compliance with the provisions of articles 10 and 11, and that such mercury will be used only for a use allowed to a party under the Convention or for environmentally sound interim storage as set out in article 10. The consent may take the form of a general notification to the secretariat by the importing non-party as the written consent required. The import of mercury by a party from a non-party also requires the provision of written consent by the importing party, along with certification from the non-party that the mercury is not from sources identified as not allowed under paragraphs 3 or 5 (b) of article 3.

6. The secretariat shall keep a public register of all general notifications.

7. In preparing the draft proposal, the secretariat has considered the experiences gathered by other conventions in the chemicals and waste cluster. Thus, paragraph 1 (c) of article 4, on general obligations, of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, reads:

Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes.

8. Article 13 of the Basel Convention provides that parties shall inform one another, through the secretariat, on matters relating to article 4, including decisions made by them not to consent totally or partially to the import of hazardous wastes or other wastes for disposal within the area under their national jurisdiction and decisions taken by them to limit or ban the export of hazardous wastes or other wastes.

9. It should be noted that the procedures covering the written consent of parties to the import of hazardous wastes under the Basel Convention are based on the specific requirements of article 6 and annex V of that Convention and are reproduced in annex I to the present note. The Minamata Convention does not include such specific provisions, and the parties may decide on a different approach.

10. The Stockholm Convention on Persistent Organic Pollutants imposes certain controls on the import and export of persistent organic pollutants, limiting the import and export of chemicals listed in annex A or annex B to environmentally sound disposal and to uses permitted to a party under the Convention. The Stockholm Convention, however, does not have a process requiring individual written consent for the import and export of these chemicals, other than through taking into account any relevant provisions in existing international prior informed consent instruments, as stipulated in article 3, paragraph 2 (b).

11. The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade has procedures in place for parties to register with the secretariat consent to import substances listed in annex III to the Convention. This does not require individual written consent for the import of such chemicals, except in the event that a party has not transmitted a decision to the secretariat which covers import for the chemical. In such a case, the exporting party may export the chemical only if it is registered for use in the importing party or if it has previously been exported to the importing party, or if explicit consent has been obtained from the importing party. Parties exporting a chemical that is banned or severely restricted in their territory but not yet listed in annex III, are required to provide a written notification of export to an importing party, which must be acknowledged by the importing party; however, explicit consent is not required.

12. In annex II to the present note, the secretariat has provided a draft proposal on the form by which consent or general notification may be provided to facilitate compliance with paragraphs 6, 7 and 8 of article 3.

13. The secretariat suggests that the committee consider the draft proposal set out in annex II and, if it so decides, adopt it on a provisional basis pending formal adoption by the Conference of the Parties at its first meeting. The committee may also wish to consider whether guidance on other aspects of import and export should be provided by the Conference of the Parties.

Annex I

Procedures for the notification of exports under the Basel Convention

Notification and movement documents

Source: www.basel.int/Procedures/NotificationMovementDocuments/tabid/1327/Default.aspx

Mandate: Article 6, paragraph 1, of the Basel Convention and decision VIII/18 of the Conference of the Parties.

Article 6, paragraph 1, of the Basel Convention states that the State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes. Such notifications should contain the declarations and information specified in Annex V A, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.

At its eighth meeting, in its decision VIII/18 on the harmonization of forms for notification and movement documents and related instructions, the Conference of the Parties to the Basel Convention invited parties to use the notification and movement documents and the instructions on their use.

Frequency: When exporting or importing hazardous wastes.

Format: At its eighth meeting (December 2006), the Conference of the Parties to the Basel Convention adopted revised versions of the forms for the notification and movement documents, including the instructions for completing these forms. These forms can be accessed from the following link: <http://www.basel.int/Procedures/NotificationMovementDocuments/tabid/1327/Default.aspx>.

Procedures and processes of the secretariat: Not applicable.

Annex II

Draft proposal on the provision of written consent or general notification for the import of mercury under the Minamata Convention on Mercury^a

Mandate: Article 3, paragraphs 6 and 7, and article 17, paragraph 4, of the Minamata Convention on Mercury

Article 3, paragraph 6, of the Minamata Convention states as follows:

6. Each Party shall not allow the export of mercury except:
 - (a) To a Party that has provided the exporting Party with its written consent, and only for the purpose of:
 - (i) A use allowed to the importing Party under this Convention; or
 - (ii) Environmentally sound interim storage as set out in Article 10; or
 - (b) To a non-Party that has provided the exporting Party with its written consent, including certification demonstrating that:
 - (i) The non-Party has measures in place to ensure the protection of human health and the environment and to ensure its compliance with the provisions of Articles 10 and 11; and
 - (ii) Such mercury will be used only for a use allowed to a Party under this Convention or for environmentally sound interim storage as set out in Article 10.

Paragraph 7 of that article further states:

7. An exporting Party may rely on a general notification to the Secretariat by the importing Party or non-Party as the written consent required by paragraph 6. Such general notification shall set out any terms and conditions under which the importing Party or non-Party provides its consent. The notification may be revoked at any time by that Party or non-Party. The Secretariat shall keep a public register of all such notifications.

Article 17, paragraph 4, states as follows:

4. Each Party shall designate a national focal point for the exchange of information under this Convention, including with regard to the consent of importing Parties under Article 3.

Purpose of the form: To provide consent when:

- Importing mercury for a use allowed under the Convention
- Importing mercury for environmentally sound storage as set out in article 10
- Making a general notification of consent under paragraph 7

Format: A draft proposal on the provision of written consent or general notification is provided below.

^a The draft proposal will be made available electronically on the Convention website (www.mercuryconvention.org).

Draft proposal on the provision of written consent or general notification

Section A. Details of importing country

Country:

Party: YES NO

If no, provide certification as requested under article 3, paragraph 6 – section G below

Section B. Contact details

If the country is a party to the Minamata Convention, details of the designated national focal point

Name:

Address:

Tel:

Fax:

E-mail:

If the country is not a party, details of authorized person

Name:

Address:

Tel:

Fax:

E-mail:

Section C. Purpose of import

What is the purpose of the import of mercury?

Interim storage in accordance with article 10: YES NO

Use allowed to a party under the Convention: YES NO
(please specify) (please specify)

Section D. Nature of consent

Is this a general notification? YES NO

If yes, go to section E below

If no, consent valid from (date) to (date) for import from (country), and go to section F below

Section E. Terms and conditions of general notification

Are there any terms and conditions of the consent to import? YES NO

If yes, please specify
