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Item 3 of the provisional agenda*

**Review and assessment of options for enhanced voluntary measures
and new or existing international legal instruments**

Common elements of a mercury framework

1. The Governing Council of the United Nations Environment Programme (UNEP), in its decision 24/3 IV on chemicals management, established “an ad hoc open-ended working group of Governments, regional economic integration organizations and stakeholder representatives to review and assess options for enhanced voluntary measures and new or existing international legal instruments” for addressing the global challenges presented by mercury.
2. The annex to the present note contains a proposal by the Secretariat for a package of elements that would be needed to address successfully the challenges posed by mercury. The proposed package is presented without prejudice to the question of whether the elements individually or collectively would require a legal underpinning.
3. In identifying the elements, the Secretariat has drawn on the range of measures contained in annex I to the report of the first meeting of the Open-ended Working Group (UNEP(DTIE)/Hg/OEWG.1/6), as well as the priorities identified by the UNEP Governing Council in paragraph 19 of its decision 24/3 IV, and has structured the measures in the form of a policy framework. The framework is being circulated as prepared by the Secretariat and has not been formally edited.

Suggested action

4. The Working Group may wish to assess the elements presented and to agree:
 - (a) That the elements presented provide a suitable structure for the control of mercury;
 - (b) To consider which elements, if any, would require a legal basis for their successful implementation and which could be adequately delivered through a voluntary structure, as well as any financial implications associated with either option.

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

Annex

Elements of a comprehensive mercury framework

1. Regardless what form an overarching mercury framework may take, it could include a number of common elements that reflect the priorities identified by Governing Council in its Decision GC 24/3, paragraph 19. The outline that follows contains the common elements that collectively could comprise the basis for a comprehensive mercury framework. An actual, adopted framework may contain more or fewer elements, depending on its scope and whether it is legally binding, voluntary, or a package of voluntary and legal elements.

2. This outline of common elements was derived from the following sources: The report of the first meeting of the ad hoc Open-ended Working Group (OEWG-1), including the revised tables of response measures from document OEWG.1/2, as contained in Annex I of the report; the structure and content of several multilateral environmental agreements, especially the Stockholm Convention on POPs; and, to a lesser extent, the Overarching Policy Statement of the Strategic Approach to International Chemicals Management (SAICM). The sequence in which the elements are listed is not intended to imply a priority in application.

A. Elements that frame the issue

3. The elements could provide a context for responding to the challenges posed by mercury and confirm the intent of participants to confront them. They include:

- (a) an expression of political commitment;
- (b) a list of the principles underlying the framework and a description of its scope;
- (c) A statement of the framework's objective (e.g., "to protect human health and the environment from anthropogenic releases of mercury").

B. Specific actions to address the challenges posed by mercury

4. The elements listed in the present section represent specific commitments or actions that countries and other stakeholders might wish undertake to accomplish the overall objective of the framework.

1. Reduce the supply of mercury

5. One aim of whatever framework is adopted might be to minimize the increase of mercury levels in the biosphere by reducing the global supply of mercury, taking into account a hierarchy of sources. This could be accomplished by using goals, targets or timetables to reduce or eliminate the supply of mercury from:

- (a) primary mining of mercury, including a prohibition on new primary mining and a phase-out of existing primary mining;
- (b) decommissioned chlor-alkali cells;
- (c) mercury stockpiles;¹
- (d) mercury produced as a by-product from mining;
- (e) mercury derived from recycling and other sources.

2. Reduce the demand for mercury in products and processes

6. Industrial and other processes that use mercury can result in significant human exposures and releases of mercury to the environment. Mercury-containing products increase the amount of mercury in waste streams and thereby increase the likelihood of eventual mercury releases. The aim of the actions in this section is to minimize such exposures and releases by reducing demand for mercury in products and processes. This could be accomplished by developing and using:

¹ Other measures to deal with mercury stockpiles are grouped under section 6 below, "Find environmentally sound storage solutions for mercury."

- (a) country-specific, sectoral or global demand reduction goals, targets or timetables relating, for example:
- (i) to prohibiting the construction of new production facilities;
 - (ii) to phasing out mercury use in products and processes by specified dates for each significant product or process;
 - (iii) to developing mercury content standards for lamps and other products where non-mercury alternatives are not available;
- (b) information tools or policies to promote the development and use of substitute or modified materials, products and processes;
- (c) best available techniques and best environmental practices (including use of non-mercury alternatives) for demand reduction in:—
- (i) artisanal and small-scale gold mining,
 - (ii) vinyl chloride monomer and chlor-alkali production,
 - (iii) products and packaging,
 - (iv) dental practice.

3. Reduce international trade in mercury

7. International trade in elemental mercury facilitates its ready supply in many domestic markets, keeping prices low and demand high. Such trade, as well as trade in mercury-containing compounds and products, distributes mercury widely, including to locations where environmentally sound management of mercury and mercury wastes is not practiced. The aim of the actions in this section is to address these challenges by reducing international trade in mercury. This could be accomplished by:

- (a) restricting or phasing out trade in elemental mercury and mercury-containing compounds;²
- (b) operating a prior informed consent procedure for trade in mercury-containing products;
- (c) developing a data reporting system to monitor mercury trade in selected areas.

4. Reduce or eliminate atmospheric emissions of mercury

8. The aim of the actions in this section is to reduce, and where feasible eliminate, unintentional atmospheric emissions of mercury derived from anthropogenic sources in key sectors, such as coal usage, artisanal and small-scale gold mining and industrial processes. This could be accomplished by:

- (a) national implementation strategies or, where appropriate, regional or subregional strategies, which could include:
- (i) evaluation of current and projected emissions;
 - (ii) evaluation of the efficacy of laws and policies relating to management of emissions;
 - (iii) strategies to reduce, and where feasible eliminate, emissions;
 - (iv) periodic review of strategies;
 - (v) a schedule for implementation of the strategy;
- (b) global, national and sectoral implementation strategies for key emission sources, reduction goals, targets and timetables;
- (c) promoting the development and use of substitute or modified materials, products and processes;
- (d) for new sources, in accordance with an implementation strategy:
- (i) phasing in the use of best available techniques for identified sectors within specified timeframes and promoting the use of best environmental practices;

² Depending on the nature and scope of trade restrictions and phase-outs, it may be necessary to allow limited specific exemptions for essential products or processes for which no suitable alternatives exist.

(ii) promoting the use of best available techniques and best environmental practices for other key sectors;

(e) for existing sources, promoting the use of best available techniques and best environmental practices within key sectors, in accordance with an implementation strategy.

5. Achieve environmentally sound management of mercury-containing wastes

9. The aim of the actions in this section is to reduce anthropogenic releases of mercury by managing mercury-containing wastes in an environmentally sound manner. This could be accomplished by:

(a) developing and promoting guidance on best available techniques and best environmental practices, using a life-cycle approach, in order to:

(i) reduce generation of mercury-containing wastes;

(ii) promote separate collection and treatment of mercury-containing wastes;

(iii) reduce mercury releases from incinerators and landfills;

(b) cooperating closely with the appropriate bodies of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal to:

(i) restrict or phase-out trade in wastes with high mercury content, except for the purpose of environmentally sound disposal, and

(ii) further develop and implement the Basel Convention technical guidelines on the environmentally sound management of mercury-containing wastes.

6. Find environmentally sound storage solutions for mercury

10. Mercury is a constituent element of the earth that cannot be destroyed or irreversibly transformed into something that no longer presents a risk to human health and the environment. Instead, mercury derived from anthropogenic sources must be stored in a manner that reduces the possibility of release into the environment. The aim of the actions in this section is to reduce or eliminate mercury releases from mercury stockpiles and wastes by developing and using environmentally sound, long-term national, regional, and subregional storage solutions. This could be accomplished by:

(a) developing and promoting guidance on best available techniques and best environmental practices for:

(i) terminal or long-term storage, and

(ii) management of existing stockpiles;

(b) cooperating closely with the appropriate bodies of the Basel Convention regarding the management and transport of mercury-containing wastes.

7. Remediate existing contaminated sites

11. Owing to the significant use of mercury in the modern era, large amounts of mercury exist in mine tailings, landfills, highly contaminated industrial sites and other locations. Such sites present an ongoing threat of future release. The aim of the actions in this section is to reduce mercury releases and the potential for future releases by remediating existing contaminated sites. This could be accomplished by:

(a) developing and implementing strategies and tools for identifying, assessing, prioritizing and remediating contaminated sites;

(b) developing and promoting guidance on best available techniques and best environmental practices:

(i) for preventing mercury contamination from spreading,

(ii) for controlling and remediating contaminated sites.

8. Increase knowledge

12. Additional data, information and research on mercury would help to improve understanding and coordination and facilitate improved risk assessment and risk management in respect of the challenges posed by mercury. For many countries, improving the knowledge base and the availability of relevant information is an essential precursor to the actions in sections 1 to 7 above. The aim of the actions in

this section is to increase knowledge by addressing data and information gaps on mercury. This could be accomplished by improving:

- (a) inventories of national use, consumption and environmental releases;
- (b) monitoring of current levels of mercury in various media;
- (c) assessments of the impact of mercury on human health and the environment;
- (d) information on transport, transformation, cycling and fate of mercury;
- (e) information on commerce and trade in mercury and mercury-containing products.

C. Arrangements related to implementation

13. The elements listed in the present section include measures that Governments might wish to implement to increase the likelihood that their efforts to address the challenges posed by mercury under any framework that is adopted are effective. They could include the following steps:

(a) information exchange and public awareness-raising, by using existing or establishing new procedures and mechanisms for information exchange related to mercury control, including, where appropriate:

- (i) identifying national focal points;
- (ii) a clearing-house mechanism;
- (b) implementation strategies that are:
 - (i) developed and implemented at the national, regional, or subregional levels;
 - (ii) shared with other participants;
 - (iii) periodically reviewed and updated;
- (c) monitoring, reporting and review, including:
 - (i) self-monitoring of implementation of strategies;
 - (ii) reporting on implementation;
- (d) financial resources and technical assistance:
 - (i) that provides financial resources and environmentally appropriate technical assistance to develop and strengthen capacity of developing countries and countries with economies in transition to implement actions;
 - (ii) that uses new or existing facilities and processes to facilitate provision of resources and assistance including through, among other vehicles, the UNEP mercury partnership programme;
 - (iii) that are periodically reviewed for effectiveness;
- (e) effectiveness evaluation and review of commitments, including:
 - (i) periodic evaluation of the effectiveness of the mercury framework in achieving its objectives;
 - (ii) determining whether the actions and commitments under the framework are sufficient or need to be revised.

D. Policy guidance and administration

14. The elements in the present section relate to overall policy guidance, oversight and administration of the framework. They could include:

- (a) policy guidance or oversight process:
 - (i) to establish a mandate and functions, which could include, among other things:
 - a. review and evaluation of the implementation of the framework;
 - b. cooperation with competent international organizations and intergovernmental and non-governmental bodies,

- c. regular review of information that participants submit;
 - d. any additional action that may be required for the achievement of the objectives of the framework;
 - (ii) to determine the schedule or timeline for the process;
 - (iii) to adopt, where applicable, decision-making rules and other rules of procedure, including those applicable to stakeholder participation;
 - (b) administrative support, including:
 - (i) identifying administrative functions;
 - (ii) designating an organization to perform the administrative functions and identifying how such functions will be funded.
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