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**Intergovernmental negotiating committee  
to prepare a global legally binding instrument  
on mercury  
Seventh session**

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Item 3 (b) 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 to the Convention: matters  
required by the Convention to be decided upon by the  
Conference of the Parties at its first meeting**

**Report of the group of technical experts on the development of  
guidance required under article 8 of the Convention**

**Draft guidance on criteria that parties may develop pursuant to paragraph  
2 (b) of article 8**

**Note by the secretariat**

The secretariat has the honour to provide, in the annex to the present note, the draft guidance prepared by the group of technical experts and forwarded to the intergovernmental negotiating committee as the result of the group's work on criteria that parties may develop pursuant to paragraph 2 (b) of article 8 on sources of air emissions, as referred to in document UNEP(DTIE)/Hg/INC.7/6. The draft guidance is reproduced without formal editing.

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\* UNEP(DTIE)/Hg/INC.7/1.

## Annex

### Guidance on criteria that the parties may develop pursuant to paragraph 2 (b)

#### A. Introduction

1. Article 8 of the Minamata Convention on Mercury deals with emissions. The article concerns controlling and, where feasible, reducing emissions of mercury and mercury compounds, often expressed as “total mercury”, to the atmosphere through measures to control emissions from the point sources falling within the source categories listed in Annex D. These source categories are:

- Coal-fired power plants
- Coal-fired industrial boilers
- Smelting and roasting processes used in the production of non-ferrous metals
- Waste incineration facilities
- Cement clinker production facilities.

2. Parties are required to control emissions from relevant sources. Paragraph 2 (b) of article 8 defines “relevant source” as a source falling within one of the source categories listed in Annex D. Paragraph 2 (b) continues as follows:

A Party may, if it chooses, establish criteria to identify the sources covered within a source category listed in Annex D so long as those criteria for any category include at least 75 per cent of the emissions from that category.

3. Paragraph 9 (a) of article 8 of the Convention calls upon the Conference of the Parties, as soon as practicable, to adopt guidance on criteria that parties may develop pursuant to paragraph 2 (b).

#### B. Criteria that parties may develop pursuant to paragraph 2 (b)

4. Paragraph 2 (b) of Article 8 allows a party the option of establishing criteria limiting the sources that it controls within a point source category to certain sources, provided that those criteria include at least 75 per cent of the emissions from that category. This option would enable a party to apply the provisions of Article 8 with some flexibility, recognizing that certain point sources may be more challenging to control for a variety of reasons.

5. If a party were to apply this option, in considering the sources that it would choose to control, it may need to develop an inventory which covers all point sources within the source category listed in Annex D, either on a facility-by-facility basis, or by developing more aggregated data for smaller sources which are anticipated to fall within the 25 per cent not included as relevant sources for the purposes of Article 8. The party may also be able to use information gained from the inventory of emissions from relevant sources prepared in line with paragraph 7 of Article 8.

6. The development of an inventory of emissions<sup>1</sup>, with an assessment of the emissions from each point source falling within the source categories listed in Annex D, will assist parties both in deciding whether to control a particular point source, and in verifying that the total emissions from sources which are not controlled do not exceed 25 per cent of all emissions from that source category. As indicated below, the sources to be controlled should be kept under review to ensure that this obligation is still met.

7. In determining whether to control a particular point source within a source category, a party may wish to consider the following:

- (a) The size of the facility: for example, based on the input or throughput (capacity) of the facility;
- (b) The mercury emissions produced by the facility and the percentage of all emissions from this source category that those emissions constitute;
- (c) The expected life of the facility or of the control technology within the facility;
- (d) The location of the facility;
- (e) Any other pollution control measures in place at the facility, in particular those which may produce co-benefits for the control of mercury air emissions.

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<sup>1</sup> Guidance on the development of an inventory of emissions is available in a separate guidance document.

8. In considering the size of the facility, a party may determine that small facilities within one of the five source categories might not be considered as relevant sources under Article 8, and could be exempt from the requirements to control emissions, based on the proportional contribution of the emissions to the overall total emissions nationally. This consideration may be more applicable within certain source categories, such as coal-fired industrial boilers, where there may be small industrial boilers providing services to small facilities which do not contribute a large amount overall.

9. A party may determine that it is appropriate to establish a threshold for control based on the size and throughput of the facility. This could be based on a consideration of the physical size of the facility, the input amount to the facility, or the production levels of the facility, depending on the factor which the party deems most suitable. With this approach the party would need sufficient emission information to ensure that the threshold level of 75 per cent of total emissions from the source category was met.

10. In considering the expected life of the facility, a party may decide, on the basis of a cost-benefit analysis, that the application of control measures to a facility which is approaching the end of its life is not cost-effective, provided that the facility and other facilities that the party chooses not to control make up less than 25 per cent of the total emissions from the category. It would then be at the discretion of the party to determine an appropriate cut-off for the length of time considered suitable. This criterion may be more appropriate in taking decisions at the outset, as the measures in the Convention are being implemented.

11. The location of the facility may influence the types of control techniques which can be implemented, as it may be difficult to transport certain control techniques to remote locations, and certain techniques may not be appropriate in locations without, for example, good access to a reliable water supply. There may be additional factors related to the requirement for other pollution controls for remote facilities where, for example, particulate matter controls may be less stringently enforced.

12. The inclusion of any other pollution control measures at a facility may result in a party determining that it has controlled mercury emission reduction under a multi-pollutant control strategy. Parties may also wish, however, to consider facilities with existing pollution control mechanisms within the category of facilities which are "not controlled" if, in their view, they would struggle to meet the obligation set out in paragraph 6 of Article 8 for the measures applied by a party to achieve reasonable progress in reducing emissions over time.

### **C. Review of the application of paragraph 2 (b) of Article 8**

13. The use of the option set out in paragraph 2 (b) of Article 8 to identify the sources covered within a source category listed in Annex D so long as those criteria include at least 75 per cent of the emissions from that category cannot be seen as a one-off decision. The measures taken by parties to control emissions, and also the construction of new facilities may change the percentage contribution of each source over time. This may require a re-evaluation of the sources to be controlled within a source category.