

January 10, 2011

Ms. Margaret Kenny
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Transmission via email: Margaret.Kenny@ec.gc.ca

RE: NGOs response to Canadian positions for the second intergovernmental negotiating committee (INC2) for a legally binding instrument on mercury

Dear Margaret Kenny:

Please find for your consideration the following comments and recommendations by the Canadian Environmental Law Association (CELA) and Chemical Sensitivities Manitoba (CSM) in response to the draft consultation document, 'Elements of Text and Options for a Mercury Treaty – Submission by Canada', for the second intergovernmental negotiating committee (INC2) in preparation for a global legally binding instrument as discussed at the stakeholder teleconference on December 16, 2010.

We want to thank you for the opportunity to participate on the stakeholder teleconference call of December 16, 2010. On this teleconference call, the government also noted their intentions to plan a face to face meeting in preparation for the third negotiating session in early Fall 2011. We want to encourage the government to proceed with planning for this stakeholder meeting with additional consideration that such a meeting be scheduled with advance notice to potential participants, and timed so that additional follow-up with stakeholders on input to developing Canadian positions can occur through subsequent teleconference calls or bilateral meetings.

We acknowledge the efforts and resources required by government to coordinate its activities with various departments in preparing for these negotiations. However, it is equally imperative that the role of stakeholders in these negotiations be duly recognized. This would require a transparent and timely process and one that seeks to obtain input, feedback and stakeholders' opinions on Canada's positions in the process. Therefore, we want to express our support and encouragement for the efforts undertaken to pursue opportunities that promote the on-going stakeholder engagement in this process.

PREAMBLE

Comments: The proposed preamble should be expanded to acknowledge the impacts of mercury to various vulnerable populations and ecosystems.

We are pleased to see the inclusion of the Arctic ecosystems and indigenous communities included in the proposed Preamble text. This would demonstrate the importance of the legally binding instrument to address mercury. However, there should be additional emphasis for indigenous peoples that rely on fish and marine mammals for their food source. The Stockholm Convention on POPs has effectively acknowledged the potential impact of POPs to these communities by noting in its preamble that “Arctic ecosystems and indigenous communities are particularly at risk because of the biomagnification of persistent organic pollutants and that contamination of their traditional foods is a public health issue.”¹

Other vulnerable people that should be recognized in the preamble should include: pregnant women and the developing fetus, children, women of child bearing age, workers, and people of low income. Based on the evidence of many scientific studies, the potential impacts of mercury to the developing fetus are significant and could result in many health impacts that include a range of disabilities. Similarly, pregnant women should be included in the preamble because of their role in protecting the developing fetus.

Impacts to workers from exposure to mercury in occupational settings should also be acknowledged in the preamble. For example, workers in the artisanal mining sector could be additionally exposed to mercury through consumer products or through releases of mercury to air, water and land. It is known that some of this mining activity is conducted illegally or lack effective measures to protect workers. The methods used to segregate the gold from the amalgam are not considered safe for the worker, the environment or residents in the surrounding areas. These factors are important and require inclusion and discussion because this sector will continue to grow and increase in mercury releases to all environmental media and people. Particular emphasis should be paid to developing countries or countries where economies are in transition as they are most vulnerable to these practices.

Another vulnerable group includes people of low income. Low income earners require additional consideration when managing toxic chemicals like mercury. According to the World Health Organization, the environment is considered one of the determinants of health. In general, people in the low income bracket have higher exposures to toxic chemicals as a result of housing issues, access to affordable food and other socioeconomic factors. The effects of these toxic chemicals on the poor can be significant but are not always recognized due to a lack of studies in this area. To effectively address this issue, a strong regulatory framework and commitment by government to eliminate the impacts from exposure to toxic chemicals is necessary.

Lastly, the preamble should acknowledge the role of the precautionary principle in addressing all anthropogenic sources of mercury and mention the role of non-governmental organizations (health, environmental and labour) in the development and implementation of obligations under the legally binding instrument.

Recommendation: Expand the proposed preamble to recognize the impacts of mercury to indigenous people - using language similar to that in the preamble to the Stockholm Convention on POPs; “... the Arctic ecosystems and indigenous communities are particularly at risk

¹ Stockholm Convention on Persistent Organic Pollutants (POPs): Text and Annexes as amended in 2009. Accessed at: <http://chm.pops.int/Convention/tabid/54/language/en-US/Default.aspx>

because of the biomagnification of persistent organic pollutants and that contamination of their traditional foods is a public health issue.”

Recommendation: In addition, the preamble should also acknowledge the impact of mercury to pregnant women and the developing fetus, children, women of childbearing, workers and people of low income.

Recommendation: The legally binding instrument should recognize the role of the precautionary principle as well as the role of NGOs in the development and implementation of obligations related to the instrument.

OBJECTIVE

Comment: We are pleased to see that the objective included reference to “eliminating global anthropogenic mercury releases to air, water and land.” However, the importance of eliminating mercury is significantly weakened because priority is given to “minimizing.” The use of the word “minimizing” in the proposed text is vague in its scope and does not provide the public or the countries a specified level of reduction to be achieved. Putting forth such a weak objective leaves Canada and its inhabitants very vulnerable to on-going release and deposition of mercury from domestic and transboundary sources.

At this early stage of the negotiations, Canada should put forth the strongest objective: the elimination of mercury from anthropogenic sources due to the extensive impacts of mercury on the environment and human health. As a major recipient of mercury through transboundary deposition, Canada should be seeking the *highest* level of protection possible. Promoting the complete elimination of mercury as Canada did on persistent organic pollutants under the Stockholm Convention is a consistent and appropriate approach. If not, there is little incentive for or pressure on those countries engaged in industrial processes or the production of products containing mercury to indicate that significant changes are required in processing or that safe substitutes to mercury must be found. In addition, there are some industrial processes and consumer products that have already been identified by various stakeholders as priority areas where elimination can and should be sought including dental amalgams. Canada should make a concerted effort in the negotiation process to identify these industrial processes and consumer products that are priority areas for elimination efforts.

Recommendation: We urge Canada to amend its proposed objectives to read: “In accordance with the precautionary principle, the objective of this Convention is to protect human health, wildlife and the environment from mercury and its compounds through the elimination of anthropogenic sources and releases of mercury.

DEMAND—PRODUCTS

Comments: Canada indicated the need to pursue more robust discussion on essential uses of mercury. While this is an important element of the negotiations, it is also important to note that even for essential uses, a commitment towards elimination should be pursued, even if additional time is required to identify substitutes.

However, there are some products such as dental amalgams that already have safe and available substitutes. While dental amalgams are lower in cost as compared to substitutes, the cost to human health and society from mercury exposure cannot be ignored. In these situations, the basis for eliminating mercury is already available and should be promoted rigorously. Other products which may be suitable to target for the elimination of mercury are light switches, thermometers, compact fluorescent bulbs, pesticides and biocides, and the light mechanisms in children's light-up shoes.

The complete phase out of products containing mercury should be the ultimate goal of the legally binding instrument. However, in situations where phasing out is not immediately feasible, interim levels of mercury should be established at very low concentrations with stakeholder input. These interim measures will minimize the impact of mercury on humans and the environment through a safe disposal or recycling process as the commitment towards phase out is achieved. However, the establishment of interim levels for mercury should only be considered when specified a timeframe for the phase out of mercury is established.

The legally binding instrument should also be able to address products that contain mercury but have not yet been identified in the negotiation process. A substantive discussion should be undertaken on the range of products that contain mercury, the role of safe substitutes in promoting elimination, and the current availability of safe substitutes. Abstaining from such a discussion will severely weaken the provisions aimed at products. For example, the absence of substitutes should not be considered adequate reasoning for considering the presence of mercury in some products as being essential. The appropriate legal triggers and assistance to develop alternatives are necessary for an effective legally binding instrument.

The consultation document uses the term "incidentally present in product," but does not define or quantify what this means. An explanation is required to provide some guidelines in this area and to also demonstrate the government's intent on eliminating products containing mercury. Does this imply that when materials for a product are sourced from naturally occurring ores, the presence of mercury in a product is acceptable? If so, how would these limits be established and by whom? It is our view that such determinations require further discussion by the negotiating countries as there are significant implications for the handling of waste from these products.

Also, while it is important to review the content limits for mercury in products, it is just as imperative to review the role of some of these products. Are these products essential or not? While the role of a product may vary depending on the country in which it is used, compromises should be sought in this process.

Finally, the section on products has not included a discussion on the export of products that contain mercury. For Canada, it is important that the export of products that contain mercury be prohibited. Mercury is already listed in Annex III of the Rotterdam Convention as a substance that has been banned or severely restricted. Mercury is banned in pesticides under the Rotterdam Convention and requires an export permit for the purposes of destruction. However, this listing appears to be limited as it does not specify how products with mercury are addressed under the Rotterdam Convention.

Recommendation: The objective of the legally binding instrument should seek to prohibit the use of mercury in products, starting with dental amalgams, light switches, compact fluorescent light bulbs, pesticides and biocides, and the light mechanisms in children's light-up shoes.

Recommendation: The negotiation process should include a robust discussion of the role of substitutes in achieving the elimination of mercury in products as well as the availability of technical and financial assistance to identify and develop safe substitutes.

Recommendation: The legally binding instrument should include obligations that aim to prohibit the export of products containing mercury, with the exception of export for destruction purposes only.

EXEMPTIONS

Comments: Canada has proposed legal text addressing exemptions to the terms of the legally binding instrument. While this section will indeed be an important element of negotiations, Canada should aim to promote a position that avoids using exemptions. However, there may be exceptional cases² where exemptions may be unavoidable. Should this scenario develop in the course of the negotiation process, it is important that the negotiation process minimize the number of exemptions to be submitted by Parties so that the objectives of the instrument are achieved.

In order to ensure the successful implementation of the legally binding instrument, Canada should promote a system that requires the highest level of accountability by the Party seeking an exemption and promote a time-limited process. This would facilitate the achievement of the objectives of the legally binding instrument rather than perpetuating the continued use and release of mercury.

Canada is considering the use of the exemption system that exists under the Stockholm Convention. In addition to the comments provided in the previous paragraph, we offer the following comments on the limitations of such a system:

- Exemptions may be sought on industrial processes as well as products. Although we strongly urge that exemptions for products or industrial application be avoided in this legal instrument, in the worst case scenario, time-limited exemptions may be necessary for Parties. The exemption system proposed in the consultation document only covers products. The negotiating parties should ensure that the criteria that are applied to potential exemptions for industrial processes are rigorous and time-limited;
- The proposed system does not address the export of products containing mercury;
- The proposed system does not mention waste streams or potential recycling processes relating to products containing mercury.

² A country may require an exemption to develop substitutes or identify BAT or BEP to achieve the objectives of the legally binding instrument.

Based on our recent experience in the implementation of the Stockholm Convention on POPs pertaining to provisions on waste and the negotiations to expand the scope of those chemicals addressed, it is patent that exports, recycling and waste streams are of great significance and should be included and discussed. The current negotiations on mercury should take this into consideration and initiate discussions on these matters at INC2.

Recommendation: While we urge that exemptions be avoided completely for products and industrial processes, there may be exceptional cases where some Parties may seek such exemptions. The legal language for exemptions on products containing mercury should be expanded to include discussions on exemptions relating to industrial processes.

Recommendation: The legal scope proposed for products containing mercury should also address export activities, waste streams and recycling processes. INC2 should provide the venue to explore and discuss how recycling processes will be addressed.

Recommendation: Canada should ensure that exemptions be time-limited and kept to a minimum. The criteria to grant an exemption should be transparent and the threshold for seeking an exemption must be further discussed.

ATMOSPHERIC EMISSIONS

Comments: During the teleconference, it was emphasized that 90% of the mercury making its way to Canada originates from long range sources outside Canadian borders. In addition, it was noted that the Canadian Arctic is “disproportionately impacted” by anthropogenic atmospheric mercury emissions from long-range transport sources. We confirm these observations and are pleased to note that the Government of Canada also recognizes their importance.

The focus of the discussion so far has been on atmospheric emissions of mercury. While we understand that releases to air are the most significant sources of mercury emissions, releases to other environmental media (water and land) have not been mentioned. We want to ensure that provisions are in place to address mercury releases to all environmental media. This will prevent possible shifting of releases from one medium to another.

The elements paper outlines the need to develop guidelines for Best Available Techniques (BAT) or Best Environmental Practice (BEP) for specific sectors. However, a significant gap in the elements paper is the lack of obligation to use BAT/BEP. It is our view that the final BAT/BEP should be required for existing facilities in all sectors identified as sources of mercury releases as well as for new sources of mercury releases.

While 90% of mercury to Canada has been estimated to come from transboundary sources, we must also note that the amount of mercury release from Canadian sources continue to be significant and for which the current measures in place may not adequately address. For example, CELA and Environmental Defence, under its PollutionWatch report, *Partners in Pollution 2: An Update on the Continuing Canadian and United States Contributions to the Great Lakes-St. Lawrence River Ecosystem Pollution*, highlighted that the Great Lakes- St. Lawrence River basin in 2007 experienced approximately 33,000 kg of total releases of mercury

(on- and off-site releases) from facilities reporting to the National Pollutant Release Inventory (NPRI) in Canada and the Toxic Release Inventory (TRI) in the US. Canadian facilities made up over two-thirds of these releases (23,000 kg). Furthermore, air releases totalled 4,000 kg from NPRI and TRI facilities.³ Despite several commitments made by the Canadian and US governments in the past three decades which have reduced the mercury levels in the Great Lakes ecosystem, the levels observed remain high. Electrical generation and smelting facilities continue to contribute significantly to the mercury releases in the Great Lakes-St. Lawrence River Basin. Thus, further measures to reduce mercury releases are still needed in Canada.

We are creating a false sense of security that the measures taken by Canada to date have addressed most mercury sources in Canada. The purpose of the on-going negotiations should not aim to ensure that other countries develop measures that will reduce mercury levels globally, but should also challenge Canada to further reduce mercury emissions, thus building upon its original commitments which have had a degree of success.

Firstly, existing Canadian regulations targeting mercury releases from industrial sources need to be examined for progress in meeting targets and be updated as more aggressive opportunities for reduction arise. Secondly, an expansion and strengthening of the NPRI program may be needed to require all facilities to report on mercury releases and transfers and monitor all industrial sources of mercury releases. Thirdly, Canada should seek to ensure that binational commitments to protect and restore the Great Lakes Basin are strengthened to seek the elimination and prevention of all toxic chemical threats, with particular emphasis on those that are persistent and bioaccumulative such as mercury. Fourthly, the Government should determine how much mercury from Canadian sources affects the Canadian arctic. Fifthly, the Government should expand monitoring (both environmental and human biomonitoring) programs that focus on mercury across Canada, with particular emphasis on remote arctic communities. Finally, regulations addressing mercury in switches should be released for public comment.

Recommendation: Canada should promote the mandatory development and implementation of BAT/BEP guidelines for existing sources of mercury releases as well as for new sources.

Recommendation: Based on the continuing release of mercury to the environment in Canada, Canada is encouraged to seek additional opportunities that work towards achieving the goal of complete elimination of mercury releases and emissions from anthropogenic sources.

WASTES

Comments: The issue of waste raises significant concerns as it relates to the negotiations. Canada expects to rely on the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (Basel Convention) as the principal instrument that will address mercury wastes. We have reservations that the Basel Convention will not effectively address the entirety of the challenges resulting from the storage and destruction of mercury-containing waste. For example, if the objective of the legally binding instrument is the ultimate

³ Canadian Environmental Law Association and Environmental Defence. *Partners in Pollution 2: An Update on the Continuing Canadian and United States Contributions to the Great Lakes-St. Lawrence River Ecosystem Pollution*. Produced under the PollutionWatch Project. March 2010.

elimination of mercury, the obligations of the Basel Convention may not be sufficiently robust to ensure the success of this objective. Our reservations pertain to the development of guidelines for Best Available Technique (BAT) or Best Environmental Practices (BEP), which will be forwarded to an Expert Group that will take into consideration the Basel Convention framework. The elements to include in the BAT or BEP guidelines should be clearly articulated and incorporated into the legally binding instrument so that the Expert Group has clear guidance on what the BAT or BEP guidelines should contain to effectively achieve an elimination goal. These elements should be negotiated during the INC process.

The inadequacy of the Basel Convention to address significant obligations related to the effective management of waste matters is evident in the implementation activities undertaken under the Stockholm Convention to address low POPs content in waste. It is expected that the same challenges related to low mercury content will emerge. In almost 10 years since the Stockholm Convention entered into force, the use of the Basel Convention to establish protective guidelines for “low POPs content” has been challenging. There are no formal committees that require the establishment of health-based standards which would go a long way for the quantitative determination of “low POPs content.”

We question the adequacy of the Basel Convention to address other aspects of waste management as it pertains to mining, trade in primary mercury (see below), and remediation of mercury contaminated sites. These elements may not be addressed effectively under the Basel Convention. Similarly, the Basel Convention may be inadequate to address industrial processes that result in the production of waste that includes mercury and other toxic chemicals (e.g. dioxins, heavy metals, particulate matter). It is unclear how the Basel Convention addresses co-contaminants that may be part of the mercury-containing waste produced from industrial sources.

Furthermore, the use of the Basel Convention to address the movement of waste containing mercury should only be permitted when countries that have environmentally sound management facilities are involved. Canada should ensure that countries with environmentally sound management facilities are not allowed to export waste for treatment by another country.

Since the Basel Convention lacks a financial instrument, there is concern that any decision to refer all mercury waste issues to the Basel Convention may have the unintended consequences of making national interventions to control mercury wastes, ineligible for financial support from the Mercury Convention financial mechanism. Very little discussion on these matters have yet to be raised in the negotiation process but this could provide a real challenge for many countries that do not have the resources and appropriate environmentally sound management facilities to manage waste containing mercury, within their borders.

Finally, there may be countries that are not Parties to the Basel Convention but are participating in the negotiation of the legally binding treaty for mercury. It is unclear how the development of the guidance on BAT and BEP under the Basel Convention may be affected by those countries that are not Parties to the Basel Convention or whether it is appropriate to subordinate the obligations of a legally binding instrument to the non-Parties. Investigation of barriers to accountability or the meeting of legal requirements for non-Parties to the Basel Convention for waste containing mercury under the Basel Convention must be examined.

Regardless of the issues we have raised related to the Basel Convention, it is important to promote discussion on the need to establish and adopt Best Available Techniques within a specific timeframe for specific sectors that are known to release mercury to the environment, such as coal fired power plants, hydroelectric dams, cement kilns, smelters and other industries. These efforts should be developed as part of the process to identify and adopt substitutes in these industrial applications. In the case of fossil fuel combustion, there are ample opportunities to develop and employ alternative energy sources that are clean, sustainable, and not based on fossil fuels or other non-renewable resources. This is a clear example as to where substitutes may already exist and a strong commitment to phase out processes such as coal-fired power plants is appropriate.

Recommendation: We encourage the government to undertake a review of the scope and obligations of the Basel Convention and its ability to effectively develop guidance for BAT and BEP for waste containing mercury.

Recommendation: At this time, we cannot support the proposed legal text supporting co-operation between the Basel Convention and the mercury convention without evidence that the objectives of the legally binding instrument will be upheld using the guidance developed through the Basel Convention, particularly on the following issues; trade in waste, low mercury content in waste, and remediation of contaminated sites, which are not currently addressed in the Basel Convention . The findings of the review proposed in the previous recommendation may address this matter.

Recommendation: Canada should support the movement of waste only to countries that have environmentally sound management facilities and to prohibit these countries from exporting waste to another country for the purposes of storage or destruction.

INVENTORIES AND REPORTING

Comments: The public should receive timely access to relevant government and private sector data related to mercury sources, mercury releases and substitutes available for mercury-containing products and processes. As such, we recognize the importance of developing and maintaining inventories for management of toxic chemicals such as mercury. This goes a long way towards increasing the public knowledge and understanding on mercury. In addition, the need for reporting is also essential for transparency and accountability. In the proposed article 19 of the elements paper, there is a lack of direction with regards to the development of pollutant release and transfer registries, for the collection and dissemination of information regarding annual mercury levels. Hence, it is critical that Canada takes every opportunity to promote the need for inventories and reporting mechanisms in the legally binding instruments. These two provisions along with the development of a National Implementation Plan (NIP) (discussed separately below) will play important roles in evaluating and supporting the effectiveness of the global efforts on mercury reduction/elimination required under any legally binding instrument.

To ensure that the inventories and reporting mechanisms are effective elements of the legally binding instrument, the information gathered in the inventories should be comprehensive in

scope and detail in order to facilitate a critical analysis of the data. Furthermore, Canada's NPRI should be linked to the provisions of this inventory. While the format of the inventory, scope of information, the frequency of reporting and monitoring will be topics for further discussion by the participating countries, additional consideration should be given to ensure that the inventory records a number of important data, including the following elements:

- Inventories of mercury releases that include all environmental media (air, water, land);
- Quantification of all mercury releases without quantity thresholds and their chemical form;
- Supply of mercury (e.g., produced through mining, used, export, import levels),
- Quantify of mercury-containing waste and stockpiles;
- Types and quantity of products that have mercury-containing waste;
- Contaminated sites; and
- Monitoring data (monitoring in various abiotic media such as air, soil, sediments and ice cores, and in biota (especially marine, but also freshwater and terrestrial), and biomonitoring in humans)

Recommendation: The legally binding instrument should include inventories and reporting provisions. In the development of the inventories, careful consideration should be given to include the following information:

- *mercury releases to all environmental media*
- *quantify all mercury releases without quantity thresholds and chemical form;*
- *supply of mercury (e.g., produced through mining, used, export, import levels),*
- *quantify mercury containing waste and stockpiles;*
- *type and quantity of products containing waste:*
- *contaminated sites; and*
- *monitoring data from various abiotic media such as air, soil, sediments and ice cores, and in biota, especially marine, but also freshwater and terrestrial, and biomonitoring of humans.*

Recommendation: Article 19 of the elements paper should be revised to include the requirements for inventories (described above) and reporting mechanisms that will assist in evaluating the progress made under the legal binding instrument on mercury.

NATIONAL IMPLEMENTATION PLANS

Comments: The inclusion of National Implementation Plans (NIPs) in the legally binding instrument is essential since it will outline the efforts required by each Party to achieve the objectives of the instrument. To achieve these objectives, the NIPs must be mandatory for all Parties under all conditions as stated in the legally binding instrument. The value of NIPs is significant as they can identify where additional resources (financial and technical) and support may be required to achieve the objectives of the instrument. NIPs can also provide accountability for each Party to meet its obligations under the legally binding instrument. NIPs will provide critical information for reporting on the progress by the Party together with the

information gathered through the inventories. Hence, it is imperative that all Parties are required to prepare NIPs.

As noted in the consultation document, “Properly designed NIPs should systematically and thoroughly identify a set of national priorities to deal with mercury; outline specific activities to meet the direct obligations under the agreement; provide a reliable basis for estimating incremental resource needs for technical and financial assistance; monitor and report on implementation of, and compliance with obligations; and contribute to regular evaluation of the Convention’s effectiveness.” It is our view that NIPs should not simply be presented as an inventory of activities to promote reduction of mercury but rather should provide added value by identifying additional measures to be implemented by a Party. For a country such as Canada where measures on mercury have already been undertaken, the value of NIPs should be further emphasized as an opportunity for new measures to be undertaken that would specifically target efforts that are intended to achieve the objectives of the instrument (i.e. development of regulations focused on mercury and the obligations outlined in the legally binding instrument).

These NIPs should provide specific details (quantitative and qualitative) as to how the measures contribute to the reduction and ultimate elimination of mercury releases from anthropogenic sources. We agree that the Stockholm Convention’s NIP provision could serve as a model with some modifications to improve its usefulness and efficacy. It is important that a requirement for substantial review and update of NIPs is stated in the legally binding instrument.⁴

Recommendation: Using the framework for NIPs required under the Stockholm Convention on POPs as a model, Canada should promote the inclusion of NIPs in the legally binding instrument.

Recommendation: Developing NIPs should be made a mandatory requirement for all Parties.

COMPLIANCE

Comments: The issue of a compliance mechanism is expected to generate substantial debate amongst the Parties throughout the negotiating process. It is essential that an effective and timely compliance mechanism be established in the legally binding instrument. The absence of an effective compliance mechanism will weaken the scope and outcome of the final instrument. As such, every effort should be taken in these early phases of negotiation to establish a compliance committee to identify the essential elements for a compliance mechanism. The mandate of this committee should be to provide the guidance required to develop a process for addressing matters of non-compliance by Parties.

⁴ Note: Based on the experience gained from implementing the Stockholm Convention, NIPs prepared by developing countries and countries with economies in transition provided a significant opportunity to outline their plans to achieve the obligations to eliminate POPs and also initiated a process that allowed these countries to identify the level of resources and assistance required to achieve these plans. In these cases, careful consideration is required to ensure that NIPs do not place a financial burden on these countries for implementing the Convention, but instead provide an opportunity to promote broader engagement across the globe through facilitation of the financial and technical assistance that supports the successful achievement the objectives and obligations of the instrument.

We appreciate that the issue of compliance will be closely related to discussions on financial and technical assistance since there are many developing countries and countries in economic transition that will face significant challenges in efforts to achieve the objectives outlined in the legally binding instrument on mercury. Additional efforts and consideration should be made by developed countries, including Canada, to identify the level of financial and technical assistance that can be offered to those countries. Canada set a high benchmark during the negotiations of the Stockholm Convention on POPs by establishing Canada's POPs Fund with a commitment of \$20 million. Similar consideration of funds should be given priority under the negotiations on mercury.

Indeed, it is critical that the challenges relating to compliance be identified and dialogue pursued as it will impact the quality of discussion on other matters such as reporting, inventories, NIPs, and financial and technical assistance. For example, the degree of non-compliance may vary from Party to Party. There will be contribution factors that could result in non-compliance that may include those which are politically motivated (e.g. political unrest, corporate lobbying). The compliance mechanism should include provisions that will address the scope of factors that can result in non-compliance and how the mechanism will address such matters.

Thus, we support the early establishment of a compliance committee in the drafting of the legally binding instrument.

Recommendation: Negotiate for the inclusion of a compliance mechanism in the legally binding instrument on mercury.

Recommendation: Establish a compliance committee in the negotiations preparing the text of the draft treaty.

RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

Comments: At this time, we cannot support the opt-in or opt-out provisions on amendments to the legally binding instrument and its annexes based on the provisions of the Stockholm Convention. For Canada, the opt-in procedure under the Stockholm Convention on POPs has created a delay in developing actions needed on POPs because of our dualist legal system. The opt-in or opt-out clause does not provide the necessary assurance, particularly for Parties that have made initial commitments to take action, to go beyond the initial scope of commitments outlined in the instrument. Furthermore, the existence of these clauses without tight time restraints will result in significant delays in the ratification of more stringent measures.

Based on Canada's experience under the Stockholm Convention, we find the process required by government to complete a ratification process on amendments to the Convention that would include reviewing amendments and undertaking a formal ratification process, to be lengthy. The process, as in Canada's case is complex and it a potential source of delays which results in the unnecessary and on-going exposure of POPs to humans, wildlife, and ecosystems. Canada invested significant resources throughout the negotiation process in COP4 of the Stockholm Convention that resulted in the expansion of the list of POPs to be addressed under the Convention. However, it has taken Canada a significant amount of time to complete its

ratification process. Such a delay in ratification may be perceived by other Parties of a decrease in commitment by Canada to take much needed action on the nine additional POPs. Indeed, because of the impacts to Canada, a faster ratification process is needed in these mercury negotiations.

In these mercury negotiations, it should be ensured that all Parties are obligated to meet the objectives through the provisions of the legally binding instrument including future amendments to the instruments. Any exemptions to these obligations should be proposed in future Conference of the Parties. While this approach is not yet supported by Canada, it does demonstrate the level of commitment that is required to address the threats of global mercury pollution.

Recommendation: We do not support the government's position to include the opt-in or opt-out clause for reviewing amendments to the legally binding instrument without additional discussion and input from Canadian stakeholders as to the value and role of these options when furthering the implementation of the instrument.

TRADE

Comments: There was significant discussion during the mercury teleconference that focused on the issues of trade for the mercury supply. It is astonishing that very little information has been provided to stakeholders on the quantity of mercury that is expected to be traded between countries and the origins of the mercury supplies. Similarly, there is very limited understanding where waste containing mercury can be stored. Canada was asked if they expect to accept waste containing mercury for storage from countries that do not have such facilities. While Canada indicated that it does not expect to accept requests for storage of waste containing mercury, it is unclear if Canada will export mercury waste to other countries for the purpose of storage.

It is important that Canada promotes greater transparency by negotiating with other countries on these issues since this will have a significant impact on scope of the overall objectives of the legally binding instrument and the obligations outlined in the instrument. There should be an obligation under the instrument that aims to prohibit the continued trade of mercury except for destruction purposes only. This can only occur if it is combined with a commitment to prohibit the mining of mercury which will ensure that no 'new' mercury is available for domestic use or trading purposes. As noted earlier, trade of mercury waste should be only be permitted in situations where a receiving country has environmental sound management facilities for destruction purposes. In cases where the receiving country does have an EMS facility, this country should be prohibited from exporting its waste containing mercury elsewhere.

Thus, additional efforts should be pursued to require countries to submit information that can further quantify the mercury supply and its sources. The use of inventories could be one such tool to track supply and use.

It must also be noted that additional discussions on the implications and limitations posed by existing trade agreements need to take place within the scope of negotiations. It is also imperative that while seeking international agreement, individual countries continue to pursue the reduction and elimination of mercury from industrial uses, products and other processes

through domestic law and policy. In this respect, any bilateral, multilateral or other trade agreements under negotiation, such as the Canada-EU Comprehensive Economic and Trade Agreement (CETA), must protect the right of Canada to pursue its domestic legislative and regulatory agenda on mercury in support of environmental, human health, safety and related objectives. Canada's ability to adopt higher standards (such as the complete phasing out of mercury) must not be compromised by overly broad commitments to regulatory harmonization in such trade agreements. As such, exemption clauses similar to GATT Article XX(b) must be central to any such agreement. Otherwise, treaty conflicts may occur due to the uncertain relationship between bilateral, multilateral and other trade treaties.

Recommendation: Canada should urge additional discussions on the need for countries to quantify and assess the use and global supply of mercury.

Recommendation: Canada should promote further discussion on the impacts and limitations posed by trade agreements in negotiating a legally binding instrument on mercury.

Recommendation: Canada should require that the legally binding instruments seeks to prohibit mercury mining to stop the supply of 'new' mercury available for domestic use or trade purposes.

Recommendation: Canada should require that the legally binding instrument on mercury seek to prohibit Parties from trading waste containing mercury for storage purposes only. Trade of waste should be permitted for destruction purposes to countries that have EMS facilities.

OTHER ISSUES

1) Public Participation, Access to Information and Awareness Raising

Public engagement and awareness raising have not been focused points of discussion in the negotiating process to this point. The experience gained through the implementation of the Stockholm Convention suggests that public engagement and the raising of awareness have contributed to its success to this point. We urge that additional resources in the negotiation process, as well as in implementation activities, be directed to the furthering of public engagement and awareness raising in this process.

In Canada, several NGOs have expressed the need to increase the level of dialogue on these international matters through the establishment of an advisory board or a task force that is mandated to review and monitor the progress made on various international agreements that focus on the management of toxic chemicals. This type of advisory group or task force is not intended to replace the much needed stakeholder consultation that should be occurring on these issues, but rather should provide opportunities for the government to seek initial input from members of the communities on developing positions. These positions should subsequently be discussed with a broader group of stakeholders beyond the advisory group/task force process.

Recommendation; To facilitate stakeholder engagement, we urge the government to consider establishing a stakeholder advisory group or task force that can provide initial input or feedback on international agreements on toxic chemicals.

Recommendation: Furthermore, broader stakeholder consultations on the negotiation process for a legally binding instrument on mercury is encouraged, with particular emphasis on face to face meetings.

2) Contaminated sites

The issue of sites contaminated by mercury is expected to be a significant issue throughout the negotiation process. We do expect such discussions to be related to the discussions on waste containing mercury. However, the scope of the Basel Convention, as previously noted, does not address contaminated sites. In the negotiation process, it is important that substantial provisions for effective remediation and disposal of sediment from contaminated sites be included in the legally binding instrument on mercury. Furthermore, the negotiations should also ensure that the following actions are undertaken regarding mercury contaminated sites: the identification and assessment of mercury contaminated sites and prevention of mercury contamination from spreading; remediation of sites contaminated by mercury and mercury compounds in an environmentally sound manner; minimization of human exposure, particularly vulnerable populations, throughout the remediation process (prior, during and after); investigation of the health effects of exposure to mercury and mercury compounds released from contaminated sites, particularly in vulnerable populations; performance of outreach and educational activities with people exposed to mercury and mercury compounds, including the provision of information on the risks of mercury exposure; assurance that people impacted by mercury pollution receive compensation and support to address exposure, taking into consideration the polluter-pays principle.

Recommendation: Ensure that the legally binding instrument includes provisions that address mercury contaminated sites.

Recommendation: The negotiation process should ensure that provisions to take specific actions for the remediation and disposal of sediments from contaminated sites also include the following:

- *Identify and assess mercury containing contaminated sites and prevent mercury contamination from spreading;*
- *Remediate sites contaminated by mercury and mercury compounds in an environmentally sound manner;*
- *Minimize human exposure particularly to vulnerable populations throughout remediation process(before, during and after);*
- *Investigate the health effects of persons exposed to mercury and mercury compounds released from contaminated sites, particularly to vulnerable populations*
- *Conduct outreach and educational activities to people exposed to mercury and mercury compounds include information on the risks of mercury exposure*

- *Ensure that people impacted by mercury pollution receive compensation and support to address exposure taking into consideration the polluter-pays principle.*

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