

**Meeting of the bureau of the intergovernmental negotiating committee on mercury and preceding informal consultation with INC2 office holders
Geneva, 28-30 March 2011**

Note by the secretariat on preparation of a new draft text

I. Introduction

1. Mandate. At its second session in Chiba (INC2), the intergovernmental negotiating committee agreed that the secretariat should prepare for consideration by the committee at its third session a new draft text of the comprehensive and suitable approach to mercury called for by Governing Council decision 25/5. The new draft text would be based upon the draft elements paper, UNEP(DTIE)/Hg/INC.2/3; however, unlike the draft elements paper, the new draft text would present the full range of party views on the possible content of the mercury instrument, as expressed by parties at the second session and as submitted by parties to the secretariat in writing by 25 March 2011. The full range of party views could be indicated in the new draft text through the use of brackets, multiple options, and other appropriate means. Any written views submitted to the secretariat would be posted on the UNEP mercury negotiations website.

2. Purpose of this note. The purpose of this note is to inform discussions at the informal consultation with the bureau, 28-29 March, and at the meeting of the bureau, 30 March, by describing the approaches the secretariat is considering for preparation of the new draft text. The note also identifies some specific issues on which the secretariat is seeking guidance.

3. The bureau may wish to consider the information in this note in providing further guidance to the secretariat as it commences preparation of the new draft text.

II. General approach for preparation of the new draft text

A. Basis of the new text

4. As instructed by the committee, the secretariat will use the draft elements paper, document INC.2/3, as the basis for the new draft text. The secretariat will adapt the elements paper so that it includes the full range of party views. The source of these party views will be the INC2 meeting report and party submissions that are received by the secretariat in a timely fashion, recognizing that some submissions may not arrive until after the 25 March deadline.

5. Contact groups. The INC2 meeting report summarizes the reports given to plenary by the contact group chairs. Text proposals contained in these summaries will be incorporated into the new draft text.

6. Reports from the facilitators. The INC2 meeting report also includes annexes containing the written reports prepared by the co-facilitators of the various informal consultations. The secretariat seeks the guidance of the bureau regarding the status of these reports, specifically, the extent to which the text proposals contained in the co-facilitators' reports should be incorporated into the new draft text.

7. Conference room papers (CRPs). CRPs normally have no status after the close of a session unless they are annexed to the meeting report. No CRPs issued at INC2 are annexed to the report. The secretariat may review the CRPs to help understand the intent of an intervention referenced in

the meeting report. However, the secretariat will base the content of the new draft text on proposals contained in the meeting report and party submissions, and not on the CRPs themselves.

B. Approach for preparation of the draft text

8. Subject to views of the bureau and any modifications that may become necessary during the course of its work, the secretariat proposes the following general approach for preparation of the new draft text.

9. “Party-driven” text. The secretariat understands the request from the committee to be that the secretariat should prepare a *party-driven* new draft text; i.e., a text that faithfully reflects the full range of views expressed by parties at the committee’s second session and in their subsequent submissions. Accordingly, the secretariat will endeavour to ensure that all text proposals from parties, and all proposals that can readily be converted into legal text, will be incorporated into the new draft. Proposals of a vague or general nature that cannot readily be converted into text may present challenges. In considering how best to deal with such challenges, the secretariat will take care to avoid the appearance that it is introducing its own views into the new draft.

10. Match similar proposals. For each specific issue, the secretariat will match those provisions and proposals that are substantively similar to each other. Where possible, similar texts will be combined and synthesized into a single, coherent passage. Doing this will be desirable because (i) the secretariat was not instructed to prepare a compilation text of all submissions and proposals received, and (ii) the new draft text will become unwieldy and unusable if it attempts to reproduce every variation of proposed text.

11. The INC2 elements paper will provide the basis for the new draft text. Where party proposals support or are consistent with a provision in the elements paper, the secretariat will modify the elements text so that the proposals are reflected in the revision. Brackets will be used to indicate when provisions and proposals contain minor, but substantive, differences, such as two or more possible different words, phrases, numbers or dates.

12. Identify options. There will be some proposals that are fundamentally different from each other or from the analogous provision of the elements paper. Similar proposals within this category will be combined and synthesized to the extent possible. Brackets within otherwise similar provisions will be used to present minor, but substantive, differences. The different synthesized proposals and texts will be presented as separate options under the appropriate article or section of the new draft text.

13. Proposals requiring structural changes in the elements paper. Some party proposals will be for options or approaches that may not work within the currently existing structure or articles of the elements paper. An example that was raised at INC2 is the proposal related to mercury wastes and the treatment of elemental mercury. Some of these proposals are identified and briefly described in Part III of this note. The bureau may wish to discuss and provide the secretariat specific guidance on how these types of proposals can effectively be reflected in the paper.

14. Additional issues. Some proposals represent issues that the elements paper did not address. To the extent possible, the secretariat will combine and synthesize such proposals when they are similar to each other. The new proposals will then be inserted as new, bracketed text in an appropriate place in the new draft.

15. Comments. At this point, the secretariat does not foresee including commentary in the new draft text, as it did in the elements paper, other than for exceptional circumstances. Thus, the comments that appeared in the elements paper will be omitted.

16. Source attributions. When the secretariat releases the new draft text, the text will not attribute its various proposals to a party or parties.

III. Substantive issues that may warrant in-depth discussion by the bureau

17. This part of the note identifies several issues that may be particularly challenging to deal with in the new draft, or in which the bureau may be especially interested.

18. Preamble. The meeting report contains Mr. Cissé's report on the informal consultations he conducted at INC2 regarding a possible preamble to the mercury instrument. The secretariat seeks the bureau's confirmation that the draft text should include preambular recitals as suggested by Mr. Cissé following his consultation with interested parties during INC2.

19. Definitions. In response to party proposals, some definitions in the elements paper will be modified and some new definitions inserted into the new text. Parties expressed varying views at INC2 on the appropriate placement of definitions. For the new draft text, the secretariat proposes to continue placing most of the definitions in Article 2, while perhaps indicating with a comment or footnote that some parties suggested that the definitions may be ordered or placed differently.

20. Products and processes. The draft elements paper used a "positive list" approach for products and processes. The new draft text will include options for both the positive and negative list approaches for these articles. It will also include a third, hybrid option proposed by a regional group. The Bureau may have views on how the three options for the articles, and their associated annexes, can best be presented so that they are readily understood.

21. Atmospheric emissions. Some parties at INC2 objected to the elements paper approach on significant aggregate mercury emissions. Can those objections be faithfully captured simply by bracketing the relevant text?

22. Atmospheric emissions and releases to water and land. Some parties suggested that these articles should be combined, which would require that they and their respective annexes be re-structured. Could this idea be captured in a comment, or should it be presented as a large (and potentially unwieldy) option in the new draft text?

23. Elemental mercury as waste. Can proposals that some elemental mercury be defined as mercury wastes be accommodated within the present article 4 (storage) and article 12 (wastes) structure of the elements paper?

24. Financial mechanism. Based upon the INC2 interventions, the new draft text will include options for a GEF-style and a MLF-style financial mechanism. Depending on the party submissions that are received, the text may include additional options.

25. Implementation committee. The secretariat anticipates that it will be able to reflect the views of parties faithfully in this article by inserting appropriately placed brackets and an option that the article should only contain an enabling clause.

26. Human health article. One regional group proposed that the mercury instrument should contain an additional article dealing with the issue of human health. In the absence of a specific text proposal, it is not clear to the secretariat what form such an article might take. This difficulty may be alleviated if a party or parties include such a text proposal in their written submission.