

Submission by the United States Mercury Intergovernmental Negotiating Committee

The United States supports the development of a comprehensive, legally-binding instrument on mercury that will significantly reduce global mercury use and releases and improve the global environment by requiring action in the priority areas identified by the Governing Council. The use of the Secretariat's elements paper (UNEP(DTIE)/Hg/INC.2/3) as the basis for negotiations at INC-2 was productive, and we support the mandate given to the Secretariat to prepare a new draft text taking into account discussions at INC-2 and submissions by the participants. The United States is providing these comments to give further clarity or additional information on specific elements, and we request that our interventions at INC-2 are also accounted for in any revised text.

With respect to a potential preamble, because we consider that any preamble should be considered closer to the end of negotiations, we have not submitted proposals; should others make proposals and a preambular section be included in the next draft of the text, we request that it indicate that States that consider it premature to consider a preamble reserve the right to make preambular proposals at a later stage.

ARTICLE 1: OBJECTIVE

The United States supports an objective that succinctly conveys what the mercury instrument intends to achieve. We support the current action-focused objective presented in the elements paper, which plainly conveys the intention of the instrument.

ARTICLE 2: DEFINITIONS

The need for definitions will be determined by the content of the substantive provisions of the instrument. We suggest keeping in mind that it might be simpler and, in some cases, necessary (i.e., if definitions vary from article to article) to have definitions within the relevant substantive articles. At this time, the United States has comments on the following definitions presented in the elements paper:

- As the negotiations proceed, the INC will need to ensure that the definition of "mercury" is appropriate for each area addressed by the agreement. For example, as currently drafted, the definition would not apply to reactive gaseous mercury or to mercury bound to particulate matter, two of the key forms of mercury emitted into air from large industrial sources. It is, however, premature to establish final language.
- Some definitions may not be necessary. The proposed definition of "Environmentally sound storage of mercury and mercury compounds" appears to be such an example. The only place this term is used is in Article 4, and the usage in that Article makes it apparent that the proposed definition is circular ("Environmentally sound storage" is storage consistent with guidance; Article 4 requires development of guidance on environmentally sound storage). We suggest omitting this definition.

join the agreement. Examples of such provisions can be found in Article 4 of the Montreal Protocol.

ARTICLE 7: MERCURY-ADDED PRODUCTS

The United States supports the positive list approach set out in the elements paper and further articulated in Annex C. It is our view that a positive list is more practical and accessible, allowing for a more focused and cost-effective effort aimed at major areas of concern and risk. Using a positive list, the INC can avoid the necessity of identifying and determining the appropriate treatment of every single use of mercury in products while addressing the major uses.

The United States agrees that the five product categories in Annex C are correct categories for consideration by the INC in order to produce a robust agreement. At INC2, participants and observers identified other product categories that may merit further consideration based on the risk they pose to human health and the environment. Regardless of the categories listed, it will be necessary to provide greater specificity in Annex C on the products and exemptions included in each of these categories and, while our own view on how to define the overall approach for each category continues to evolve, some preliminary suggestions to achieve this specificity are included below. Some categories will require more consideration and, potentially, creativity than others.

We are aware that several delegations at INC-2 suggested mercury amalgam should not be included in Annex C, noting a number of difficulties and complexities related to this issue. The United States supports further consideration of dental amalgam by the INC such that the agreement is able to achieve the phase down, with the goal of eventual phase out by all Parties, of mercury amalgam upon the development and availability of affordable, viable alternatives. To the extent that Annex C is not structured to accomplish such a goal, the United States believes that a number of obligations could be considered within an appropriate operative paragraph of the agreement itself. Such a paragraph could commit Parties to phase down the use of mercury amalgam or address mercury releases through conducting and promoting further research on alternatives, mandating the use of separators in dental offices, promoting and incentivizing prevention strategies, educating patients and parents in order to protect children and fetuses, and training of dental professionals on the environmental impacts of mercury in dental amalgams, and to report on their progress in doing so to inform the Conference of the Parties on the progress being made to phase down amalgam use.

With respect to the text of Article 7, paragraphs 1 and 2 are unduly complicated in bifurcating what is allowed and not allowed. We believe the objectives of those two paragraphs can be addressed in a single, clean paragraph. And while we are supportive of efforts to address the introduction of new mercury-containing products, we suggest a somewhat different and less prescriptive approach; Parties should discourage the introduction of such products and provide available information to report on the production of new mercury-containing products. We do not believe, however, that there should be an exclusion for products that use less mercury than the products they replace, as this would merely delay the transition to mercury-free products.