

IPEN QUICK VIEWS: MERCURY TREATY COP-5

October 2023

The fifth Conference of the Parties (COP-5) of the Minamata Convention on Mercury (Mercury Treaty) will take place in Geneva from 30 October to 3 November 2023, and several important decisions will be discussed. These decisions may include:

- **Effectiveness Evaluation indicators**
- **Amendments to Annex A (products) and Annex B (manufacturing processes)**
- **Establishing mercury waste threshold concentrations (Category C) under Article 11**

In addition, IPEN will raise awareness on three important issues that are not on the agenda at COP-5 but should be on the agenda for COP-6 as they are critical to the objectives of the Convention of reducing global mercury pollution and protecting human health. These objectives may be best served by

1. **Ending the global mercury trade.**
2. **Prohibiting Artisanal and Small-Scale Gold Mining (ASGM) as an allowable use of mercury.**
3. **Promoting appropriate health care services for exposed populations, especially in ASGM areas.**

For more information, see **Setting the agenda for COP-6** in the second part of this document.

Key issues and decisions for COP-5

Waste thresholds (Category C - wastes contaminated with mercury or mercury compounds)

The expert group on waste thresholds has been meeting for several years to discuss the requirement for the COP to establish thresholds to define mercury waste under Article 11, paragraph 2. The expert groups have previously recommended that Category A waste (consisting of mercury) and Category B waste (containing mercury – essentially mercury-added products) are

not to have a threshold applied and should simply be deemed mercury waste. While the COP has agreed, Category C waste has been the subject of much debate and threshold values between 1 mg/kg (1 ppm) and 25 mg/kg (25 ppm) have been proposed.

At its most recent meeting in February 2023, the expert group could not reach consensus on a threshold level, although it did agree that a total concentration approach (i.e., mg/kg, not leaching values) should be taken. The expert group resolved to recommend to the COP that three concentration values should be considered. The values in brackets are [10 mg/kg], [15 mg/kg] and [25 mg/kg].

If only the levels in brackets are to be discussed, then IPEN recommends adopting a level of 10 mg/kg, but no higher, as this level can be confidently assessed by mercury-screening instruments – an important issue for developing countries and countries in transition that lack analytical capacity.

First Proposed Amendment to Annex A (Mercury-added cosmetics)

The Africa Region has proposed a two-part amendment to address the ongoing production, use, and trade of mercury-added cosmetics, specifically skin-lightening creams, soaps, and other cosmetics containing mercury and mercury compounds. EcoWaste Coalition, a Philippines-based IPEN member, has been at the forefront of investigating, analyzing, and exposing the prolific international trade in skin-lightening products, especially via online sales which can elude customs controls. IPEN supports both elements of the proposal as outlined below.

The first element of this proposal is to amend Annex A Part I

Currently, Annex A Part I of Article 4 of the Convention requires phasing out mercury added cosmetics containing 1 ppm or more of mercury. This allows

cosmetics with a mercury content of less than 1 ppm to still be traded. The proposal by the Africa Region is to remove the 1 ppm limit and prohibit all mercury-added cosmetics by 2025. This includes the manufacture, import, and export of cosmetics containing any quantity of mercury. This approach should simplify the detection of cosmetics containing mercury using readily available mercury-screening devices such as XRF, Lumex, or Jerome analyzers even if the level cannot be accurately quantified. IPEN supports this amendment.

The second element of this proposal is to amend Annex A Part II

National objectives to minimize sales and marketing of mercury-added cosmetics

This element of the proposal adds a new section to Part II that provides for a schedule of optional measures which, if taken in part or as a whole, may accelerate the phase-out and reduce public demand for and sales and marketing of mercury-added cosmetics. These measures are intended to operate in conjunction with the first element of the proposal. These measures include:

- Raising awareness of the dangers of mercury-added cosmetics with the public, doctors, beauticians, CSOs, and other relevant groups that can influence consumers of these products.
- Implementing regulations to restrict the advertising (including online ads), display, and marketing of mercury-added cosmetics.
- Publicizing lists of prohibited cosmetics to increase consumer awareness of the hazards posed by mercury-added cosmetics.
- Working with online marketing platform associations to develop strategies such as product safety pledges to prevent the advertising and sale of mercury-added cosmetics.
- Licensing and regulation of cosmetic manufacturers to meet safety standards and labeling of cosmetic products with ingredient lists to allow consumers to choose mercury-free products.
- Providing knowledge and information with transparency about the contents of products.

Other aspects of the proposed amendment include regional and global coordination and cooperation on the phase-out of mercury-added cosmetics at the intra-ministerial level (including Ministers responsible for Health, Drugs Administration, Trade, Customs, etc.) directed at the transboundary movement of such products. IPEN supports the proposed amendment.

Second proposed amendment to Annex A (Dental Amalgam)

The proposal by the Africa region is to amend parts I and II of Annex A of Article 4 on dental amalgam.

The first element of this proposed amendment seeks to add a row to the table in Annex A Part I listing ‘**Dental amalgam**’ to the column headed **Mercury-added Products** and to then add ‘**2030**’ to the adjacent column headed **Date after which the manufacture, import or export of dental amalgam shall not be allowed (phase-out date)**. If successful, this amendment would have the effect of banning the production and trade of dental amalgam by 2030.

The second element of the amendment proposed is to add two further mandatory provisions to the table listing dental amalgam. It is proposed to add the provisions that parties shall:

- (i) Submit to the Secretariat a national plan to implement the phase-out of the use of dental amalgam.
- (ii) Exclude or not allow the use of dental amalgam in government insurance policies and programmes.

This would have the effect of committing a party, in writing, to the measures it will take and by removing insurance coverage, make the use of dental amalgam significantly less attractive to dental practitioners, especially for women, pregnant women, and children. IPEN supports this amendment proposal.

Proposal to phase out remaining fluorescent lamps (Annex A Part I)

The Africa region has also proposed amendments to:

- Phase out Linear Fluorescent Lamps (LFLs) for general lighting purposes by 2026.
- Phase out Non-linear Fluorescent Lamps (NFLs) (e.g., U-bend and circular) for general lighting purposes by 2026.
- Phase out Compact Fluorescent Lamps (CFLs) for general lighting purposes that are > 30 watts by 2025.¹
- Phase out Compact Fluorescent Lamps with a non-integrated ballast (CFL.ni) for general lighting purposes that are R 30 watts with a mercury content not exceeding 5 mg per lamp burner by 2025.² IPEN supports all these elements of the proposal.

¹ Africa Region proposal carried forward from COP-4.

² Ibid

Other Annex A considerations

Batteries

COP-4 decided that the remaining battery types containing mercury (zinc air and silver oxide) should be phased out and the decision on the phase-out date should be determined at COP-5. It is clear that there are now globally available alternatives to these batteries and IPEN supports a phase-out date of 2025.

Switches and relays

COP-4 decided that the remaining switch and relay types containing mercury should be phased out with the discussion on phase-out dates to be determined at COP-5. Non-mercury alternatives to these switches and relays are now globally available and IPEN supports a phase-out date of 2025.

Annex B considerations

Production of polyurethane using mercury-containing catalysts is currently subject to Annex B Part II where measures include aiming to phase out use within 10 years of entry into force of the Convention (but no phase-out date is mandated).

Most manufacturers have now moved away from mercury-based catalysts in polyurethane production as alternatives for polyurethane production are globally available. COP-4 decided to give further consideration to adding production of polyurethane using mercury-containing catalysts to Annex B part I and determining a phase-out date. IPEN supports this addition to Annex B Part I and supports a phase-out date of 2025.

Effectiveness Evaluation

An intersessional process running since COP-4 has been evaluating potential indicators that can be used in the effectiveness evaluation process of the Convention. The Secretariat developed a draft list of indicators for commenting by 31 January 2023, based on articles of the Convention and other criteria such as biomonitoring and environmental monitoring. The draft indicator list has been further developed based on the comments received. This list could be subject to possible adoption at COP-5. IPEN supports the development of the draft list of indicators and has the following comments on specific indicators that could improve the outcome:

Indicator 2 ‘Total amount of mercury mined from primary mercury mines.’

This indicator should be more specific as national reporting on this item under Article 3 has been inconsistent, with some countries reporting quantities of cinnabar mined, others the quantity of elemental mercury derived from the cinnabar (they are not equivalent), and some reporting no primary mercury mining even though illegal primary mercury mines were operating. These issues should be resolved in the final text for the indicator. An elemental mercury-equivalent conversion should be available if a Party is reporting cinnabar quantities only. However, additional information about the percentage of mercury in cinnabar will be helpful to provide better information.

It should also be ensured that the indicator covers estimates of both legal and illegal primary mining of cinnabar. A more accurate wording for this indicator may be, “Total mercury extracted from primary mercury (cinnabar) mines” or similar.

Indicator 3 ‘Number of parties that have ‘endeavoured’ to identify mercury stocks...’

This indicator should also include the number of Parties that **have** effectively identified mercury stocks and the total quantities they have identified, rather than just those who have attempted to identify stocks. This indicator should also cover the industry types that are the source of these stocks or for which the stocks are intended to be used.

Indicator 6 ‘Estimated global amount of mercury, in tonnes per year, that is traded in accordance with the Convention ...’

While this indicator covers legal trade for mercury supply, mercury-added products, and mercury-using processes, it should also list product types by HS code as well as quantity (stating specific amounts for Low- and Middle-Income Countries). It should also specifically specify mercury traded that is legally intended for ASGM use and include an estimate of the quantities involved in the illegal trade in mercury for ASGM. There is currently a significant difference between the volumes of mercury traded globally and ASGM mercury use estimates in National Action Plans, which are much lower. Some quantities may be accounted for by diversion from other allowed uses as well as illegal trading and smuggling of mercury.

Separate to the issue of indicators, the Open-Ended Science Group for Effectiveness Evaluation (OESG) has developed a draft *Plan for data analysis consistent with the Monitoring Guidance*. If this document is discussed, under Table 1, point 5, *Estimation of exposure and adverse impacts*, IPEN supports inclusion of the evaluation of the cost of inaction. Similarly, for Table 3. *Tentative information outputs from the data analysis in relation to the analysis themes*, for section E. *Health and environmental impacts*, IPEN supports inclusion of the evaluation of the cost of inaction.

Setting the agenda for COP-6

IPEN invites delegates to discussions on the three issues below, with a view to developing proposals for amendments to the convention text at COP-6.

1. It is time to end the global trade in mercury

Now that most products and legal manufacturing processes that relied on mercury have been phased out, there is little justification to continue the global mercury trade. Most mercury being traded finds its way into ASGM, the leading source of global mercury emissions. These emissions result in contamination of the food web and undermines the human rights of Indigenous Peoples and those who are reliant on fish, such as populations in Small Island Developing States. More than 50 countries have developed National Action Plans to Eliminate Mercury use in the ASGM sector and introduced substitutes for mercury. In terms of synergies with other Multilateral Environmental Agreements, this proposal would also align with the new SAICM objective of “*A planet free of harm from chemicals and waste for a safe, healthy and sustainable future,*” and its Target A5: “Governments work towards prohibiting the export of domestically prohibited chemicals, in line with international obligations.”

The total value of mercury traded is low compared to most global commodities and prohibition of its trade via amendments to Article 3 of the Convention are unlikely to lead to any significant impact on the economy of any Party or non-Party to the Convention. The US and the EU have already prohibited mercury exports. Exemptions may be considered for mercury exports that will be subject to stabilization and long-term storage/disposal. While the details can be negotiated, the principle should be to end the mercury trade once and for all.

2. It is time to prohibit ASGM as an allowable use of mercury

While the Convention appears to have been effective in phasing out most products and manufacturing processes using mercury, there has not been the same level of effectiveness in reducing mercury use in ASGM. There is still heavy use of mercury in ASGM areas in Latin America, parts of Africa, and Southeast Asia, with no verifiable signs of a decline in volumes used in the last five years.

The mercury sources for ASGM are a combination of legally traded mercury, smuggled mercury, and cinnabar smelting from primary mines (particularly in Indonesia and Mexico). The long-term use of mercury in the ASGM sector is undermining the human rights of Indigenous People, local communities, and other vulnerable populations who gain no benefit from legal or illegal gold mining practices. ASGM activity is contaminating the food web and destroying protected environments that Indigenous People and local communities rely on for their existence and livelihood.

As long as the Convention permits ASGM to be an “allowed use” sector for mercury, it sends a signal that gold extraction is more important than human rights, and the practice will continue to be tolerated at the national level in many countries. Furthermore, in many countries the illegal business of mercury and gold traded from ASGM sites leads to convergent crimes and other types of illegal businesses. The convention needs to send a clear message that mercury use will no longer be tolerated in the ASGM sector by the international community. This may be achieved through amendments to Article 7 and Annex C, among others.

3. It is time to promote appropriate health care services for prevention, treatment, and care for populations affected by mercury exposure, especially in ASGM sites

Following ten years since the Minamata Convention entered into force, many countries with ASGM have received information and technical support to substitute mercury with other practices. However, in many places, mercury poisoning lasts much longer than ten years and has spread to downstream areas affecting wider populations and vast regions. Article 16 on Health Aspects stipulates that Par-

ties are encouraged to promote the development and implementation of strategies and programs to identify and protect populations at risk, especially vulnerable populations. Further, parties are also encouraged to promote appropriate health care services for prevention, treatment, and care for populations affected by the exposure to mercury.

Many countries have already phased out medical devices containing mercury, and many miners in developing countries with ASGM have shifted to non-mercury methods to extract gold. However, Parties must conduct health risk assessments and design programs to train their healthcare workers to identify mercury poisoning and develop programs to treat and care for impacted communities. Further, Article 17 encourages parties to facilitate information exchange concerning health impacts associated with exposure to mercury. Progress on medical treatment of mercury poisoning must be shared/exchanged and this has not occurred in any significant way to date.



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