

China's Non-paper: Explanatory Note on the Menu-Order Approach to the Implementation of the Instrument

I. Legislative mandate

As set out in the Governing Council Decision GC25/5 of UNEP which mandates the negotiation on the mercury of instrument, paragraph 28 requests that the intergovernmental negotiating committee should consider the “*flexibility* in that some provisions could allow countries discretion in the implementation of their commitments” and “approaches *tailored* to the characteristics of specific sectors” as well as “*prioritization* of the various sources of mercury release for action”.

II. Rationale for the Approach

The development of an instrument aims at implementation and implementation therefore consists in the core of an instrument.

Mercury issues are the common challenge for the global community while they are sometimes specific to certain countries, ranging from its primary mining, added products, processes and wastes disposal etc. When the control and management of the mercury obligations are applicable to all the countries, the specific circumstances of different countries have to be taken into consideration.

The prominent feature is that the implementation of the legally binding obligations by developing countries will be contingent upon the availability of the financial resources and technological support.

The submission of national implementation plan will be linked with the funding which can largely promote the implementation and compliance of the Instrument.

III. Operation of the Approach

Development of *National Implementation Plan (NIP)* :it is suggested that, each country party is encouraged to develop an implementation plan, taking into its own specific circumstances, covering the obligations to be fulfilled in the context of the instrument which is termed as "menu-order approach". For example, for the countries which may have only the problem relating to the mercury wastes, the implementation plan will be devoted to the disposal of the mercury wastes *per se*. For the countries which have a wide range of issues to tackle, the implementation plan has to cover all the issues that these countries have. In this regard, a template will be developed and endorsed by the Conference of the Parties (COP), so as to guide the elaboration of the implementation plan. The template will serve as a menu, and each country party will bring about its own implementation plan with reference to such a menu. And the template will be such a comprehensive combinations of all the obligations which cover both legally binding and non-binding items.

Review and Approval of the NIP: it is expected that the NIP will be submitted to an envisioned Technical and Economic Expert Group (TEEG) for review and the TEEG will recommend to the COP for final review and approval. In the NIP itself, it will cover the reporting elements requested by the Instrument as well the action plan including the timing schedule, control target and the budget etc for the legally binding obligations. Once the NIP is approved by the COP, the funding for the implementation of the legally binding obligations which are hinged on the scheduled target will be approved simultaneously.