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Implementation of the Minamata Convention on Mercury in the Hong Kong Special Administrative Region

PURPOSE

This paper seeks Members' views on our plan to implement the Minamata Convention on Mercury ("the Convention") in the Hong Kong Special Administration Region ("HKSAR").

BACKGROUND

2. Mercury is a naturally occurring heavy metal which is highly toxic. Owing to its unique physical and chemical properties, mercury has been used in various products and processes for a very long time. Once released, mercury stays in the environment in various forms and can be transported over long distance in the atmosphere. It can be bioaccumulated in the ecosystems and poses a serious threat to human health and the environment.

3. Recognising its harmful effects, the United Nations Environment Programme developed the Convention, which is an international legally binding treaty¹ with the objective to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds. The People's Republic of China ("PRC") completed ratification of the Convention on 31 August 2016 and started to become one of the Parties to the Convention when it entered into force on 16 August

¹ The full text of the Convention can be downloaded from the link:
<http://mercuryconvention.org/Portals/11/documents/Booklets/COP1%20version/Minamata-Convention-booklet-eng-full.pdf>

2017. Per Article 153 of the Basic Law², the Central People's Government ("CPG") has also decided that the Convention applies to the HKSAR.

4. To achieve its objective, the Convention contains provisions to impose restrictions and control on a range of activities, processes, industries and products where mercury is sourced, used, released or emitted. The Convention addresses direct mining of mercury and its trading, use in mercury-added products and manufacturing processes, emissions to the atmosphere, releases to water bodies, safe storage as well as disposal when becoming waste³. Articles on operational matters in the Convention set out the following specific obligations to:

- (a) restrict mercury mining;
- (b) control use of mercury in artisanal and small-scale gold mining;
- (c) phase down use of dental amalgam;
- (d) control emissions of mercury and mercury compounds to the atmosphere;
- (e) control releases of mercury and mercury compounds to land and water;
- (f) restrict import and export of mercury;
- (g) phase out mercury-added products;
- (h) phase out or restrict manufacturing processes in which mercury or mercury compounds are used;
- (i) store mercury and mercury compounds in an environmentally sound manner; and
- (j) manage mercury waste in an environmentally sound manner;

² Article 153 of the Basic Law stipulates that the application to the HKSAR of international agreements to which the People's Republic of China is or becomes a party shall be decided by the CPG, in accordance with the circumstances and needs of the HKSAR, and after seeking the views of the Government of the HKSAR.

³ The Convention requires that mercury wastes shall be managed in an environmentally sound manner, taking into account the requirements under the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal.

5. Some of the operational obligations under the Convention outlined above are readily fulfilled under the existing administrative and regulatory frameworks in the HKSAR. The following table summarises those obligations which are enforceable under the existing frameworks or there is *de facto* compliance by the HKSAR.

Obligations	Current Position
(a) restrict mercury mining; and (b) control use of mercury in artisanal and small-scale gold mining	<ul style="list-style-type: none"> • All mines in Hong Kong are property of the Government. • The Mining Ordinance (Cap. 285) effectively controls all prospecting and mining activities in Hong Kong. • Based on mineral resources record, mercury has not been identified in Hong Kong, nor is there any reasonable prospect for gold mining.
(c) phase down the use of dental amalgam	<ul style="list-style-type: none"> • The dental profession, the academia and the Government have agreed to take on board the recommended measures in the Convention to phase down the use of dental amalgam⁴.
(d) control emissions of mercury and mercury compounds to the atmosphere	<ul style="list-style-type: none"> • The Air Pollution Control Ordinance (Cap. 311), coupled with the use of best environmental practices by relevant sources, can effectively control mercury emissions from existing sources and new sources which fall within the source categories as listed in the Convention.
(e) control releases of mercury and mercury compounds to land and water	<ul style="list-style-type: none"> • The Water Pollution Control Ordinance (Cap. 358), which sets out the effluent standards for discharges to all types of environmental waters, effectively controls releases of mercury and mercury compounds.
(j) manage mercury waste in an environmentally sound manner	<ul style="list-style-type: none"> • Mercury waste is categorised as chemical waste under the Waste Disposal Ordinance (Cap. 354), which effectively controls its import, export, transboundary movement and disposal.

⁴ A “Consensus Statement on the Minamata Convention on Mercury and Phase Down of Dental Amalgam in Hong Kong” was jointly promulgated by the Department of Health, the Dental Council of Hong Kong, the Faculty of Dentistry of the University of Hong Kong, the College of Dental Surgeons of Hong Kong and the Hong Kong Dental Association, which can be downloaded from the following link:-
https://www.dh.gov.hk/english/main/main_ds/files/consensus_statement.pdf

6. Meanwhile, four key obligations among the operational obligations of the Convention as listed out in paragraph 4 above are identified to be unenforceable under the existing regulatory or administrative frameworks of the HKSAR. They are to:-

- (f) restrict import and export of mercury;
- (g) phase out mercury-added products;
- (h) phase out or restrict manufacturing processes in which mercury or mercury compounds are used; and
- (i) store mercury and mercury compounds in an environmentally sound manner.

THE PROPOSAL

7. To fully fulfil the requirements of the Convention with a view to protecting the environment of Hong Kong and safeguarding public health, it is necessary to put in place a new piece of legislation. The new legislation, proposed to be named the Mercury Control Ordinance (“the Ordinance”), will include the following major provisions:-

- (a) to restrict the import and export of mercury by imposing a permit system;
- (b) to control the use of imported mercury to that specified in the import permit;
- (c) to prohibit the import, export and manufacture of mercury-added products as listed in the Convention after a date specified in the Ordinance;
- (d) to prohibit the sale, supply, offer for sale and offer for supply of mercury-added products as listed in the Convention after a specified period from prohibition of their export, import and manufacture;
- (e) to prohibit manufacturing processes in which mercury or mercury compounds are used as listed in the Convention after a date specified in the Ordinance; and

- (f) to control the storage of mercury and mercury compounds by imposing a permit system.

Control import / export of mercury

8. The Convention controls the import and export of mercury, which includes mixtures of mercury and mercury alloys with a mercury concentration of at least 95% by weight. Under the Ordinance, no person shall import mercury into or export mercury from the HKSAR except under and in accordance with a permit issued by the Director of Environmental Protection (“DEP”). For issuance of the permit, DEP will consider whether the source and use of the mercury are allowed under the Convention, whether the imported mercury can be stored in an environmentally sound manner, and whether the importing side objects to such import⁵. These factors for consideration will be stated in the application guidelines.

9. According to trading statistics, Hong Kong has been active in international trading of mercury before the Convention came into force. To tally with the spirit of the Convention to minimise, if not eliminate, international trading of mercury, the HKSAR will adopt a policy of not permitting import of mercury if its subsequent use is merely for exporting to another places (i.e. transshipment).

Phase out Mercury-Added Products

10. The Convention also requires all Parties to ban the manufacture, import and export of the Convention-listed mercury-added products by end-2020. The Ordinance will implement this requirement by prohibiting the manufacture, import and export of these Convention-listed mercury-added products when the Ordinance comes into force (tentatively by end-2020). To ensure effective phasing out of the mercury-added products, the Government will further prohibit the sale, supply, offer for sale or offer for supply the Convention-regulated mercury-added products three years afterwards (tentatively by end-2023).

Control Use of Mercury in Manufacturing Processes

11. The Convention requires phasing out of the use of mercury and mercury compounds in two manufacturing processes by their respective phase-out dates (as late

⁵ A written consent arrangement has been established under the Convention, under which export of mercury from a country / region is not allowed unless with the consent from the importing country / region.

as 2025) and also restricting the use of mercury and mercury compounds in three other manufacturing processes. To implement these requirements, the Ordinance, when coming into effect, will immediately prohibit these manufacturing processes in the HKSAR. As these manufacturing processes in which mercury or mercury compounds would be used do not exist in Hong Kong, the immediate prohibition would not affect our manufacturing industry.

Control Storage of Mercury

12. The Convention requires Parties to take measures to ensure that the storage of mercury and mercury compounds is undertaken in an environmentally sound manner. The Ordinance will impose a permit system to, among other things, implement this requirement. It will be an offence if any person stores mercury or mercury compounds without a valid permit or stores mercury or mercury compounds while failing to comply with the condition(s) of the permit. The Government will promulgate guidelines to specify the requirements on storage.

PUBLIC CONSULTATION

13. To prepare for the legislative proposal, the Environmental Protection Department (“EPD”) has conducted a series of consultations with members of the public and relevant trades and stakeholders during August – November 2018. The scope and the detailed regulatory approach of the legislative proposal are set out in the consultation document issued by the EPD in August 2018. The consultation document can be downloaded from the link below

https://www.epd.gov.hk/epd/english/resources_pub/policy/consultation_mercury.html

14. The consultation document for the proposal was sent alongside a survey form to more than 500 relevant stakeholders including major trade associations, relevant trade sectors, foreign chambers of commerce in Hong Kong, relevant professional institutions, academia, religious institutions, etc. A list of the different categories of stakeholders consulted is attached at **Annex I**. In parallel, EPD hosted a series of consultation meetings, including two public consultation forums and a number of dedicated consultation meetings with the major trade associations and specific trade sectors. A list of bodies consulted in the dedicated meetings is at **Annex II**. The major views collected from the consultation exercise are summarised in the ensuing paragraphs.

15. The proposal was generally well received at the consultation forums and respondents to the survey generally supported the Government's legislative proposal for the implementation of the Convention. This notwithstanding, as certain specific trades and sectors from cosmetic, laboratory and testing, and Chinese medicine raised their opinions on the legislative proposals, EPD arranged dedicated consultation meetings with them to discuss the legislative proposals in detail and has revised the proposals to address their concerns. .

16. The Government met with the major trade associations including the Hong Kong General Chamber of Commerce, the Chinese General Chamber of Commerce, the Chinese Manufacturers' Association of Hong Kong, the Federation of Hong Kong Industries and the Hong Kong Chinese Importers' & Exporters' Association. Noting that the Convention is an international convention and that our major trading partners have become Parties to the Convention, the trade associations generally held the view that the legislative proposal which seeks to align with the international practices should not create any major burden on the trade.

Views from Specific Sectors

Cosmetic Sector

17. According to the Convention, cosmetics (with mercury content above 1 part per million ("ppm")), including skin lightening soaps and creams, and not including eye area cosmetics where mercury is used as a preservative and no effective and safe substitute preservatives are available, are not allowed to be manufactured, imported or exported after end-2020. In gist, while it is clear that cosmetics with mercury content above 1 ppm are subject to phase-out, the lack of a clear limit of mercury content in eye cosmetics when mercury is used as a preservative rendered much difficulty and ambiguity for the trade to comply with the Convention.

18. By making reference to the practices in other jurisdictions including the Mainland of China, the European Union and Singapore, we propose to adopt 70 ppm as the limit for the mercury content in preservatives in eye area cosmetics. EPD consulted the cosmetic trade in October 2018⁶. The trade supported the legislative proposal, in particular on the adoption of the 70 ppm limit for mercury content in eye area cosmetics when mercury is used as a preservative. The representatives from the cosmetic trade pointed out that, as long as the control on cosmetics aligns with

⁶ The meeting was attended by representatives from the Cosmetic & Perfumery Association of Hong Kong Ltd., the Federation of Beauty Industry (H.K.), the International CICA Association of Esthetics and a cosmetic product testing company.

international standards, the legislative proposal would not create undue burden to the trade.

Laboratory and Testing Sector

19. The Convention provides exemption for import or export of quantities of mercury to be used for laboratory-scale research or as a reference standard. To incorporate such exemption in the Ordinance, various options for setting the exemption quantities have been explored and discussed with the sector. One of the approaches is that the import or export of mercury in a single package not exceeding a specific weight, and the total quantity in a shipment not exceeding a total exemption weight, will be exempted from the permit control under the Ordinance. Similarly, for storage of mercury or mercury compounds in a laboratory for research or use as a reference standard not exceeding a specified quantity, exemption from the storage permit control will also be provided under the Ordinance. However, some respondents from the sector considered that setting the exemption quantity for mercury compounds in solution based on the volume of the solution may lead to ambiguity, because the mercury content can vary according to the concentration level of the solution. Taking on board the sector's comments, we have reviewed the proposed exemption quantities. Instead of setting a limit based on the volume of a mercury compound solution, we propose to set the limit based on the "equivalent mercury weight" (or the net mercury content) of the solution. The revised approach provides a clear limit on the permitted quantities that can benefit from the exemption under the Ordinance. We advised the sector in writing in June 2019 of the revised approach and received no adverse comment.

Chinese Medicine Sector

20. At the consultation forums held in September 2018, some participants from the Chinese medicine sector enquired if mercury-containing proprietary Chinese medicines would be controlled under the Ordinance. We explained that as mercury-containing proprietary Chinese medicines are not on the list of regulated mercury-added products in the Convention, the Ordinance would not regulate mercury-containing proprietary Chinese medicines⁷.

21. Separately, it is noted that some mercury-containing Chinese herbal medicines listed in Schedule 1 of the Chinese Medicine Ordinance (Cap. 549) (*namely*

⁷ While the Mercury Control Ordinance will not cover mercury-containing proprietary Chinese medicines, proprietary Chinese medicines are already subject to stringent control in the HKSAR under the Chinese Medicine Ordinance (Cap. 549) and the Import and Export Ordinance (Cap. 60).

calomelas (輕粉), *cinnabaris* (朱砂), *hydrargyri oxydum rubrum* (紅粉), *mercurous chloride and mercuric chloride* (白降丹) and *medicinal mercury* (水銀), given their chemical compositions, may fall under the definition of mercury or mercury compounds in the Convention, thus possibly rendering them subject to the same control as required in the Convention on mercury or mercury compounds in general. As it is not totally clear if mercury-containing Chinese herbal medicines should fall under the control of the Convention, we are seeking the advice from the CPG in this regard, and are awaiting a response.

22. Upon reviewing the existing control regime for Chinese medicines, it is noted that the HKSAR has already established a robust control regime under Cap. 549, the Import and Export Ordinance (Cap. 60), Practising Guidelines for Chinese Medicines Traders and Code of Conduct for Chinese Medicine Practitioners promulgated by the Chinese Medicine Council of Hong Kong. It is undesirable for the sector to have to comply with two different control regimes, which will create unnecessary burden to the sector and its members / practitioners. Upon comparison between the existing control regime and the requirements of the Convention, it is observed that basically, the existing control regime for Chinese medicines can already cater for the requirements under the Convention⁸. As such, should mercury-containing Chinese herbal medicines need to be controlled by the Convention, Chinese herbal medicines listed in Schedule 1 to Cap. 549 will be carved out from the Ordinance. The Government briefed the sector on the above proposed arrangement at a dedicated consultation meeting held in June 2019, and received general support from the sector.

WAY FORWARD

23. To allow timely implementation of the requirements of the Convention, the Government plans to introduce the legislative proposals into the Legislative Council for consideration in early 2020, with a view to allowing the Ordinance to come into operation by end 2020.

Environment Bureau

Environmental Protection Department

July 2019

⁸ Only minimal change to the current administrative arrangement for issuing the import or export licence under the Import and Export Ordinance (Cap. 60) may be required to cater for import and export of medicinal mercury.

List of Major Categories of Stakeholders Consulted

Category of Stakeholder Groups / Associations / Institutes	
1.	Academia
2.	Biocides in Painting and Coating Products
3.	Building Materials
4.	Chemical and Pharmaceutical Products
5.	Chemical Waste Collectors
6.	Chinese Medicine Trade and Practitioners
7.	Construction
8.	Consulate-General
9.	Cosmetics
10.	Electrical and Electronic Products and Related Services (Electronics and Telecommunication Equipment included)
11.	Existing and Expired Hazardous Chemicals Control Ordinance Permit Holders
12.	Foreign Chamber of Commerce
13.	Government Funded and Statutory Organisations
14.	Laboratories
15.	Local Chamber of Commerce
16.	Machinery
17.	Metals

Category of Stakeholder Groups / Associations / Institutes
18. Non-Government Organisations / Green Groups
19. Utility Services
20. Professional Bodies
21. Religion
22. Trade (Import and Export Trade included)

List of Major Associations Consulted in Dedicated Consultation Meetings

Major Trade Associations¹	
1.	The Hong Kong Chinese Importers' & Exporters' Association
2.	The Hong Kong General Chamber of Commerce

Major Associations of Cosmetics/ Cosmetic Product Testing	
1.	The Cosmetic & Perfumery Association of Hong Kong Ltd.
2.	The Federation of Beauty Industry (H.K.)
3.	The International CICA Association of Esthetics
4.	The SGS Limited

Major Associations / Companies of Chinese Medicine Trade and Chinese Medicine Practitioners (in Chinese only)	
1.	香港中成藥商會
2.	新華中醫中藥促進會
3.	啟泰藥業集團有限公司
4.	港九藥房總商會有限公司

¹ EPD also offered to hold dedicated consultation meetings with the Chinese General Chamber of Commerce, the Chinese Manufacturers' Association of Hong Kong and the Federation of Hong Kong Industries respectively. The three associations turned down the offers, and submitted written comments or sent representatives to attend some of the public consultation forums.

Major Associations / Companies of Chinese Medicine Trade and Chinese Medicine Practitioners (in Chinese only)
5. 位元堂藥廠有限公司
6. 香港頤和堂藥業科技集團有限公司
7. 恆昌隆藥品有限公司
8. 香港南北藥材行以義堂商會
9. 北京同仁堂國藥有限公司
10. 北京同仁堂香港藥業有限公司
11. 豐華(香港)公司
12. 香港表列中醫協會
13. 華聲醫藥(香港)有限公司
14. 中華中醫師公會
15. 香港中成藥製造商聯合協會
16. 香港藥行商會