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.

- The proposed definition of "Mercury-added product" is longer than necessary. If the definition is to include any product with mercury intentionally added "for any other reason," there is no need to specify reasons, and doing so could cause confusion. Therefore, we suggest that the text "to provide a specific characteristic, appearance or quality, to perform a specific function or for any other reason" be deleted.

- The proposed definition of "Primary mercury mining" needs to be corrected because the term "mercury-containing ore" could be read to include nearly any ore in existence. The prohibition in Article 3 could therefore be read to apply to all mining. Therefore, the words "or mercury-containing ore" should be deleted or a substitute should be developed that captures the concept without unintentionally broadening the scope of the agreement.

ARTICLE 3: MERCURY SUPPLY SOURCES

The United States supports the elimination of primary mercury mining and believes that neither new primary mines nor further expansion of existing primary mercury mines is needed given the widespread availability of alternative sources of mercury supply and declining global demand.

We understand the use of the term "not allow" in paragraph 2 of Article 3, as explained by the Secretariat in the commentary to the elements paper, is intended to permit a country where primary mercury mining does not currently occur to comply with the obligation in paragraph 2 without the necessity for legislation or other measures to explicitly "prohibit" primary mercury mining. Therefore, the obligation would be only to prevent primary mercury mining from commencing if that were to be attempted in the future. We support paragraph 2 based on this understanding.

Regarding paragraph 3(b), if the use of mercury for specific purposes is already prohibited, it is unclear what is gained by also prohibiting the supply from specific sources of mercury for those prohibited uses. In addition, paragraph 3(b) would be complicated and costly to implement. We also are unsure what purpose would be served by the reporting requirement in paragraph 3(e). We recommend deleting those two provisions.

The United States supports inclusion of an export restriction to reduce the supply of elemental mercury in commerce, such as in paragraph 3(c). A broader export restriction, however, may be more efficient and effective than a restriction that is limited to mercury from particular supply sources, particularly given the difficulty of identifying, in the marketplace, the source of elemental mercury.

We have concerns about the definitions of the relevant sources of mercury in Annex A. For example, the phrase "mercury recovered from pollution controls for the source categories listed in Annex E" in Paragraph 1 would potentially include substances like fly ash that are not a significant source of mercury supply. If this language was meant to address mercury recovered from non-ferrous metals smelting, we believe it is unnecessary as such sources are already included in Paragraph 2. Therefore, we suggest deleting that phrase.

We also have reservations regarding implementation of provisions regarding the supply source in item 5 of Annex A, "other private mercury stocks." We believe that the majority of mercury supply can be addressed through provisions on the other four sources, and would therefore suggest deleting this item from Annex A.

Suggested Changes to Article (3) Mercury supply sources:

1. Each Party with primary mercury mining within its territory at the date of entry into force of this Convention for it shall:

(a) Not allow the export of any mercury or mercury compounds produced from primary mercury mining;

(b) Include in its reports submitted pursuant to Article 22 information on any primary mercury mining within its territory, including at a minimum:
(i) Its location; and
(ii) Estimated quantities, destinations and intended uses, where known, of mercury produced annually by such mining; and

(c) Eliminate such mining within X years of the date of entry into force of this Convention for it.

2. Each Party shall not allow primary mercury mining that was not being conducted within its territory at the date of entry into force of this Convention for it.

3. Each Party shall:

(a) Identify the mercury supply sources listed in Annex A that are located within its territory;

~~(b) Not allow the sale, distribution in commerce, or use of mercury from supply sources listed in Annex A except for a use allowed to the Party under this Convention~~;

~~(c)~~(b) Not allow the export of mercury ~~from supply sources listed in Annex A~~, except ~~as provided in Article 5~~ for the purpose of environmentally sound storage or disposal or for a use allowed to a party under the Convention; and

~~(d)~~(c) Ensure that all mercury from supply sources listed in Annex A that is not ~~sold, distributed in commerce, used or~~ used for a use allowed to a party under the Convention or exported pursuant to subparagraph (b) ~~or (c)~~ is stored in an environmentally sound manner as set out in Article 4.~~; and~~

~~(e) Include in its reports submitted pursuant to Article 22 information on the quantities of mercury:~~
~~(i) Produced from each category of supply source identified pursuant to subparagraph (a); and~~
~~(ii) Sold, distributed, used, exported or stored pursuant to subparagraphs (b), (c) and (d).~~

Suggested Changes to Annex (A) Sources of mercury supply:

1. Mercury recovery, recycling, and reprocessing operations~~, including mercury recovered from pollution controls for the source categories listed in Annex E~~.

2. Mercury produced as a by-product of non-ferrous metals mining and smelting.

3. Mercury from government reserve stocks and inventories.

4. Mercury stocks from decommissioned chlor-alkali and vinyl chloride monomer plants.

~~5. Other private mercury stocks.~~

ARTICLE 4: ENVIRONMENTALLY SOUND STORAGE

Access to environmentally sound mercury storage is important; however, it will not be efficient or cost effective for every country to establish its own mechanism for mercury storage. The instrument should provide for each region, and its respective members, to have a regional storage plan that could include a regional mercury storage facility or, where appropriate, export to another region for environmentally sound storage.

Article 4 should focus on the storage or sequestration of elemental mercury from major supply sources and avoid attempting to address "all" mercury, including that destined for allowable uses. We also do not believe that the storage obligations of Article 4 should apply to mercury compounds.

The guidance referred to in paragraph 2 should provide examples or suggestions of how to achieve an objective defined in the text of the instrument, but should not itself have an "ultimate objective."

Suggested Changes to Article (4) Environmentally sound storage:

1. Each Party shall manage its surplus mercury from the supply sources listed in Annex A in an environmentally sound manner ~~and the mercury compounds listed in Annex B~~, taking into account ~~in a manner consistent with~~ the guidance on environmentally sound storage adopted, updated or revised by the Conference of the Parties pursuant to this article.

2. The Conference of the Parties shall, at its first meeting, adopt guidance on the environmentally sound storage of mercury~~ and the mercury compounds listed in Annex B. The ultimate objective of the guidance shall be that all mercury from primary mercury mining or~~, with particular emphasis given to mercury from the supply sources listed in Annex A~~shall be stored in an environmentally sound manner~~. In considering the guidance, the Conference of the Parties shall take into account the factors listed in Part II of Annex B.

3. The Secretariat shall facilitate the development of regional plans to provide for the long term management of surplus mercury. To the maximum extent feasible, each such regional plan shall provide for establishment of at least one storage facility within the region and available to all Parties within the region.

~~3~~4. To achieve the objectives of this article, the Conference of the Parties shall periodically review the effectiveness of the guidance adopted under paragraph 2 and shall update or revise it as it may deem necessary.

~~4~~5. Parties ~~may~~ are encouraged to cooperate with one another and with relevant intergovernmental organizations and other entities, as appropriate, to develop and maintain global, regional and national capacity for the long-term environmentally sound storage of mercury ~~and mercury compounds~~.

ARTICLES 5 & 6: INTERNATIONAL TRADE WITH PARTIES AND NON-PARTIES

The United States believes that trade provisions can and should be used, as appropriate, to ensure an effective agreement that reduces the global supply of mercury and should be consistent with other international rights and obligations, including those related to trade. A more focused use of trade measures in the context of individual articles that can be tailored and crafted to address the true concerns of each area to be covered by the instrument is more likely to accomplish our collective objective. We are therefore not convinced that a separate article dealing only with trade is desirable, and are not providing specific editorial suggestions to the structure of Articles 5 and 6 (which in part duplicate other Articles even verbatim – for example, in Article 5, paragraph 3), but rather focusing on the substance of their content.

We support inclusion of an export restriction in this agreement. With respect to the scope of any such restriction, a more focused approach limited to elemental mercury and mixtures, and not including mercury compounds, would be more practical and accessible to a greater number of Parties to implement. In establishing export restrictions, we recognize there may be situations where export of mercury should be allowed, including trade for environmentally sound storage. We do not, however, think a process by which an importing Party certifies that a shipment will be used only for the purpose of environmentally sound storage or a use allowed to the Party is valuable if the importing Party is already complying with obligations related to storage, allowable-use exemptions, mercury-added products, and manufacturing processes. We see this provision and the import restriction in paragraph 1 as being cumbersome for both the exporting and the importing country, duplicative of the obligations that Parties will elsewhere agree to take on, and providing no additional environmental protection.

To the extent the instrument allows trade with Parties for certain purposes, there should be a mechanism that allows trade for those same purposes with non-Parties where that trade would not compromise the environmental protection goals of the agreement. We recommend considering the provisions in the Stockholm Convention on trade with non-Parties as one example when contemplating language for such a provision. In that Convention, Parties must provide a certification from non-Parties with which they trade showing the commitment of the non-Party to act within the spirit or the objective of the Convention and comply with particular Convention provisions.

Depending on the nature of provisions on trade with non-Parties, there may be a need to consider a later entry-into-force date for such provisions to avoid a situation where too many countries are adversely affected by the provisions before they can complete internal processes necessary to

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.

Suggested Changes to Article (7) Mercury-added products:

1. Each Party shall not allow~~:~~

~~The manufacture, distribution in commerce or sale~~ the production, import, or export of mercury-added products listed in Annex C, except

(a) for production or import in accordance with an allowable-use exemption listed in that annex for which the Party is registered as provided in Article 14;

(b) for import or export for the purpose of environmentally sound disposal as set out in Article 12~~The export of mercury-added products listed in Annex C, except as provided in paragraph 2~~; or

(c) for export to parties with an allowable-use exemption or to non-parties that have provided written consent to the import, provided that the exporting Party in either case has an allowable-use exemption for the product.~~The import of mercury-added products listed in Annex C from States not Party to this Convention except where the State provides an export notification to, and receives the written consent of, the importing Party. Parties shall assist one another as may be necessary to achieve the objectives of this subparagraph~~.

~~2. Each Party may allow the export of a mercury-added product listed in Annex C only:~~

~~(a) For the purpose of environmentally sound disposal as set out in Article 12; or~~

~~(b) After:~~

~~(i) Providing an export notification to the importing State, which shall include a certification that the exporting Party is registered for an allowable-use exemption applicable to the product, as provided in Article 14; and~~

~~(ii) Receiving the written consent of the importing State.~~

~~3~~2. Each Party ~~shall not allow~~ should take measures to discourage the production~~,~~ ~~sale or distribution in commerce~~ of any new variety, type or category of mercury-added product that was not produced~~, sold or distributed in commerce~~ in the territory of the Party at the date of entry into force of this Convention for it~~, except where the product is intended to replace an existing mercury-added product that contains more mercury per unit than does the new product~~.

3. Each Party shall include in its reports submitted pursuant to Article 22 statistical data on its production, import, and export of mercury-added products listed in Annex C and available statistical data on any production of any new mercury-added products.

Suggested Changes to Annex (C) Mercury-added products:

Mercury-added product	Allowable-use exemption
1. Batteries • Mercuric oxide • Button, mercuric oxide • Alkaline manganese • Button, alkaline manganese • Button, silver oxide • Zinc carbon	Alkaline manganese button cell batteries until [date certain or date after entry into force]. Silver oxide button cell batteries [or specific varieties] until [date certain or date after entry into

• Button, zinc air	force].
2. Measuring devices • Barometers • Flow meters • Manometers • Psychrometers/hygrometers • Pyrometers • Sphygmomanometers • Thermometers	[Specific product] for calibration purposes. Sphygmomanometers as needed for special patient groups, such as patients with arrhythmias.
3. Electric switches and relays • Tilt switch • Float switch • Pressure switch • Temperature switch • Displacement relay • Wetted reed relay • Contact relay • Thermostat • Flame sensor	Switches [or specific variety] used as replacement for equipment in use, medical diagnostic equipment, electricity generating facilities. Relays [or specific variety – TBD] used as replacement for equipment in use, medical diagnostic equipment, electricity generating facilities. Thermostats [or specific variety – TBD] used as replacement for equipment in use, custom-designed and/or associated with industrial applications. Flame sensors [or specific variety – TBD] used as replacement for equipment in use.
4. Mercury-containing lamps	Potential content limits and/or de minimis threshold
5. Dental amalgam	Potential or gradual phase-down [Please see our suggestion for this product under Article 7 related to the option of addressing dental amalgam in an operative paragraph to accommodate the views expressed at INC 2.]

Note: This annex shall not apply to the personal use of products that are not intended for resale.

ARTICLE 8: MANUFACTURING PROCESSES IN WHICH MERCURY IS USED

The United States supports eventual elimination of the use of mercury in industrial processes, including through phasing out mercury use or emissions in the chlor-alkali and vinyl chloride monomer industry and measures to prohibit new facilities. We support the current flexibility in

the text to allow countries to achieve a ban or phase out of the use of mercury in industrial processes through different domestic regulatory means, such as a ban on mercury emissions from facilities. However, new facilities using lower-mercury approaches should not be allowed; such facilities would delay the transition to non-mercury processes.

We also support the availability of allowable use exemptions to enable countries to transition to mercury-free process technology over a reasonable period of time, but it is very important to ensure that extensions of allowable use exemptions be granted sparingly and only in cases where truly justified so as not to prolong the use of mercury in processes. Additionally, environmentally sound storage is an important component of the transition. Any closures or conversions that result in significant amounts of elemental mercury should be accompanied by a storage plan that precludes mercury from being sold on the commodity market except as allowed by the instrument.

The United States believes it would make the most sense if the Annex D processes, chlor-alkali production and vinyl chloride monomer production, were addressed clearly and separately from other processes.

Suggested Changes to Article (8) Manufacturing processes in which mercury is used:

1. Each Party shall not allow the use of mercury in the manufacturing processes listed in Annex D except in accordance with an allowable-use exemption listed in that annex for which the Party is registered as provided in Article 14.

2. Each Party shall not allow the ~~introduction~~ intentional use of mercury ~~of~~ in any other manufacturing process~~es or facilities~~ in which mercury ~~is intentionally~~ was not used ~~that were not used or present~~ in the territory of the Party as ~~at~~ of the date of entry into force of this Convention for it~~, except in the case of any new process or facility that achieves reductions in mercury use by replacing an existing process or facility~~.

3. Each Party with one or more facilities that use mercury in the manufacturing processes listed in Annex D shall prepare a national action plan to reduce and eliminate its use of mercury in such processes. The national action plan shall, no later than one year after the entry into force of this Convention for the Party, be submitted to the Secretariat for distribution to the Parties. Each national action plan shall, at a minimum, include the elements listed in Part II of Annex D.

Suggested Changes to Annex (D) Manufacturing processes in which mercury is used:

Part 1

Manufacturing process	Allowable-use exemption
1. Chlor-alkali production	
2. Vinyl chloride monomer production	

Part II: National action plans

Each Party required to prepare a national action plan under Article 8 shall include in its plan, at a minimum:

(a) An inventory of the number and type of facilities that use mercury in the manufacturing processes listed in Part 1, including estimates of the amount of mercury that they consume annually;

(b) Strategies for achieving a transition by the facilities referred to in subparagraph (a) to the use of non-mercury production processes or for replacing them with facilities that employ such processes;

(c) Strategies for promoting or requiring the reduction of mercury releases from facilities identified in subparagraph (a) until such a time as they achieve a transition to the use of non-mercury production processes or are replaced by facilities that employ such processes;

(d) Strategies for the environmentally sound management of surplus mercury and mercury waste from the closure and decommissioning of facilities, including recycling, treatment, or placement in environmentally sound storage facilities if applicable.

(~~d~~e) Targets and timetables for achieving the strategies referred to in the preceding subparagraphs;

(~~e~~f) A review, every five years, of the Party's strategies and their success in enabling the Party to meet its obligation under Article 8; such reviews shall be included in reports submitted pursuant to Article 22; and

(~~f~~g) A schedule for implementation of the action plan.

ARTICLE 9: ARTISANAL AND SMALL-SCALE GOLD MINING

The United States believes that in those countries with significant ASGM gold production, the following practices should be prohibited:

- Whole-ore amalgamation;
- Burning of mercury amalgam without mercury vapor capture devices;
- Burning or other processing of mercury amalgam in residential areas; and
- Cyanide leaching of tailings to which mercury has been added.

Countries with significant ASGM sectors should be required to submit national action plans that set forth a realistic approach to implementing these prohibitions and further reducing mercury use in the sector. We have provided suggested text for a new Annex specifying the content of the national action plans as well as the list of prohibited practices.

We question the value of the import restrictions in this Article, particularly since import restrictions have not proven particularly effective in the past in reducing mercury use in ASGM.

It is very important to allow for the environmentally sound recovery of mercury from ASGM practices in both mining and processing, in order to keep harmful mercury vapors away from miners, their families, and the global atmosphere. To that end, draft Article 1(b), to the extent it could be read to apply to recovery and recycling of mercury from ASGM activity itself, would be counterproductive. We support promoting the use of simple, inexpensive and locally

producible tools available for mercury vapor capture which can help to reduce use and emissions of mercury in field practices and secondary gold refining.

Suggested Changes to Article (9) Artisanal and small-scale gold mining:

1. Each Party that ~~has~~ produces at least volume X of gold annually by artisanal and small-scale gold mining using mercury within its territory ~~at the date of entry into force of this Convention for it~~ shall take steps to reduce and, where possible, eliminate the use of mercury in such mining. Such ~~Parties~~ steps shall ~~consider taking measures, among others~~ include at a minimum the following:

~~(a) To prevent, in accordance with Article 5, the import of mercury for use in artisanal and small-scale gold mining and the diversion of mercury for use in that sector;~~

~~(b)~~ (a) To prevent, in accordance with Articles 12 and 13, the recovery, recycling or reclamation of mercury wastes, including wastes from sites contaminated with mercury, for use in artisanal and small-scale gold mining;

~~(c)~~ (b) To develop, in accordance with part II of Annex X, a national ~~or regional action~~ plan~~s, which may~~ that include~~s~~ national objectives or reduction targets; ~~and~~

~~(d)~~ (c) To ~~prohibit~~ not allow the specific practices set forth in part I of Annex X; and. ~~such as whole ore amalgamation.~~

(d) To promote practices that reduce the release of and exposure to mercury in artisanal and small-scale mining.

2. Parties may cooperate with one another and with relevant intergovernmental organizations and other entities, as appropriate, to achieve the objectives of this article. Such cooperation may include:

(a) Development of strategies to prevent ~~Prevention, in accordance with Article 5 , of~~ the ~~import and export~~ diversion of mercury for use in artisanal and small-scale gold mining ~~and the diversion of mercury for use in that sector~~;

(b) Education, outreach and capacity-building initiatives;-and

(c) Provision of technical and financial assistance.

~~3. For the purposes of Article 5, the use of mercury or mercury compounds in artisanal and small-scale gold mining shall not be considered a use allowed to any Party under this Convention.~~

Proposed New Annex Related to (9) Artisanal and small-scale gold mining:

Part I: Practices

1. Whole ore amalgamation

2. Open burning of amalgam or processed amalgam

3. Burning of amalgam in residential areas

4. Cyanide leaching in sediment, ore, or tailings to which mercury has been added.

Part II: National action plans

Each Party required to prepare a national action plan under Article 9 shall submit such a plan to the Secretariat no later than X years after entry into force of the Convention for that Party, and shall include in that plan, at a minimum, the following:

(a) National objectives and reduction targets;

(b) Identification and description of the measures the country will take to ensure that the practices set forth in Part 1 above are not allowed;

(c) Strategies to promote practices which reduce the emissions and other releases of, and exposure to, mercury in artisanal and small-scale gold mining, including mercury-free methods;

(d) Timetables for achieving the strategies referred to in subparagraph (c); and

(e) A schedule for implementation of the action plan.

ARTICLE 10: ATMOSPHERIC EMISSIONS

Air emissions sources are a priority issue that needs to be addressed with binding requirements that will result in the significant reduction of mercury emissions. We believe that the obligations in Article 10 should be strengthened. For example, application of best available techniques (BAT) should be required (as opposed to promoted) for existing sources in countries with significant aggregate emissions within a reasonable timeframe. We support an agreement that has obligations for all countries, with additional obligations that would focus implementation on addressing the most significant air emissions of mercury. This would not necessarily require, as the elements paper presented, creation of a defined category of countries. We are open to considering various approaches to crafting obligations to achieve such focus. We also believe that such additional obligations should apply to the vast majority of global emissions.

As in other articles, we suggest clarifying that parties would be obligated to take specific steps – in this case, those set forth in the provisions of Article 10 – with the goal of reducing and, where feasible, eliminating mercury emissions. We further believe that a robust evaluation of the effectiveness of Article 10 is very important as part of the effectiveness evaluation called for in Article 23. Through the effectiveness evaluation, parties should review closely what has been learned through the application of the elements in Article 10 and consider whether further progress in mercury emission reduction is needed to achieve the objectives of the agreement. In this respect, we believe that among the listed information sources in paragraph 2 of Article 23 should be included the national inventories, goals, and actions plans required in Article 10.

Definitions for BAT and best environmental practices (BEP), as well as for new and existing sources are needed. The definitions in Article 5(f) of the Stockholm Convention could be a

useful starting point for consideration. Furthermore, the agreement needs to include, at least, general guidance in Annex E with respect to BAT and BEP, rather than leaving all guidance to be developed by the Conference of the Parties (COP). This general guidance should set a high standard for the COP and should be specific enough to serve parties in emission reduction efforts while the COP is preparing more specific guidelines. The general guidance and subsequent guidelines developed for the COP should allow for changes in technology while, at the same time, avoiding a costly and drawn-out process for accommodating change. The guidance in Part V of Annex C of the Stockholm Convention is a useful example of how such guidance for mercury emission sources could be structured.

The United States agrees that countries with significant aggregate emissions should adopt national goals to reduce mercury emissions, but such goals should, at a minimum, be consistent with the application of BAT/BEP. Requiring that the national goal be numerical would provide some yardstick for measurement toward achieving the goal. In addition, a reliable current national inventory of sources and emissions estimates is an essential element for developing such a goal. Although the elements paper included a requirement of inventories of sources and emissions estimates as part of the national action plan in Annex E, we believe the submission of an initial inventory to the Secretariat for distribution to the COP along with the national goal would provide context for discussion by the COP. The requirement should also be strengthened by specifying a maximum time period between updates.

We also support the development of national action plans for parties with significant aggregate emissions. The periodic evaluation of the plan required in paragraph (f) of Annex E Part II should include consideration of how progress in reducing mercury emissions could be furthered in the future. Furthermore, countries should assess how emissions from their domestic sources are impacting human health, for example, from consumption of local or regionally-caught fish, to complement their planning and implementation of emission reduction strategies.

The United States believes that it would be unduly burdensome for every country to have to develop and maintain emissions inventories in order to show compliance with their obligations under Article 10. The obligations should be crafted so that countries with less significant emissions can comply without creating such inventories. It will be important that countries be able to easily determine whether the inventory requirement applies, and that the requirement includes a mechanism to allow updates to account for changes in emissions patterns over time.

<u>Suggested Changes to Article (10) Atmospheric emissions</u>:

1. Each Party shall <u>take steps as provided in this Article to</u> reduce and, where feasible, eliminate atmospheric emissions of mercury from the source categories listed in Annex E, subject to the provisions of that annex.

2. For new emissions sources among the source categories listed in Annex E, each Party shall:

(a) Require the use of best available techniques for such sources as soon as practicable, but no later than X years after the entry into force of the Convention for it; and

(b) Promote the use of best environmental practices.

3. For existing emissions sources among the source categories listed in Annex E, each Party shall promote the use of best available techniques and best environmental practices.

4. Parties shall take into account guidance provided in Annex E, as well as guidelines adopted by the Conference of the Parties when implementing the provisions of this article. The Conference of the Parties shall at its first meeting adopt guidelines on best available techniques and best environmental practices to reduce atmospheric emissions of mercury from the source categories listed in Annex E. ~~Parties shall take these guidelines into account when implementing the provisions of this article.~~ Such guidelines may be updated as necessary by the Conference of the Parties.

5. Each Party with significant aggregate mercury emissions from the source categories listed in Annex E shall, within the later of X years of entry into force of this convention for that Party or X years of becoming a source of significant aggregate mercury emissions from such sources:

(a) Develop and maintain an initial inventory of sources and reliable emissions estimates for the source categories listed in Annex E. Thereafter, the inventory of sources and emissions estimates shall be updated no less frequently than every X years.

~~(a)~~ (b) Adopt a numerical national goal which is at a minimum consistent with the application of best available techniques and best environmental practices for reducing and, where feasible, eliminating atmospheric mercury emissions from the source categories listed in Annex E;

~~(b)~~ (c) Submit its initial national inventory of sources and emissions and its national goal to the Secretariat for distribution to the Parties for discussion at ~~and consideration by~~ the next scheduled meeting of the Conference of the Parties ~~at its next meeting~~ ; ~~and~~

~~(c)~~ (d) Develop and implement, in accordance with Part II of Annex E, a national action plan to reduce and, where feasible, eliminate its atmospheric mercury emissions from the source categories listed in Part I of Annex E~~.~~; and

(e) Notwithstanding paragraph 3 above, for existing emission sources among the source categories listed in Annex E:

(i) Require the use of best available techniques for such sources as soon as practicable, but no later than X +Y years (e.g., later than X years for new sources listed in 2(a) above), after the entry into force of the Convention for it; and

(ii) Promote the use of best environmental practices.

6. For the purposes of this article and Annex E, "significant aggregate mercury emissions" means the annual atmospheric mercury emissions of a Party from the source categories listed in Annex E that, in total, equal X or more tons.

7. Each Party shall include in its reports submitted pursuant to Article 22 information sufficient to demonstrate its compliance with the provisions of this article. The scope and format of such information shall be decided by the Conference of the Parties at its first meeting.

Suggested Changes to Annex E:

Part I: Source Categories

1. Coal-fired power plants and ~~industrial~~ coal-fired boilers and process heaters in industrial, institutional and commercial use.

2. Non-ferrous metals production facilities, including industrial gold production.

3. Waste incineration facilities.

4. Cement production factories.

5. Ferrous metals production facilities.

Part II: National Action Plans

Each Party with significant aggregate mercury emissions from the source categories listed in Part I shall develop a national action plan to reduce and, where feasible, eliminate its atmospheric mercury emissions from those source categories, taking into account the impacts of mercury emissions and emission reductions on human health and the environment within their territory. The action plan shall include, at a minimum:

(a) An evaluation of current and projected atmospheric mercury emissions from the source categories listed in Part I, including the development and maintenance of source inventories and emissions estimates;

(b) Strategies and timetables for achieving the Party's national atmospheric mercury emissions reduction goal adopted pursuant to paragraph 5 of Article 10;

(c) Consideration of the use of emissions limit values for new and, where feasible, existing emissions sources;

(d) Application of best available techniques and best environmental practices, as specified in paragraphs ~~2-4~~ 2 and 5(e) of Article 10, including the consideration of substitute or modified fuels, materials and processes;

(e) Provision for monitoring and quantifying emissions reductions achieved under the action plan;

(f) A review, every five years, of the Party's emissions reduction strategies and their success in enabling the Party to meet its obligations under Article 10; such reviews shall be included in reports submitted pursuant to Article 22; and

(g) A schedule for implementation of the action plan.

ARTICLE 11: RELEASES TO WATER AND LAND

The United States recognizes the importance of reducing mercury releases to water and land. We believe, however, that the obligations as currently described in Article 11 prejudge the outcome of the negotiation of the provisions provided in the corresponding elements on products, processes, ASGM, non-ferrous metals mining, wastes, and contaminated sites, which would include provisions aimed at reducing releases to water and land, as well as air. We are therefore sympathetic to the position expressed by many countries at INC2 that this Article may duplicate others and may not be necessary.

Additionally, we agree that it would be appropriate for Parties to promote the use of BAT/BEP to reduce releases of mercury to water and land from the source categories listed in Annex F. If the Article is to be retained, the United States believes that this can best be accomplished by taking into account the guidelines developed under the corresponding provisions of Articles 3, 7-9, and 12-13, as reflected in the suggested edits below.

Suggested Changes to Article (11) Releases to water and land:

1. Each Party shall reduce and, where feasible, eliminate releases of mercury to water and land from the source categories listed in Annex F, ~~subject to~~ as provided in the provisions of that annex and the provisions of Articles 3, 7-9, and 12-13.

2. Each Party shall promote the use of ~~The Conference of the Parties shall develop and adopt guidelines on~~ best available techniques and best environmental practices to reduce releases of mercury to water and land from the source categories listed in Annex F, taking into account any~~. The~~ guidelines developed under ~~shall complement and avoid duplication with~~ the provisions of Articles 3, ~~8,~~ 7-9, 12 and 13 ~~and any guidelines developed there under~~ that are relevant to the achievement of reductions of releases of mercury to water and land. ~~Parties shall take these guidelines into account when implementing the provisions of this article.~~

3. Parties may cooperate in developing and implementing strategies and methodologies for achieving the objectives of this article.~~, including through the provision of financial and technical assistance.~~

4. Each Party shall include in its reports submitted pursuant to Article 22 information required under the provisions of Articles 3, 7-9, and 12-13 sufficient to demonstrate its compliance with the provisions of this article. The scope and format of such information shall be decided by the Conference of the Parties at its first meeting.

ARTICLE 12: MERCURY WASTES

The United States supports an approach focused on the completion and implementation of technical guidance on environmentally sound management that can facilitate sound mercury waste management in all countries.

It is important to distinguish among three broad types of mercury wastes. The first is elemental mercury that is left from facilities that have discontinued the use of mercury in industrial processes (e.g., chlor-alkali facilities) or appears in discarded products such as switches and

thermometers and other measuring devices. This liquid mercury should be collected, purified, and handled consistent with Articles 3 and 4. Second, there are types of mercury wastes that contain significant but not pure mercury content, such as dental amalgam and lamps. With these types of wastes, we believe the best approach is one that would encourage or at least allow retorting and reclamation/storage of the mercury content. Third, there are mercury wastes such as fly ash that have mercury content that is so low that the most appropriate management may be landfill disposal, with or without treatment as necessary. Any approach to mercury wastes should allow for different treatment of these different types of wastes.

Therefore, we propose below an alternative text that addresses the concerns we have outlined while maintaining the key aspects of the elements paper (and Stockholm Convention) approach, which include: (1) the basic obligation to handle mercury wastes in an environmentally sound manner; (2) the obligation not to transport wastes across international boundaries in contravention of the Basel Convention or other obligations; and (3) the reliance on the COP to develop guidance to help Parties determine what is environmentally sound management in different contexts, taking into account Basel requirements and guidance.

Suggested New Language for Article (12) Mercury wastes:

1. Each Party shall ensure that mercury wastes, including mercury-added products upon becoming wastes, are:

(a) Handled, collected, transported, treated and disposed of in an environmentally sound manner, taking into account guidelines developed under paragraph 2; and

(b) Not transported across international boundaries except for the purpose of environmentally sound disposal in conformity with the provisions of this article or environmentally sound storage of the mercury content of the wastes in conformity with the provisions of Article 4. Nothing in this paragraph shall authorize movement inconsistent with the obligations of a Party under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

2. The Conference of the Parties shall develop guidelines to describe methods that constitute environmentally sound management of mercury wastes and mercury-added products upon becoming wastes. Such guidelines shall take into account:

(a) Guidance developed for the environmentally sound storage of surplus mercury as required by Article 4; and
(b) Relevant provisions of the Basel Convention and guidelines developed thereunder.

ARTICLE 13: CONTAMINATED SITES

The United States recognizes that contaminated sites pose significant risk of exposure to local populations; therefore, legislative, regulatory, or other domestic measures aimed at addressing concerns at such sites are very important. Based on our own experience, the United States believes the language proposed in Article 13 reflects the appropriate approach.

ARTICLE 14: ALLOWABLE-USE EXEMPTIONS

Article 14 on allowable-use exemptions is closely related to Articles 7 and 8 on products and processes; as a result, the procedural regime in Article 14 cannot be decided until the substance of Articles 7 and 8 takes shape. We know, however, that certain questions will need to be addressed, and the text should reflect the following issues still to be decided:

- How long should exemptions last? The elements paper suggests that exemptions would be available for a fixed initial period that could be extended for particular countries upon request. Whether the exemption period could be extended just once or whether parties could make repeated requests for extensions should not be left ambiguous, as it is currently.

- What are the criteria for an exemption? More guidance must be given to the COP on the review process and criteria. Such criteria need not be complex, as seen in other MEAs, but they should be specified in the agreement to ensure that they are developed before the period for exemption renewal is nearly finished.

- How does a Party get an exemption? In our view, Parties should have to offer a basic statement of reasons to claim an initial exemption, especially if the exemption period will be lengthy, recognizing that such claims could not be subject to COP review or approval. We recommend the following language to this effect be added at the end of paragraph 1 of Article 14: "Any such registration shall be accompanied by a statement explaining the Party's need for the exemption."

- When can a Party claim an exemption? Paragraph 9 should include a time delay provision to ensure that parties that join the instrument within the first few years of its entry into force are not precluded from claiming exemptions, even if no prior parties have done so. The paragraph could read as follows: "If, anytime after X years after the entry into force of this Convention, there are no longer any Parties registered for a particular type of allowable-use exemption, no new registrations may be made with regard to it."

ARTICLE 15: FINANCIAL RESOURCES AND MECHANISMS

The United States supports a financial mechanism that meets the following key criteria:

- Effective in implementing projects and programs
- Responsive to the Conference of the Parties
- Focused on facilitating compliance
- Able to mobilize resources in a sustained manner
- Able to leverage significant investments

We want to work with other countries to ensure that the resources we have and the efforts we make for this convention are most effectively applied to reduce mercury pollution on a global basis. All countries that join this agreement are taking on the responsibility to implement its provisions; therefore, we recognize that technical and financial assistance are important to help

certain countries implement the obligations they have taken on. Additionally, the purpose of the financial mechanism should be to assist countries in need in meeting the agreed incremental costs of implementing specified measures aimed at producing global environmental benefit. The purpose of a financial mechanism is not to pay all costs of implementation.

The United States believes that the range of donor support should be as broad as possible to maximize the resources we have available to address mercury pollution. Countries will need to mobilize their own resources to the extent possible, and rely on the private sector to play a key role to implement provisions of the agreement.

We also believe that a stand-alone mechanism has considerable advantages for some of these criteria, but additional discussion is needed on what type of institution would effectively support this agreement. Additionally, contributions should be provided on a voluntary basis.

There needs to be considerable discussion about the draft text in Article 15, and at this point, countries should not prejudge any decision on which institution the INC might select to support this Convention. The existing text could use some refinement; for example, paragraphs 2 and 3 could be combined as a preambular paragraph that sets out the rationale for why we have a financial assistance article in the Convention. Additionally, the language in paragraph 3 should be revised as it currently prejudges the nature of the financial mechanism itself, and for now, such references need to be set out in a more neutral manner.

Finally, the United States encourages countries to remember that this finance discussion is closely linked to the ongoing consultative process on chemicals and waste finance. We should bear in mind those discussions as we consider the path forward on Article 15.

ARTICLE 16: TECHNICAL ASSISTANCE

The United States recognizes the need for effective, sustainable, and cost-effective approaches for delivering technical assistance to developing countries based on the substantive obligations of the agreement. We are open to discussion of using existing regional centers, such as those found in the Stockholm and Basel Conventions, and to draw on existing institutions and expertise in this area. Additionally, we continue to be supportive of the work of the UNEP Global Mercury Partnership, and recognize it as a possible option for providing technical assistance to countries.

ARTICLE 17: IMPLEMENTATION COMMITTEE

The United States supports establishment of an implementation committee in the agreement; the approach currently proposed in Article 17, of requiring the COP to establish the committee at its first meeting, has not proven to be a successful one.

We believe it is necessary for the agreement to set out the basic terms of reference by which the committee would operate, such that the committee can be operational from the outset. These terms of reference would include its membership; when it would meet; its basic functions and tasks; and how it would make decisions. The proposed text in Article 17 goes a long way towards achieving this, but we have some initial suggestions for improvement below. In

considering such terms of reference, and any other provisions regarding this committee, it is important that the focus remain on facilitating compliance with the agreement rather than punishing non-compliance.

Suggested Changes to Article (17) Implementation committee:

1. ~~The~~ There is hereby established as a subsidiary body of the Conference of the Parties ~~shall at its first meeting establish~~ an implementation committee to promote compliance with the provisions of this Convention. The ~~Conference shall also at that meeting decide on the~~ committee~~'s~~ shall operate according to terms of reference, which shall include the following elements:

(a) The committee shall consist of X members nominated by Parties and elected by the Conference of the Parties on the basis of equitable geographical representation. The first committee members shall be elected at the first meeting of the Conference of the Parties for a two-year term, and shall elect their own chair from among the members;

(b) The committee may decide to examine any questions of implementation of the Convention that come to its attention. It may consider such questions on the basis of:

(i) Written submissions from any Party;
(ii) National reports and reporting requirements under Article 22;
(ii) Requests from the Conference of the Parties; or
(iv) Any other relevant information that becomes available to the committee;

(c) The committee may make non-binding recommendations for consideration by the Conference of the Parties; and

(d) The committee shall make every effort to adopt its recommendations by consensus. If all efforts at consensus have been exhausted and no consensus is reached, such recommendations shall as a last resort be adopted by a X majority vote of the members present and voting.

2. The Committee shall develop its own rules of procedure, which shall not be inconsistent with the terms of reference in paragraph 1, and which shall be submitted to the Conference of the Parties for its approval.

~~2.~~3. The Conference of the Parties may, as it considers necessary for the implementation of this Convention, develop further terms of reference for the implementation committee and/or assign the implementation committee responsibilities related to implementation of the Convention that are additional to those mandated in this article.

ARTICLE 21: IMPLEMENTATION PLANS

The United States recognizes the value of an intragovernmental planning process for coordinating actions to implement the obligations of the future convention. However, the voluntary provisions to develop implementation plans contained in Article 21 may be redundant to national action plans that might be required under other provisions or delay actual implementation of the agreement. It would be more productive to put this question aside until we have more progress on establishing the extent to which obligations for implementation plans

will be included in other elements of the instrument. At that point, the INC could come back and see if Article 21 is necessary or should be deleted.

ARTICLE 26: SETTLEMENT OF DISPUTES

The United States can support the overall approach to the settlement of disputes in the elements paper. To make clear that the purpose of a conciliation procedure would be to facilitate a mutually agreed resolution of a dispute, the proposed conciliation procedures in the annex could be improved as noted below. Furthermore, in paragraph 6 of Article 26, we suggest deleting "render a report with recommendations" and replace with "make proposals for a resolution of the dispute." We also offer below some suggestions for technical modifications to the proposed arbitration procedures.

Suggested Changes to "Conciliation procedure" text in UNEP(DTIE)/Hg/INC.1/7:

Conciliation procedure

Article 5

1. The conciliation commission shall, unless the parties to the dispute otherwise agree, determine its own rules of procedure.

2. The parties to the dispute and the members of the conciliation commission are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the commission.

Article 5bis.

1. The conciliation commission assists the parties in an independent and impartial manner in their attempt to reach an amicable resolution of their dispute.
2. The conciliation commission may conduct the conciliation proceedings in such a manner as it considers appropriate, taking into account the circumstances of the case and the wishes the parties may express, including any requested need for a speedy resolution.
3. The conciliation commission may, at any time of the proceedings, make proposals for a resolution of the dispute.

Article 5ter.

The parties shall cooperate with the conciliation commission. In particular, they shall endeavor to comply with requests by the commission to submit written materials, provide evidence, and attend meetings.

Please note that Articles 5bis and 5ter are based on similar Articles from the conciliation procedures proposed for the United Nations Convention to Combat Desertification.

Suggested Changes to "Arbitration procedure" text in UNEP(DTIE)/Hg/INC.1/7:

Arbitration procedure

Article 2

1. If a dispute is referred to arbitration in accordance with Article 1 above, an arbitral tribunal shall be established. It shall consist of three members.

2. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the President of the tribunal. The President of the tribunal shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

3. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

4. Any vacancy shall be filled in the manner prescribed for the initial appointment.

~~5. If the parties do not agree on the subject-matter of the dispute before the President of the arbitral tribunal is designated, the arbitral tribunal shall determine the subject-matter.~~

Article 3

1. If one of the parties to the dispute does not appoint an arbitrator within two months of the date on which the respondent party receives the notification of the arbitration, the other party may inform the Secretary-General of the ~~United Nations~~ Permanent Court of Arbitration, who shall make the designation within a further two-month period.

2. If the President of the arbitral tribunal has not been designated within two months of the date of the appointment of the second arbitrator, the Secretary-General of the ~~United Nations~~ Permanent Court of Arbitration shall, at the request of a party, designate the President within a further two-month period.

"**. . .**"

Article 6

The arbitral tribunal may, at the request of one of the parties, ~~recommend~~ impose essential interim measures of protection.

"**. . .**"

Article 10

A ~~p~~Party that has an interest of a legal nature in the subject matter of the dispute which may be affected by the decision in the case may intervene in the proceedings with the consent of the tribunal.

ARTICLES 27 & 28: AMENDMENTS TO THE CONVENTION & ADOPTION AND AMENDMENT OF ANNEXES

Overall, the United States supports Article 27. It is important that the text makes clear that amendments are subject to acceptance by Parties, and also establishes without ambiguity a rule for determining when amendments may enter into force. We believe the proposed text is clear in applying the "current time" approach.

We have one suggestion for improvement of the text. Amendments should be permissible only after the agreement has been in force for a certain amount of time, thus allowing more countries to become parties and participate in discussion of amendments. Therefore, we suggest paragraph 1 be revised to read as follows: "Amendments to this Convention may be proposed by any Party, but no earlier than X years after entry into force of this Convention."

It remains too early in the negotiations to discuss adoption and amendment of annexes. Although the elements paper proposed several annexes, it has not been determined whether the instrument will include annexes and what information they would contain.

ARTICLE 31: RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

The United States believes the agreement should require States to make a non-binding declaration upon joining the agreement as a Party that identifies the legislative or other measures they have taken that will enable them to comply with their obligations under the agreement. This idea is consistent with UNEP's guidelines on compliance with MEAs, and it is designed to help ensure that countries take necessary domestic steps to promote implementation before they become a party to the agreement. So, for example, if the final instrument requires Parties to prohibit sale of mercury-containing thermometers, a country upon joining the instrument would identify its legislation or regulation containing such a prohibition. Or, if the instrument required a Party to designate a national authority to serve as a contact for a particular issue, that designation would appear in the declaration.

Similar ideas already appear in the elements text. For example, paragraph 3 would require a regional economic integration organization to declare the extent of its competence in matters governed by the instrument if it were to join the instrument as a Party. And Article 22(1) would require Parties to report on measures taken to implement the convention's obligations. We support those requirements but believe that a declaration would contribute significantly to promoting compliance with the agreement.

Suggested Changes to Article (31) Ratification, acceptance, approval or accession:

> 1. This Convention shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. It shall be open for accession by States and by regional economic integration organizations from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. States and regional economic integration organizations shall include in their instruments of ratification, acceptance, approval, or accession a declaration identifying the legislative or other measures that permit them to implement the obligations set forth in Articles 3-13 of this Convention.

~~2.~~3. Any regional economic integration organization that becomes a Party to this Convention without any of its member States being a Party shall be bound by all of the obligations under the Convention. In the case of such organizations one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

~~3.~~4. In its instrument of ratification, acceptance or accession, a regional economic integration organization shall declare the extent of its competence in respect of the matters governed by this Convention. Any such organization shall also inform the Depositary, who shall in turn inform the Parties, of any relevant modification in the extent of its competence.

ARTICLE 33: RESERVATIONS

The United States believes that it is premature to agree to a clause prohibiting reservations. Whether or not reservations should be permitted will depend on the nature of the eventual obligations. Therefore, we encourage the designation of this provision as a placeholder.

ARTICLE 34: WITHDRAWAL

The proposed Article 34 would permit a party to seek to withdraw from the instrument only after it had already been a party for three years; such a withdrawal would become effective one year later. The United States understands the need for a delay of the effective date of withdrawal. We hesitate to support a three year "waiting period" (on top of the one-year deferral of the effective date), however, because we see no immediate benefit to requiring states that have decided they do not wish to be bound to remain during that period. We therefore suggest deletion of the words "three years from the date on which" from paragraph 1 of Article 34.