

27 February 2020

**REGULATORY REPORT**

**DEPARTMENT OF ENVIRONMENT, FORESTRY AND FISHERIES (DEFF)**

**Minimata Convention – Mercury Initial Assessment (MIA) Report Validation Workshop**

**24 – 26 February 2020, Southern Sun Hotel, Rosebank, Johannesburg**

**What is the Minamata Convention and what are the expectations from South Africa as a signatory to the Convention?**

“The Minamata Convention on Mercury was adopted by the Conference of Parties at the Diplomatic Conference for the Minamata Convention on Mercury, in October 2013 in Japan. The convention came into force in August 2016. South Africa ratified the Convention in April 2019, making it a party to the Convention.

The objective of the Convention is to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds into the environment. In order to achieve this objective, the convention requires parties to set and implement a number of regulatory and policy measures to control the supply and trade with mercury and/or its compounds, including certain specific sources of mercury such as primary mining, mercury-added products such as dental amalgams, various measurement equipment, fluorescent bulbs, etc. and, manufacturing processes in which mercury or mercury compounds are used, as well as artisanal and small-scale gold mining. In addition, the Convention requires parties to control air emissions and water and land releases of mercury and/or its compounds by setting mercury emission limit values for industries such as coal-fired power plants; coal-fired industrial boilers; smelting and roasting processes used in the production of non-ferrous metals; waste incineration facilities; cement clinker production facilities, based on BAT and implementing of emission/ releases control measures for existing facilities. It also contains provisions on the environmentally sound interim storage of mercury

and on mercury wastes, contaminated sites, public health and information dissemination aspects.

Minamata Initial Assessment (MIA) stems from the Minamata Convention's Article 30 (paragraph 4), which states that *"Each State or regional economic integration organization is encouraged to transmit to the Secretariat at the time of its ratification, acceptance, approval or accession of the Convention information on its measures to implement the Convention"*.

A Minamata Initial Assessment (MIA) provides an opportunity for a country to undertake:

1. a mercury inventory,
2. determine and agree upon the measures it will take to implement the Convention,
3. estimate associated costs and communicate this information in a concise and clear manner.

The government of South Africa undertook the Minamata Initial Assessment (MIA) project from 2017 to 2019. The South African Minamata Initial Assessment (SA MIA) was undertaken in order to determine the national requirements and needs for the ratification of the Minamata Convention and establish a national foundation to undertake future work towards the implementation of the Convention. The project generated the following outputs/reports:

- ◆ Mercury Inventory Level 2 Report.
- ◆ Augmentation of the Gaps Identified in the Mercury Inventory Level 2 Study.
- ◆ An Assessment of the National Infrastructure, Including Legislation, of Ratifying and Implementing the Minamata Convention in South Africa; and
- ◆ Identification of Challenges, Needs and Opportunities to Implement the Minamata Convention on Mercury in South Africa.
- ◆ Awareness raising report.

A report was shared providing a consolidation of the outputs above. The report provides a summary of the country's mercury emission as well as capacity to implement the Minamata Convention precepts." (*MIA report, DEFF*)

### **How does the report relate to the Cosmetic Industry?**

Cosmetic industry products that were identified as containing mercury include illicit skin lightening or bleaching creams and eye cosmetic products. As per Annex V – Preservatives allowed for use in eye products, entry 17: Phenyl mercuric salts (including borate) can be used at a maximum level of 0.007% of mercury and such products must be labelled with “contains phenylmercuric compounds”.

CTFA submitted commentary on the MIA report raising the following concerns:

1. Wherever the report refers to skin lightening products as products containing mercury that this category must be described as illicit products as per the R.1227
2. As the SA report will be accessible to the international community and based on sound scientific principles, it is imperative that the test method employed to carry out the quantitative analysis of mercury in cosmetic products is a validated scientific and internationally recognised method and that the test results are valid and relevant.
3. The report should include the current guidelines in place with regards to the use of phenylmercuric compounds for eye products, which is aligned to regulatory requirements in Europe and is used at very low levels and is probably the lowest contributor to environmental contamination. This should be a key consideration in the prioritisation of bans in various industries.
4. CTFA questioned the accuracy of the amount of mercury found in cosmetic products and the subsequent correlation to the distribution in air, water and land.

These comments have been re-submitted in February 2020 to DEFF with the aim to create awareness of the responsible cosmetic industry in South Africa.

Representatives from United Nations Environmental Protection (UNEP) were present at the 3-day Workshop.

The UNEP representative’s response to CTFA’s concerns about the illicit trade of mercury containing skin lightening products, was that the objective of the MIA report is not to mention

or consider whether activities are illicit or not in various countries, but is aimed on focusing on the levels of mercury found in the environment and the identification of the contributors to the environmental contamination and the subsequent implementation plan to reduce and eventually eradicate such contributors as per the Convention requirements.

**Input into the National Action plan:**

On day 2 of the workshop, CTFA was allocated to a break-away group, “Mercury added products – mercury supply sources and trade” and tasked to input into an implementation plan to reduce environmental mercury contamination as per the Convention requirements. Specific obligations were provided, and inputs discussed on the current status, the targets, indicators to track progress, institutions responsible for targets, milestones, actions required to meet obligations and timeframes.

*The obligation as per the Convention:*

*“Not allow the manufacture, import or export of mercury-added products listed in Part I of Annex A after the phase-out date specified for those products, except where an exclusion is specified in Annex A or the Party has a registered exemption pursuant to Article 6*

*Each Party shall take measures to prevent the incorporation into assembled products of mercury-added products the manufacture, import and export of which are not allowed for it under this Article.*

*Disallow the use of mercury or mercury compounds in the manufacturing processes listed in Part I of Annex B after the phase-out date specified in that Annex for the individual processes, except where the Party has a registered exemption pursuant to Article 6.*

*Restrict the use of mercury or mercury compounds in the processes listed in Part II of Annex B*

*Each Party with one or more facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex B shall:*

*(a) Take measures to address emissions and releases of mercury or mercury compounds from those facilities; and*

*(c) Endeavour to identify facilities within its territory that use mercury or mercury compounds for processes listed in Annex B.*

*Disallow allow the use of mercury or mercury compounds in a facility that did not exist prior to the date of entry into force of the Convention for it using the manufacturing processes listed in Annex B.”*

(more information on the annexes mentioned above can be obtained from CTFA)

It was concluded that since there is already an existing regulation in place (R.1227) which is the responsibility of the Department of Health, the responsibility falls upon the Regulator to enforce stricter control measures and penalties where there is non-compliance. In addition, Port Health authorities and other officials require the appropriate training to identify and test products entering the Ports. The other institutes that are responsible for reaching the target as indicated (to enforce regulations) are, SARS (at the Ports of entry) and SAPS (for routine raids of informal trade).

### **Way Forward**

DEFF will consider all comments received on the MIA report as well as the input to the National action plans from various stakeholders represented at the workshop. The MIA report and National Action Plan and timeframes will be distributed in the short term prior to submission of these to the Convention. CTFA will remain engaged with DEFF on the matters relating to bans and timeframes that will be relevant to the cosmetic industry.