
NATIONAL COMPLIANCE AND ENFORCEMENT OF INTERNATIONAL ENVIRONMENTAL TREATIES

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SUMMARY

This paper discusses the importance of compliance and enforcement to any environmental regulatory program, especially in the context of effective international relations. Before international negotiations may begin, countries must develop their national positions. Upon completion of an international agreement, each country must then translate the treaty obligations into national law. Governments must be empowered to implement laws and regulations in order to promote compliance. The views expressed herein are those of the authors and not necessarily those of the United States Government.

1 INTRODUCTION

The role of compliance and enforcement is critical to the success of any environmental regulatory program. No matter how good the science or how carefully regulatory decisions are crafted, their value is limited without compliance. The connectivity among programmatic design, implementation, and compliance, provides a good basis for describing the key elements for promoting compliance and enforcement of international treaties.

Since the 1992 Rio Conference, there has been a great deal of progress in addressing environmental problems on an international scale, especially in the area of hazardous chemicals, products, and pesticides. Over the last ten years, international cooperation has become a norm for addressing environmental issues of global concern. The growing support for international cooperation and action has, in itself, introduced a number of challenges for countries. National governments must think

beyond their traditional domestic approaches in order to adapt and develop new strategies for influencing international debate and for implementing international agreements. Also, the international community has become more aware of the connectivity between international trade and international environmental concerns. The experience of the North American Free Trade Agreement (NAFTA) has been singular in that regard, and certainly, the public, at large, will continue to focus on this interconnectivity.

Three basic principles are important for achieving international cooperation through effective national implementation. First, when engaged in international treaty negotiations, governments must develop responsible national positions and negotiate in good faith. Second, governments must translate international agreements into effective national laws, regulations, and enforcement mechanisms. Third, governments must promote a "culture of compliance." Three recently negotiated envi-

ronmental conventions will be used to illustrate these principles: 1) the Stockholm Convention on Persistent Organic Pollutants (POPs), 2) the Rotterdam Convention on the Prior Informed Consent Procedure (PIC) for Certain Hazardous Chemicals and Pesticides in International Trade, and 3) the International Convention on the Control of Harmful Anti-fouling Systems on Ships (Antifouling Treaty). The Stockholm Convention on POPs focuses initially on the so-called "dirty dozen" chemicals (Table 1). The convention seeks to either completely eliminate the production, sale, and use of these substances, or to severely restrict them to a handful of compelling uses such as DDT for certain public health purposes. The twelve chemicals, for the most part pesticides, are already banned or largely restricted in some areas of the world. With the signing of the Stockholm Convention, many governments face the challenge of meeting the treaty obligations that effectively require the use of alternatives.

The Rotterdam Convention on PIC establishes both a framework and a procedure for regulating the international trade in hazardous chemicals and for assuring that countries have complete and timely information about chemicals that may be imported. With a focus on hazardous chemicals, many of which are pesticides, PIC establishes a threshold whereby any chemical that is banned or severely restricted in two regions of the world can be subject to export and import controls (Table 2). This enables a country to choose whether those substances can be imported. It also empowers countries to prevent the trade of chemicals and pesticides with hazardous formulations that cannot be used safely under particular circumstances.

The Antifouling Treaty is a convention designed to control the type of substances that are applied to protect the hulls of ships, in particular, organotin biocides. These pesticides can have serious adverse

effects in marine environments. The convention prohibits the application of organotin biocides, particularly tributyltin (TBT), on ships beginning January 1, 2003. Because of the longevity of these biocides on ship hulls, the convention provides a period of 5 years after which they must either be removed or sealed to prevent leaching. The convention also establishes a risk and benefit review process for other antifouling systems to ensure that alternatives do not cause unreasonable adverse effects on the marine environment.

2 DEVELOP RESPONSIBLE NATIONAL POSITIONS AND NEGOTIATE IN GOOD FAITH

In order to have international agreements that are effective, governments must begin to plan and develop national positions before the start of negotiations. If countries enter into an international negotiation having considered questions about implementation and issues about enforcement and compliance from the outset, the negotiation is more likely to result in an effective and meaningful international agreement. Issues to consider include: a) level of national commitment and political will, b) institutional capacity to enforce and promote compliance, c) clarity of organizational roles, responsibilities, and relationships among governments, the regulated community, and the public, and d) mechanisms for consulting with public stakeholders.

In the U.S., it is customary to first reach a unified governmental position among the various federal (and, if appropriate, state) governmental agencies. As a large complicated bureaucracy, this initial step can pose several challenges. This process also includes consultation with public stakeholders that may be affected by the potential activities. The affected industry, which often has the necessary resources and motivation, is likely to be

engaged; however, other parts of the public may need assistance in order to be adequately engaged. After finalizing the government position, stakeholders continue to participate in the negotiation process as observers, and it is common for the government and stakeholders to continue a dialogue during the negotiations.

The Antifouling Treaty illustrates the complexities of this dynamic process for involving industry and other stakeholders. First, it was necessary for EPA to understand the myriad number of issues from the perspective of the ship builders, port operators, and the manufacturers of both the organotin coatings and potential substitutes. Second, it was necessary to understand the dynamics and sensitivities of the estuarine environment. A public-private dialogue ensued in order to reach a sophisticated fine-tuned position. This involved issues of enforceability and feasibility of potential new requirements. In considering these issues, it became clear that a purely standard setting approach is not sufficient. Two key elements were necessary to develop an effective treaty: 1) the introduction of safer alternatives that can protect ships from the build-up of barnacles, and 2) a method for detecting the presence of organotins on ships. Even with these elements in place, treaty implementation will be challenging and will likely require additional resources at the national level.

3 TRANSLATE INTERNATIONAL AGREEMENTS INTO EFFECTIVE NATIONAL LAWS, REGULATIONS, AND ENFORCEMENT MECHANISMS

After successfully negotiating an international agreement, it is necessary for each country to translate the treaty obligations into national law. Some of the challenges of this second stage could be avoided if countries, prior to and during the negotiation phase, planned for some of the expected outcomes of the agreement.

Three elements are important in this phase: 1) status of national legal authorities, 2) availability of information and technical expertise, and 3) understanding and support from the affected parties.

In order to create the legal authority needed for implementing the agreements at the national level, countries may need to pass statutes, prepare regulations, issue orders, and interpret existing laws. Recent activity in the U.S. to ratify the Stockholm and Rotterdam Conventions illustrates the importance of creating adequate legal authority. In the U.S., existing federal legislation (The Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act) establish the basic legal authority for EPA to implement the agreements. After further legal analysis, some specific statutory changes to these laws were considered necessary. Therefore, a package with these proposed statutory changes was submitted to Congress along with the treaties for ratification in April 2002.

Information and technical expertise provide a basis for implementing laws at the national level. This can include general information and technical documents, national and international chemical assessments, and information on alternatives. In the area of tributyltin, EPA is in the process of implementing the phase-out schedule established under the Antifouling Treaty. This involves both voluntary and mandatory approaches based on the risks and availability of alternatives. Also, the Coast Guard is reviewing monitoring techniques, including certificates and placards for documenting the types of antifouling paints being used on ships entering U.S. ports. Thus, necessary information and monitoring mechanisms will be in place to support the effective application of national laws.

Finally, understanding and support, within the government, the regulated community, and from anybody who has a role to play, is needed for successful compliance

and enforcement. To promote awareness and support, governments can organize consultations with the regulated community and other stakeholders and can support training seminars and workshops. Stakeholders, too, can engage their sectors through similar awareness raising activities. Thus, both the public and private sectors can accelerate implementation by becoming fully engaged and supportive of national implementation efforts.

4 PROMOTE A “CULTURE OF COMPLIANCE”

Promoting a culture of compliance around legal requirements poses a complex set of challenges. Governments must be empowered to implement laws and regulations through:

- Clearly stated goals, requirements, regulatory and non-regulatory tools, and consequences
- Technically and economically feasible standards
- Market mechanisms
- Financial and technical resources
- Incentives and deterrents
- Citizen involvement

The first step is to have requirements that people can comply with, that are understood, and that are mandatory when needed. Standards are not meaningful if they are not both technically and economically feasible. It does not mean they must be easy, or that they cannot reach for technical capacity that currently does not exist. Nor does it mean that they cannot push the system to internalize more costs than it readily does. However, in the end, regulations must be possible to implement.

The use of market mechanisms can also be highly effective in promoting compliance. In addition, adequate financial and technical resources are critical both within and outside the government. While

incentives are important, deterrents are also needed. The regulated community needs to have a reason to comply and that almost always includes a strong deterrent. Lastly, citizen involvement makes a significant difference, both in terms of information flow and enforcement activity.

In the chemical area, pesticides and other chemicals fulfill a valuable function as products. Without alternatives to these products, the willingness to halt their use will be difficult to achieve. Also, incentives and deterrents, penalties and fines, and license revocations all have particular relevance in the chemicals arena. In the pesticide area, license revocations and modifications can operate as enforcement tools. Finally, citizens can do a lot to assist government enforcement. Governments should provide citizens with whistle blower protections and other safety measures especially in contexts where citizens feel relatively powerless.

5 CONCLUSION

International agreements are exciting and they can also make a huge difference for generations to come. However, they will do so only when they are implemented and when affected parties comply with the requirements. Toward this end, government has a critical role to assure there is a culture of compliance throughout the world with regard to these major and valuable agreements. The role of the private sector should be to work with government and to independently help assure that policy is informed by their practical knowledge. The general public can affect political will through democratic processes and can promote the exchange of information and assure enforcement. International agreements, if implemented effectively on a national basis, can result in stronger environmental and public health protection on a global scale.

Aldrin
Chlordane
DDT
Dieldrin
Endrin
Heptachlor
Hexachlorobenzene
Mirex
Toxaphene
PCBs
Dioxins
Furans

Table 1. List of 12 Persistent Organic Pollutants

2,4,5-T
Aldrin
Binapacryl*
Captofol
Chlordane
Chlordimeform
Chlorobenzilate
DDT
Dieldrin
Dinoseb and dinoseb salts
1,2-dibromoethane (EDB)
Fluoroacetamide
HCH (mixed isomers)
Heptachlor
Hexachlorobenzene
Lindane
Mercury Compounds
Pentachlorophenol
Toxaphene*
Methamidophos (Soluble liquid formulations of the substance that exceed 600g active ingredient/l)
Monocrotophos (Soluble liquid formulations of the substance that exceed 600g active ingredient)
Phosphamidon (Soluable liquid formulations of the substance that exceed 1000g active ingredient/l)
Methyl parathion (emulsifiable concentrates (EC) with 19.5%, 40%, 50%, 60% active ingredient and dusts containing 1.5%, 2%. And 3% active ingredient)
Parathion (all formulations)
Crocidolite (Industrial)
Polybrominated biphenyls (PBB) (Industrial)
Polychlorinated biphenyls (PCB) (Industrial)
Polychlorinated Terphernyls (PCT) (Industrial)
Tris (2,3-dibromopropyl) phosphate (Industrial)

Table 2. Chemicals Subject to the Prior Informed Consent Procedure