

SUMMARY OF WORKSHOP 3D: ANALYZING THE COMPLIANCE AND ENFORCEMENT MECHANISMS OF THE MONTREAL PROTOCOL

Facilitators: Jim Curlin, United Nations Environment Programme
 Gilbert Bankobeza, United Nations Environment Programme

Rapporteur: Scott Stone, INECE Secretariat

GOALS

To explore the role that INECE can play in:

- Building capacity for compliance and enforcement in developing countries with regard to the Montreal Protocol.
- Encouraging the enforcement community in developed countries to share their compliance and enforcement expertise with developing countries so they can implement the provisions of the Montreal Protocol effectively.

1 INTRODUCTION

Mr. Jim Curlin gave an introductory presentation on the basic features of the Montreal Protocol. Adopted in 1987, the Montreal Protocol was designed to phase out the use of ozone-depleting substances (ODS) and is generally regarded as the most successful multilateral environmental agreement (MEA).

The Montreal Protocol has entered what is termed the “late stages” of implementation. This means that the developed world has largely come into full compliance with its terms and that the production and use of ODS has been virtually eradicated. However, problems remain in the developing world where ODS are still produced and used. Many of these countries contribute to a significant black market for ODS in the developed world.

In 1991, the Multilateral Fund for the Implementation of the Montreal Protocol was established to provide developing countries with the funding necessary to comply with the terms of the treaty. Managed by the United Nations Development Programme (UNDP), United Nations Environment Programme (UNEP), United Nations Industrial Development Organization (UNIDO), and the World Bank, the fund

has supported 4,600 technical capacity-building projects for 134 developing countries worth 1.75 billion U.S. dollars. It will phase out 182,690 tons of ozone depleting potential (ODP) consumption, and 62,200 tons of ODP production. Most of this has already been accomplished as of 2004.

To qualify for assistance from the Multilateral Fund, a Party must have country programs (implementation and compliance strategies) in place. Also, the data that a country submits to the fund must be timely and accurate to be considered. Regular technological assessments of each country are made every two years to monitor compliance with the treaty.

The goal, of course, is to build sufficient capacity in developing countries so that it can meet its legal obligations under the treaty. The keys to national compliance include national policies, legislation, regulations, directives for licensing and quota systems, export controls, bans on equipment using ODS, and economic instruments. Compliance and enforcement stakeholders include government agencies (foreign affairs, environment, customs, agriculture, judiciary), industry (ODS users and producers, importers), and civil society.

Compliance assistance under the

Montreal Protocol includes institutional strengthening for National Ozone Units (NOUs) (which are responsible for implementation and compliance), national and industry-sector compliance strategies, and investment and technical assistance from UNDP, UNIDO, and the World Bank. UNEP operates a compliance assistance program that consists of policy development and enforcement, data reporting, customs training, technical support, information, and communication.

There are frequent meetings among the many national NOUs to exchange experiences, ideas, and knowledge and to develop skills. These meetings are opportunities for sharing data and intelligence, and they have proven to be a cost-effective and constructive way to assist developing countries with their enforcement efforts.

Mr. Curlin pointed out, however, that there are still pressing issues unresolved. First there is a great need for developed countries, other MEAs, and non-governmental organizations to transfer real-world compliance and enforcement experiences and knowledge from developed countries to developing countries. There need to be bilateral exchanges on specific issues, both North-South and South-South, matching peer-to-peer inspectorates to address different issues. Furthermore, there should be a focus on training officials, prosecutors, and judges in all countries so they know the most effective way to adjudicate customs seizures and how to levy and enforce penalties that will further effective implementation of the Montreal Protocol.

Mr. Curlin concluded his introduction with a brief summary, noting that: (1) the Montreal Protocol is succeeding, but much work remains to be done; (2) compliance is being achieved, and treaty goals are being met, and (3) the ozone layer is on a path to recovery

2 DISCUSSION SUMMARY

2.1 Capacity Building

There is a need to establish com-

mon and realistic goals for capacity building that developing countries are able to meet. When building capacity, all efforts need to be made to create transparent national enforcement and compliance regimes. Training environmental and customs officers as well as members of the judiciary and legislature is essential, and current training programs must be maintained and expanded.

Additionally, there must be a common international program of compliance verification, and the results must be made publicly available. The resulting public input will give the Parties incentives to improve their compliance records.

2.2 Regulating Producers of CFCs

— The 1997 Montreal Amendment to the Montreal Protocol introduced a system for licensing the import and export of controlled substances. Under this regime, each manufacturer is licensed for each product it produces. A good number of parties have implemented this licensing system, and by controlling the number of licenses issued, these parties are able to identify illegal manufacturers. Though many countries adopted this system, there are often few or no supporting enforcement mechanisms; if the licensing system is not backed up by enforcement mechanisms (with both trade and use aspects), it is meaningless. This has allowed black-market production of ODS to flourish in many countries around the world. This illegal production supplies black-market consumption in Party nations that have already successfully regulated their own producers, thus undermining the goal of the licensing system to regulate and reduce the amount of ODS production.

— The Multilateral Fund (MLF) finances the closure of the CFC/Halon producers. The state government must agree with the MLF that the government will use the funds to reduce the number of these facilities and the amount of the CFC/Halon produced. The MLF will freeze the delivery of funds unless the

government delivers clear proof of progress. Mexico has gone fully out of production as of May of 2005.

- The MLF also has a complete list of every facility that produces banned substances.
- Quite often CFCs are used in fine chemical production that once occurred in developed nations. When this manufacture is moved to developing countries with weaker enforcement mechanisms and production controls, the production of CFCs can actually increase. This combined with irresponsible handling and less sophisticated facilities can work to undermine the goals of the Protocol to reduce/eliminate ODS all together. Regional programs may be a good way to help developing nations regulate these industries and enforce the terms of the Protocol. A regional program will allow local countries to pool and focus resources on the biggest problems first and will be sensitive to local needs.

2.3 Regulating International Trade of Banned Substances

- The developed countries have a great need for enforcers to gather intelligence and identify the sources of illegally imported products.
- It is relatively straightforward to develop a database for banned substances that are coming in and out of a country. Because of the size of the CFC market and the fact that the chemicals are coming in from a multitude of different sources, some countries have decided that the way to attack this problem is to focus on the importer/exporter, which are more easily targeted and which are often responsible for massive amounts of illegal traffic and commonly deal in numerous chemicals and products.
- Current MLF efforts to provide countries with the equipment and technology necessary to catch ODS at their borders are both expensive and inefficient, because the volume of trade crossing a border at any given time is so immense. Instead, environmental inspectors should be tasked with tracking the illegal products back to the importer/exporter. The tracking process should begin with the receiving market, because looking on store shelves is easier than trying to identify illegal ODS as they cross the border in the stream of commerce. Furthermore, if the investigation traces the ODS back from the store to the manufacturer, the environmental agent will discover the source of the ODS and whether that source is responsible for more than one ODS. Then the agent can verify whether the country of manufacture is allowed to produce that ODS.
- How the success of an import/export enforcement regime is measured is important. If a retailer is caught with ODS in its merchandise, busting the shopkeeper is not an efficient or judicious remedy, because a manufacturer may have a market that involves thousands of retailers and covers dozens of products. Therefore, indicators that simply measure the number of busts is not the best way to measure success; arresting a hundred shopkeepers has less of an environmental impact than stopping a single import/export operation that brings huge quantities of ODS into the country. Furthermore, it often costs the same amount to bust the shopkeeper as it does to bust the importer, and an agency may only have enough resources to bust one of them.
- Even investigating an import/export operation without a bust can cause a major upheaval in business and deter illegal activity.
- Some developing countries do not need to be in compliance until 2010 and are not currently prohibited from manufacturing CFCs. They can export legally; it is only the imports that are illegal. Therefore, the enforcement community needs to focus on the importers and not the producers. If enough importers are busted, the producers will be deterred because their market will become unstable.

- MLF is trying to promote some cooperation between importing and exporting companies. The developing country exporter can provide a list to importers in developed countries about who is authorized to produce CFCs. This is an excellent use of Montreal Protocol regional networks because it identifies bad exporters.
- MLF is trying to develop indicators to monitor laws that limit the import/export of CFCs. The first indicator should be whether a country has a list of authorized importers. If a country does not have such a list, it may show that they are not concerned about the import/export of CFCs.
- The representative from Bahrain suggested that they need assistance to avoid giving anyone an exception to import into the country if they are not known to be legal CFC importers/manufacturers. Bahrain also needs to know about aerosols/sprays, e.g. which factories legitimately manufacture them with CFCs. This is a question that could be addressed by posing it through the network to other countries.

2.4 Judges, Prosecutors, and Inspectors

- Education for judges and prosecutors is a very high priority. It is also critical that the on-the-ground enforcement community is educated on environmental policy matters including the Montreal Protocol.
- Prosecutors and judges must be able to evaluate the societal costs of environmental damage. They need to be able to understand the actual significance of each violation and to levy penalty/remediation judgments appropriately. For instance, it may seem impractical to prosecute the selling of the toy “Silly String”, but if the dangers of the CFCs that may be contained in the product were understood, the importer of such a product would receive a stiff fine.
- INECE emphasizes that environmental goals should always be reflected in the

regulations and requirements that embody them. Inspectors should understand the significance of these broad environmental policies. Inspectors should understand not just how many violations they need to detect, but the significance of that quantity in relation to the overarching environmental objective. This would encourage the input of inspectors and enforcers in the creation of domestic regulation which, all too often, neglects adequate enforcement mechanisms.

2.5 Legislation/Regulation

- Countries need to pass regulations that include specific instructions for industry on how to comply with the terms of the Montreal Protocol. A company simply cannot be expected to interpret the Montreal Protocol alone and bring itself into compliance without national policy and regulation. The government should identify the types of activities deemed to be illegal and communicate this information to the company clearly.

2.6 Disposal

- An example of a common disposal problem was raised: Once an old refrigerator reaches the end of its lifespan, it is often disposed of in the developing world. If the refrigerator is destroyed there, there may be a release of CFCs into the atmosphere. Often, however, the refrigerator is re-used, because it is cheaper to refurbish it and add new refrigerant than to buy a new refrigerator with non-CFC refrigerant. The recycling of refrigerators from the developed world keeps the CFC production industry alive in many developing countries where they are trying to phase out CFC use.
- Under the Basel Convention for the Transboundary Movement of Hazardous Waste, the refrigerator could be considered waste. However, the definition of waste varies depending on disposal versus re-use, so its regulatory status under Basel is unclear depending on

whether the refrigerator is shipped for disposal or for re-use.

3 RECOMMENDATIONS FOR INECE

- INECE should work with various regions on developing regional enforcement programs.
 - INECE should work with the Parties to develop a mechanism for evaluating program success that is not based simply on the number of citations.
 - INECE should help Parties build capacity to identify illegal importers/exporters.
 - INECE should expand its educational programs to include CFC policy for judicial and enforcement communities.
 - INECE should consider distributing a list of known manufacturers of CFCs.
- INECE needs to link up with the Montreal Protocol website that contains the list, and the outcomes of this workshop also need to link to both sites.
- INECE should create a global website for all information on CFCs, containing information relevant to enforcement and compliance promotion. It would include things such as: reasons and need for legislation, descriptions of the products, how they can be located, main countries of origin, alternate uses, substitute uses, what types of products, scales for fines, etc.
 - INECE needs to work with regulation writers to make sure that the regulated community will be able to understand what they need to do to comply with legislation implementing the Montreal Protocol.