
REGULATIONS TO IMPLEMENT MONTREAL PROTOCOL: GUATEMALA COUNTRY PROGRAM

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SUMMARY

This paper contains a brief description of how, in general, legal norms are applied in Guatemala. Some concepts and values that prevent law enforcement are mentioned. This situation is characterized by a weak legal system and certain conditions that affect legal procedures. In this context specific environmental regulations are being promulgated. Supportive measures need to be enacted to guarantee enforcement.

1 BACKGROUND

The political and institutional framework of Guatemala for the last 40 years has weakened the legal system. Military-authoritarian regimes have ruled the country with no respect for law abiding and civil rights. Repression, kidnapping, crime, human rights violations and corruption increased. In the last 10 years (since 1985) democratically- elected governments have been appointed to govern the country. Some efforts have been made to restore the legal system and strengthen human rights institutions and the function of the attorney general.

In this period public opinion and human rights organizations have been active, legal causes were prepared, and public offenders were brought to court. Nevertheless, law effectiveness was very poor. Impunity was the main cause for having a strong case. Causes have also prescribed for lack of evidence.

2 Regulations and the Montreal Protocol

To implement the Montreal Protocol, it has become necessary to establish a set of regulations to diminish consumption of ozone depleting substances (ODS) and other measures to regulate the selling, distribution, and use of such chemical products. According to the legal framework, it is clear that supplementary measures are needed in order to accomplish environmental compliance and enforcement.

Such supplementary measures include:

- Frequent reminders to the government by international agencies to complete ozone depleting substance reports.
- Description of specific cases of applied regulations and compliance.
- Exposure and training for public officers in public compliance and law enforcement.
- Information to the consumer.
- Certify trained technicians.
- Qualify inspectors in monitoring procedures and application of the laws.

These are considered key elements to enforce environment laws and regulations.

3 LEGAL FRAMEWORK

In Guatemala, as in many other countries, a wide body of legislation and regulations already exist. It is worthwhile to consider the legal structure that operates within the country. There are constitutional laws, congressional acts, sectorial agreements and municipal regulations. For example, the Ministry of Health (at the national level) is responsible for analyzing every environmental health hazard case, taking this responsibility away from municipal competence.

Laws and regulations have been prepared one-by-one as needed, over time, there has been a duplication and over-lapping of responsibilities and a failure to apply the law.

Civil servants have little knowledge of existing laws and procedures and there is no compliance by end users. It is wide-spread practice to favor vested interests and serve special privileges, impunity being a common result. Several press articles have proven this situation.

Sanctions are not relevant and they are not proportional in relation to offenses. Legal procedures to build a case and enforce the law are slow and complex. Cases are prepared on a documented basis by the attorney general after administrative sanctions or procedures have been exhausted. This lengthy procedure is time consuming (2-3 years) and in most cases, files and documents are overdue, evidence becomes blurred, and the whole case is dismissed.

The attorney general conducts these investigations to collect evidence and prepare the cause. Procedures are slow and weak due to the shortage of specialized personnel, financial support and poor technical procedures. Due to these factors, law enforcement becomes extremely ineffective.

4 ENVIRONMENTAL INSTITUTIONS AND REGULATIONS

In its particular role, the National Environmental Commission (CONAMA) lacks the appropriate resources and law compliance orientation to monitor and apply public sanctions.

Regulations related to the environment are wide-spread within different organisms and entities. Article 197 of the political constitution states that social-economic development should go hand in hand with environmental protection. The protection, recovery and rational use of natural resources and ecological systems is mandated in a specific law promulgated by Congress (Public Decree 68-86). The health code contains standards for drinking water, waste management, contaminants, food management and toxic waste disposal.

The main responsibility for applying regulations and environmental protection is based on Government Decree 58-88 which entitles municipalities to apply sanctions. Other specific regulations refer to fluid discharge - maximum and minimum levels. (Decree 60-89). Congressional Law Number 252-89 regulates the use of chlorofluorocarbons (CFCs) for the aerosol industry.

5 SOCIAL, POLITICAL AND ECONOMIC BACKGROUND.

5.1 Social economic profile

Guatemala's population numbers 10.3 million inhabitants. Sixty percent live in rural areas and 26% are concentrated in the metropolitan area. Adult literacy accounts for 37% and total illiteracy is found in 51 % of the total population. The active economic population numbers 2.5 million and the average annual income is U.S. \$600.00 .

5.2 Political profile

In the last fifty years the country has been ruled by military-authoritarian regimes. War, poverty and unemployment have been dominant factors in this period thus weakening Democratic and legal institutions as a result. Ten years ago (1985) civil-democratically elected governments started a new phase. Legal institutions were created such as the Constitutional Higher Court, The Human Rights Ombudsman, also the Public Ministry was restructured.

In 1986 the National Environmental Commission (CONAMA) was created as a coordinating entity adjoined to the Presidential office. It has neither executive force nor mandatory law enforcement. The Commission was established due to present causes by the attorney general and the Justice Court, but can not apply the sanctions included in its own bylaw.

In the last three years there has been a strong emphasis to present environmental impact studies. This improvement is the consequence of a specific regulation that stated sanctions to public officials that might approve development projects that have not prepared their own environmental impact studies. The next step should be the reinforcement of monitoring procedures to assess proposed environmental corrective measures stated in the environmental impact studies.

5.3 The economy

During the last 150 years there has been a strong mercantile tradition - few regulations and low taxes with an extensive agricultural activity. In recent years, the economy has been oriented toward a free market mode. The gross national product has substantially increased due to an increase in banking and finance, construction, non-traditional exports and tourism

6 THE MONTREAL PROTOCOL: GOALS AND REGULATIONS.

The Vienna Convention for the Protection of the Ozone Layer was approved in March 1985 by the Conference of the parties; it was ratified by the Congress of the Republic of Guatemala in July 1987 authorizing the government to comply with this international agreement.

This agreement is a regulatory instrument by which the parties agreed to take the appropriate measures to help to restore the ozone layer depletion. To establish specific goals, The Montreal Protocol was signed so that each country within its country program would take specific measures to comply with the "phase out" and elimination of in the stated periods.

Basic ozone depleting substances data registered in Guatemala established that 286.3 of chlorofluorocarbons were utilized in 1991. The principal substances utilized are refrigerants, solvents, foams and pesticides. Chlorofluorocarbons are not manufactured in the country.

In 1995, four industry assessments were performed: an overall assessment to verify 1991 data; another two for the refrigerating sector (small shops and servicing companies); and methyl bromide was analyzed in the fourth study. These studies included data for imported quantities, final users, prices, and volumes used in each branch of commercial activity. The interviewed persons were aware of The Montreal Protocol, its regulations, the "phase out" period, and the new products.

In 1989, a Government Decree was published to regulate the use of chlorofluorocarbons (R-11 and R-12) in the production of sprays and aerosols. Imports were prohibited for this specific use. A one year delay was granted to clear out inventories. Some medical supplies were excluded from this regulation. These norms served as a regulatory frame. Businessmen considered the benefits of establishing a large liquefied petroleum gas plant to serve the aerosol

and cosmetics industry. At present, the plant draw-back for these industries is Central America, the Caribbean and the northern part of South America. In that case the regulation and the use of a substitute technology created the incentives for an alternative solution.

Some small aerosol producers utilize chlorofluorocarbons (R-11, R-12). These cases have been denounced and sanctions have been applied in order to avoid the smuggling of finished products.

7 THE CONTEXT OF LAW COMPLIANCE.

Taking into account the different factors that condition the applicability of the law and compliance, it is worthwhile to mention some of the particular statements and claims of interest groups (importers, end users, distributors) regarding regulations that are necessary to eliminate the use of ozone depleting substances (quoting):

- Imports of chlorofluorocarbons will continue (R-11, R-12, R-502).
- Prices of chlorofluorocarbons are lower in Guatemala than in Mexico and the USA (1 LB = U.S.\$ 1.39 in Guatemala and U.S.\$ 6.70 in the USA.)
- Laws and regulations negatively affect the productive activity.
- Some believe that laws and norms should not be issued because nobody will obey the law.
- It is believed that chlorofluorocarbons will continue to be used as long as prices are lower than alternatives, R-134
- Large agroexporters (banana, water melon, berries, orchards) comply to U.S. regulations by using R-134 in refrigerated containers that are shipped to the U.S. Transportation within Guatemala still uses R-12 because there are no government regulations.
- R-134a is more expensive than R-12. In addition an over-tax has been added to make it less competitive.
- Importers agree that import limitations will cause smuggling. At present there are no regulations limiting imports; and smuggling of chlorofluorocarbons from Mexico is a common practice.

Due to the previous considerations and the nonobservance of compliance, it is expected that ozone depleting substances regulations will be difficult to put into practice. Regulations, incentives and sanctions must be very clear and strong. Monitoring and law enforcement must be set in place. The promulgation of such regulations has to be a positive experience and enhance institutional capacity for environmental compliance and enforcement in Guatemala.

8 PROMULGATED REGULATIONS

To attain stated objectives the following regulations were promulgated:

8.1 Government Decree to institute the Ozone Coordinating Committee.

This decree grants the committee legal authority to address and manage Country Program implementing actions, to promote and follow up stated phase-out objectives.

8.2 Obligatory register.

By Government Decree an official ozone depleting substance registrar was established at the Ministry of Trade and Industry. Its main objective is to keep actualized records of such imports, substitutes, importing Companies, distributors and end users. A basic form is used as a monthly record. It is a Public Declaration in good faith.

8.3 Restrictions to ozone depleting substances imports.

To comply with ozone depleting substance phase out in accordance with the Montreal Protocol calendar, this disposition regulates imports of R-11 and R-12 at levels equal to those of 1991. It promotes the use of alternative substances by avoiding over-pricing, taxes and sanctions and also promotes industrial changes, training and certification.

8.4 OZONE Seal.

The OZONE Seal provides industry a certification that recognizes those products that are free of chlorofluorocarbons in their elaboration. The seal is consumer oriented. Quarterly sampling is performed to guarantee compliance by sending products to the chromatography laboratory.

9 COMPLEMENTARY AND SUPPORT MEASURES.

Taking into account that law abiding is a weak concept and law is violated without any consequences (due to low and insignificant penalties) it is useful to include external factors that facilitate the application and compliance of such regulations. Some of these actions could be:

- Official Notes by Montreal Protocol Secretariat, reminding the Government of Guatemala to report and to meet deadlines and agreements signed by the government and possible sanctions and obligations.
- Progress reports and statistical data presented regularly with a standard format for comparison purposes.
- Reports on legal instruments and sanctions related to the monitoring and follow up to make effective the elimination of ozone depleting substances and progress in the use of alternative substances.

To complement these actions it would be helpful to have specific support to train public officials and law officials in law compliance and law enforcement in subjects such as:

- How to apply sanctions in specific circumstances, selling, distribution and final use of restricted chlorofluorocarbons, if legal regulations are not observed.
- Exposure to applied regulations in other countries, such as the United States, the EEC (seminars, case studies).
- Ample distribution and information regarding ozone depleting substance regulations, public awareness and consumer protection.
- Using the established registrar and controls to monitor compliance for distributors, technicians, end users and importers regarding ozone depleting substances and alternative substances.

- Monitoring and supervising to build causes, collect evidence and prepare public causes and to train environmental inspectors in monitoring, compliance and law enforcement.

10 CONCLUSION

Montreal Protocol regulations to implement the phase out of ozone depleting substances is an opportunity for environmental compliance and law enforcement in a country with a poor legal tradition.

