



Obligations - The 1987 Montreal Protocol on Substances that deplete the Ozone Layer

Overview of the Montreal Protocol main provisions, phase-out schedule of ozone-depleting substances, amendments and non-compliance procedure.

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Course: Introductory Course to the International Legal Framework on Ozone Depletion

Book: Obligations - The 1987 Montreal Protocol on Substances that deplete the Ozone Layer

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1. Background

In light of the necessity for more concrete action under the Vienna Convention, countries reconvened in Montreal in 1987 to adopt a protocol regarding the phase out of ozone depleting substances (“Montreal Protocol”).

During the negotiations of the Montreal Protocol, three issues were of major importance:

1. Broad adherence to the Montreal Protocol was essential and there was considerable concern about the financial abilities of developing countries to implement the Montreal Protocol.
2. The Montreal Protocol needed to be drafted in a flexible way in order to timely adjust to new scientific evidence and to the changing needs of its parties.
3. It was key to determine an economically feasible and detailed time schedule for the phase out of ozone depleting substances.

2. Main obligations

On the contrary to the Vienna Convention, the Montreal Protocol establishes very concrete and measurable obligations to Parties while having into account the special needs of developing countries.

This model was, later on, imitated by other environmental agreements and evolved in the common but different responsibility principle.

2.1. Setting targets: A milestone in international environmental law

The Montreal Protocol on Substances that deplete the Ozone Layer is a significant milestone in international environmental law. It establishes firm targets for reducing and eventually eliminating consumption and production of a range of ozone depleting substances.

These substances are enumerated in Annexes A-E to the Protocol and are to be phased out within the schedules given in articles 2A-2I. The Montreal Protocol controls both consumption and production of ozone depleting substances in order to protect the interests of producers and importers, who otherwise would have had to sustain high price inflation or overproduction during the phase out period of the targeted gases.

2.2. Special provisions for developing countries

The Montreal Protocol takes into account that developing countries have hardly contributed to ozone depletion and thus provides for a ten-year delay for developing countries in phasing out the production and consumption of ozone-depleting substances.

This exemption is granted under article 5 of the Protocol, which applies to developing countries whose annual calculated level of consumption of the controlled substances in Annex A is less than 0.3 kilograms per capita for chlorofluorocarbons (CFCs) and 0.2 kilogrammes per capita for halons on the date of the entry into force of the Montreal Protocol or any time thereafter until 1 January 1999.

Furthermore, new financial and technical incentives were adopted to encourage developing countries to switch as quickly as possible to alternative substances and technologies.

2.3. Dealing with non-parties

The Montreal Protocol further attempts to address the problem of trade with countries that are not yet parties to the agreement (“non-parties”). It bans trade in controlled substances with non-parties unless they are found by the Meeting of the Parties (“MOP”) to be in compliance with the Protocol.

Furthermore, the parties must discourage the export of CFC production technology to non-parties.

Despite the fact that the Montreal Protocol bans export and import of ozone depleting substances, it remained compatible with the former General Agreement on Tariffs and Trade (“GATT”) rules, now WTO. Article XX (b and g) of GATT allows trade restriction in support of environmental goals and health measures as long as they are not disguised restrictions to trade or applied in a discriminative manner

3. Amendments to the Montreal Protocol

In the light of new scientific evidence it soon became apparent that there were more ozone-depleting substances than previously acknowledged and which had to be listed and controlled under the Montreal Protocol to reduce ozone depletion.

Therefore, amendments were adopted that incorporated additional substances into the Annexes and provided for a more stringent schedule for phasing out of ozone-depleting substances.

3.1. The London Amendment

At the Second MOP in London in 1990, restrictions on CFCs and halons were made more stringent, and three new controlled substances - methyl chloroform, carbon tetrachloride and other fully halogenated CFCs were included.

197 countries have ratified (as of November 2013) the 1990 London Amendment to the Montreal Protocol in addition to the Protocol itself.

3.2. The Copenhagen Amendment

At the Fourth MOP in Copenhagen in 1992, restrictions on CFCs, halons, methyl chloroform, carbon tetrachloride and other fully halogenated CFCs were made considerably more stringent.

In addition HCFCs, HBFCs and methyl bromide were included in the list of controlled substances with prescribed phase out dates.

197 parties (as of November 2013) have ratified the 1992 Copenhagen Amendment to the Montreal Protocol.

3.3. The Montreal Amendment

In 1997, the parties adopted the Montreal Amendment, deciding to advance the phase out date of methylbromide for the industrial countries from 2010 to 2005.

Also, in order to assist the parties in preventing illegal trade of controlled substances, the parties were now required to establish and implement a mandatory system for licensing the import and export of ozone-depleting substances.

195 parties (as of November 2013) have ratified the 1997 Montreal Amendment to the Montreal Protocol.

3.4. The Beijing Amendment

After intensive negotiations at the twelfth meeting of the parties in Beijing in 1999, the parties agreed to include production control of hydrochlorofluorocarbons (HCFCs) for industrial as well as developing countries. A new ozone depleting substance, bromochloromethane was added to the Protocol and was to be phased out by 2002.

The Beijing Amendment also establishes a ban on trade in HCFCs with countries that have not yet ratified the 1992 Copenhagen Amendment to the 1987 Montreal Protocol.

193 parties (as of November 2013) have ratified the 1999 Beijing Amendment to the Montreal Protocol.

4. Adjustment to accelerate phase-out of HCFCs

In 2007, Parties adopted an adjustment to accelerate phase-out of hydrochlorofluorocarbons (HCFC). Article 5 Parties agreed to freeze the production and consumption of HCFCs in 2013, followed by a gradual reduction from 2015 to 2030. Developed countries committed to complete the accelerated phase-out of production and consumption of HCFCs by reducing to a 90 per cent by 2015, while allowing a 0.5 per cent for servicing the period 2020–2030.

5. Current issues under discussion

Since 2009, Parties have considered proposals to amend the Protocol to include HFCs, which are ozone-friendly and commonly used as substitutes to CFC and HCFCs but potent greenhouse gases, but have reached no agreement.

During the 25th MOP held in Bangkok in 2013, Parties discussed legal, technical and financial aspects of a phase-down approach to manage HFCs under the Montreal Protocol and further discussion on these issues will be carried out in 2014.

6. Non-compliance Procedure

The Montreal Protocol's non-compliance procedure was adopted by the Parties under Article 8 of the Protocol to bring non-complying states into compliance by engaging them in a cooperative manner.

The non-compliance procedure can be invoked by any party to the Protocol, by the Secretariat or by the party itself. The matter is then referred to the Implementation Committee which consists of ten parties elected on the basis of equitable geographical representation. The Implementation Committee considers information and observations submitted to it with a view to securing an amicable solution to issues that are subject to non-compliance by any party or groups of parties. Reports by the Implementation Committee are submitted to the MOP which decides which decides on what measures should be taken to bring about full compliance. Such measures can include financial, technical or training assistance. If these measures are insufficient, cautions can be issued. As a last resort, rights and privileges under the Montreal Protocol can be suspended.

The MOP also decides on appropriate action in case a developing country informs the Secretariat that it is not able to implement the protocol due to the failure to receive adequate financial or technological support. As seen at the description of the Multilateral Fund, financial support provided by developed countries is an essential tool to induce compliance in developing countries and reflects the concept of common but differentiated responsibilities.