

Issues for Parliamentarians

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Parliamentarians' Forum on Economic
Policy Issues (PAR-FORE)

Achieving the Goals of Multilateral Environmental Agreements

BACKGROUND

Both the 1972 Stockholm Conference and the 1992 Rio Summit were instrumental in highlighting and focusing attention on the environment. This led to a host of conventions, conferences and other activities related to different environmental issues, which resulted in fructifying a number of multilateral environment agreements (MEAs). MEA is an agreement between more than two countries or several countries to take certain steps to protect environment or conserve natural resources. Each of the MEAs asks for countries to develop

specific implementation mechanisms and fulfil obligations, including reporting, training and educating the public etc.

Today there are around two hundred major MEAs in existence in the world. Yet, despite all these MEAs and the high compliance rate, the state of the global environment is continuing to deteriorate.

India is signatory to a number of MEAs and this itself is an expression of India's commitment to address global environmental problems. The Ministry of Environment and Forest (MoEF), Government of India is responsible for the

implementation of most of these MEAs and Conventions.

PRESENT PREDICAMENT

Albeit MEAs have heightened awareness and worked to address the environmental concerns. Still, environmental degradation continues

unabated, and there is widespread concern that MEAs have not lived up to the expectations because the goals are not sufficiently implemented, though fully complied with or adequately enforced by all contracting Parties.

In India, enforcement of MEAs has always been in question since the government seldom possesses personnel with skills needed to enforce policy packages. More often the flaw relates either to the choice of policies or to the enforcement processes and/or to the low priority being assigned to the MEAs. There is a greater need to adequately integrate the legislative, technical, administrative and other parameters into the fabric of the development process.

Following are the major bottlenecks in the way of effective implementation of MEAs:

- Inadequate policy framework;
- Paucity of financial resources;
- Lack of coordination among different Ministries at the national level;
- Lack of qualified personnel related to MEAs at the national level;
- Restricted participation by national stakeholders, as well as the general public, in the negotiation of MEAs;
- Failure of some MEAs to reflect national environmental priorities; and
- Absence of in-depth understanding of the contents of MEAs.

India and Major MEAs

Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), 1973

CITES convention aims to regulate international trade in wildlife for conservation purposes. By ratifying the agreement India is obliged to abide by

Box 1: A Historical Perspective

- Pre-1960: 24 multilateral treaties mainly relating to management of living natural resources – 1st MEA on marine pollution in 1954
- 1960s: 25 multilateral treaties addressing emerging trans-boundary environmental risks (radioactive, marine and freshwater pollution)
- 1970s: 75 MEAs – post-Stockholm acceleration of MEA development – expansion on substantive & geographical scope and broader involvement of international community as a whole by main focus still on regional approach.
- 1980s: 40 MEAs – new expansion of scope of multilateral law making to address global environmental threats.
- 1990s: 75 MEAs – post-Rio-law making effort

Source: www.joensuu.fi/unep/envlaw/materi2004/pallemaerts1.ppt

this goal. However, till now India is found to be lacking in sound management of its wildlife trade. There is huge disparity and lack of coordination between the MoEF and Ministry of Commerce (MoC).

Besides, limited number of staff working in the regional and sub-regional offices of the MoEF also affects the implementation process. For example, there are hardly 15 staff or so attending to the implementation of CITES while it is estimated that more than 4,000 vacancies of the forest guards exist. The officials are poorly trained and lack vital support systems, which has given rise to a rapid increase in number of illegal cases of wildlife trade taking place through porous international borders. In fact, the country is seen as a source for the

flourishing illegal trade in wildlife products, estimated worldwide to be US\$12bn.

The problem of limited staff has also led to the lack of progressive international action at CITES Conference of Parties (CoP). The MoEF has no dedicated CITES Cell to follow up the submissions made in the CoPs and to properly attend to communications from the CITES Secretariat. Furthermore, there is a concern that India has been defaulting in terms of the 10 years review of many species in the appendices of CITES, especially only 1.3 percent of the total listed species available in India is listed under the CITES appendices.

In early 2005, CITES temporarily suspended India

on the grounds that the country had failed to adopt required CITES legislation or submitted an adequate legislative plan.

Montreal Protocol, 1987

India signed the Montreal Protocol along with its London Amendment on September 17, 1992, and also ratified the Copenhagen (1992), Montreal (1997) and Beijing (1999) Amendments on March 03, 2003. It should be noted that India is the second largest producer of chlorofluorocarbons (CFCs), an ozone depleting substance (ODS), only second to China.

The MoEF was entrusted with the responsibility to ozone layer protection and implementation of the Montreal Protocol, including all matters relating to the Protocol.

When compared to other MEAs India was successful in complying with the international obligations under this Protocol through a combination of awareness campaign by the National Ozone Unit, investment and non-investment projects and policy measures. As a result of this package of activities, India has been able to fulfil its obligation of freezing ODS consumption by July 1999 as required under the Protocol. As per the Protocol, Indian plants producing CFCs will have to completely phase out its manufacture by the year 2010.

For this purpose, India received technical and financial assistance from the Multilateral Fund amounting to more than US\$120mn. Indian industry continues to play a proactive role in complementing national ODS phase out efforts. Many exporters have transferred to CFC-free manufacture with the incentive of greater sales in growing export markets. However, very little effort was made to train Ozone Officers and their high turnover was always ignored.

Basel Convention, 1989

India signed the Basel Convention in March 1990 and ratified it in June 1992. However, prior to the ratification of the Basel Convention, India had enacted the Hazardous Waste (Management and Handling) Rules 1989, which not only controlled the handling, treatment, transport and disposal of hazardous waste but also checked the import of hazardous wastes to the country.

However, the Rules, 1989 as well as its implementation of the rules are imperfect till date, as the concerned authorities hardly pay attention in implementing it. While the Basel Convention bans import of 76 items, the Rules, 1989 bans just 29 items.

Similarly, there are only four officers responsible for overseeing the implementation of the Rules throughout the country, who are responsible for formulation and implementation of new policies concerning management of these hazardous wastes, besides representing the Government at the Basel negotiations.

Box 2: Major MEAs to which India is a Signatory

- Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973
- Montreal Protocol on Substances that Deplete the Ozone Layer (to the Vienna Convention for the Protection of the Ozone Layer), 1987
- Basel Convention on Trans-boundary Movement of Hazardous Wastes, 1989
- United Nations Framework Convention on Climate Change, 1992
- Convention on Biological Diversity, 1992
- United Nations Convention on Desertification, 1994
- International Tropical Timber Agreement, 1994
- Convention on Wetlands of International Importance, 1971 (Ramsar Convention)
- Convention on Migratory Species, 1999 (Bonn Convention)

In addition these officers also have responsibilities other than hazardous wastes within the Ministry.

Moreover, there is a lack of clear guidelines for all the agencies concerned. The Customs, the state and Central Pollution Control Boards, the Directorate-General of Factory Advice Service and Labour Institutes (the agency entrusted with the task of ensuring safety on the docks at the major ports) and the port trusts have to be involved in implementing the ban. A close coordination among these agencies is very much needed for the effective implementation.

Cartagena Protocol, 2000

India ratified this Protocol on January 17, 2003. The Protocol fundamentally pertains to the trade of living modified organisms (LMOs: a more specific version of Genetically Modified Organisms [GMOs]). With the purpose of facilitating the exchange of scientific, technical, environmental and legal information on LMOs, in line with Article 20 of the Protocol, India Biosafety Clearing House was established.

Though India took an ambiguous stand on compliance, it has never been supportive of a strong compliance mechanism, because of the perception that the country would one day be an exporter of GM products and therefore would not want to confront a rigorous compliance regime. Also, India, being a vast and diverse country, needs additional cooperation and financial resources for implementing the Protocol and harmonising it with domestic and international biosafety regulations.

The WTO negotiations address Article I of the Protocol, which targets the 'trans-boundary movement' of LMOs to fulfil the objective of its safe transfer, handling and use. Many of the rules enacted in the Protocol relate to conditions where parties can restrict imports of LMOs. This raises the issue of conflict with WTO agreements, which aim to curb trade protectionism.

UN Framework Convention on Climate Change, 1992

This Convention represents the international consensus on how to deal with climate change. India ratified the same on November 01, 1993. Even though the international community has made

promises for technology transfer and additional financing since Rio Summit, this has not resulted in any effective outcome. Critical technologies, which can have significant impact on decarbonisation, have been out of reach of developing countries because of both prohibitive costs and the existing IPR regime. Moreover, there is no particular or comprehensive legislation in India to deal with climate change.

Convention on Wetlands of International Importance, 1971

By signing this Convention in 1981, India is obliged to have at least one wetland listed as being a Ramsar site, with a commitment to maintaining its conservation and wise use. So far, India has designated 25 wetland sites of international importance as Ramsar Sites.

However, the wetlands do face the tragedy of commons. This is apparent from the present quality and sharp decline in their numbers. The *raison d'être* for this state is the lack of coordination among many agencies involved in the management. Effective coordination between the different ministries, like energy, industry, fisheries revenue, agriculture, transport and water resources, is essential for the protection of these ecosystems.

The country still has no specific legal measures geared to the implementation of the Convention while laws on environmental conservation apply to wetlands and their management, which are ineffective as far as the protection or conservation of aquatic ecosystems is concerned.

Similarly, though National Committees for Wetlands and Mangroves were constituted in 1988, which later amalgamated into a single Committee for Wetlands, Mangroves and Coral Reefs in 1992, their functioning is irregular and is apparently rarely of a substantive nature.

Box 3: Major Controversies

In 2005, Indian Government with support from the Supreme Court Monitoring Committee, in flagrant violation of both Basel Convention and the Supreme Court's October 2003 order, allowed beaching and dismantling of the 51-year-old ailing ship 'Riky' despite repeated diplomatic recall requests from Denmark. The Supreme Court had prohibited the import of hazardous wastes in an order on 14 October 2003.

In 2005, the French aircraft carrier *Le Clemenceau* was allowed to enter Indian waters laden with toxic substances, till the French Government recalled the ship from the high seas under intense public pressure and legal actions in the French courts.

In June 2005, on an ironical commemoration of the World Environment Day, the Supreme Court of India went against its own 2003 ruling, prohibiting import of hazardous wastes by permitting the *Blue Lady* to enter India on non-legal grounds.

REQUIRED POLICY ACTIONS

Following are some policy actions needed for effective implementation of the MEAs:

- Increasing awareness among decision makers and the general public on the MEAs;
- Enhancing capacity building of national institutions and local officers through training and technology development;
- Addressing financial needs by securing finance from different sources;
- Instituting an intra-regional mechanism for implementing programmes related to the MEAs;
- Ensuring the effective involvement of country experts on MEA negotiations; and
- Translating MEAs into regional languages for proper understanding of their texts.

ISSUES FOR DISCUSSION

Some of the major issues related to MEAs, which are to be discussed, are outlined below:

- ◆ What can the government do to enhance national implementation of MEAs?
- ◆ What measures should the government take to ensure that there is coordination between the MoC and the MoEF in relation to trade related-environmental issues?
- ◆ How can an effective monitoring system be put in place to keep track of all imports concerning hazardous wastes and chemicals? Should there be an expansion in the list of 29 banned products in the Hazardous Waste (Management and Handling) Rules 1989?
- ◆ What are the steps that government need to take to prevent repeating incidents like the *Ricky, Clemenceau & Blue Lady*?
- ◆ How can India develop its environmentally sound recycling technology in industries, including capacity and resource strengthening of our negotiators to persuade developed country governments to provide more funding and technical assistance in this regard?
- ◆ How can the authorities be made responsible and accountable for effective implementation of an MEA? Should environmental organisations be resourced to perform the role of a watchdog?
- ◆ How can the government address the crucial issues like lack of financial and professional capacity of the country to meet with the obligations addressed in a MEA?
- ◆ Is there a need for setting up separate environmental courts due to the growing environmental degradation and the increase in failure to enforce regulations?
- ◆ What can the government do to ensure that there is an adequate participation of stakeholders and general public in the negotiation of MEAs?

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