

Relevance of Montreal Protocol in the Contemporary Debates on the Use of Refrigerants

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Summary

The Montreal Protocol has been regarded as the most of effective international treaty mechanism of all time and it has been successful in handling the question of ozone depletion with the help of mechanisms like Multilateral Fund.

The Montreal Protocol (MP), which came into effect in 1989, deals with the elimination of substances that lead to the depletion of the ozone layer. The MP has been widely hailed as the most successful international treaty of all time and through mechanisms such as the Multilateral Fund, it has been able to tackle the problem of ozone depleting substances effectively. Under the MP, the decision was taken to phase out harmful chlorofluorocarbons (CFCs) which were widely used as refrigerants and replace them with hydroflourocarbons (HFCs) which did not affect the ozone layer. Most of the developed world has already implemented this transition. It was only because the rich countries had to phase their chemicals out and then followed by the developing countries.

Meanwhile, the developing world, having made a first transition to relatively less expensive hydrochloroflourocarbons (HCFCs), is slated to start making the switch to HFCs during 2013-2030. However, HFC is a greenhouse gas, capable of further adding to the worldwide warming effect. In fact, it is widely known as a 'super greenhouse gas', which is 3,830 times more potent than carbon dioxide and has a lifetime of 14 years. Curbing emissions of carbon dioxide remains today's priority to counter the climate change phenomenon. The resultant effect of the developing world's vast, emerging market shifting to HFCs would therefore pose a new challenge to tackling climate change. Hence, the pressure is mounting on the developing world, particularly, the large developing countries such as India, to switch directly to newer generation gases, which have neither a GHG nor an ozone depleting effect.

While the claim seems fair at the outset, a deeper look throws light on the more contentious issues. First, HFCs are one of the six greenhouse gases covered under the ambit of the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol (KP), which comes under it. As such, the developing world wants any move to transition away from HFCs to be brought under the UNFCCC framework. This policy line is in direct opposition to the wishes of the developed world, particularly the European Union and the USA, who have voiced their belief that the success of the MP makes it the perfect mechanism to deal with the issue. The EU raised the issue at the climate change negotiations in Bonn this June. It again came up for extensive discussion in Bangkok during the summer review meetings of the MP where the North American proposal received particular attention.

Second, the new generation refrigerant gases being touted by the USA as alternatives for HFCs are patented by few multinational companies in the Western world, most of them American. Hence, agreeing to a transition to these gases would ensure a mostly American-led monopoly of the refrigerant gases business - one which has huge potential given soaring global temperatures. Private American companies such as DuPont have already reaped benefits when the initial transitions to HCFCs and HFCs by the developing and developed world respectively were implemented. Now, a move to newer-generation gases would in the same manner benefit large multinationals, active in lobbying the American Congress and who hold patent rights over those products.

Third, and most crucially, the financial mechanism under the MP is far less stringent when it comes to technology transfer and the

possibility of additional funds being sanctioned than the UNFCCC. This in itself is the sole failing of the MP when it comes to such large-scale, prolonged transitions, as the one India would have to make. If the issue of transition past the HFC stage is discussed and implemented under the MP, it would further generate technological dependence in the developing world. The argument in favour of bringing the issue under the MP framework is primarily the UNFCCC's perceived lack of effect in reaching to a consensus regarding tackling global greenhouse gas emission. However, as Brazil has made clear recently, the lack of financial assurances from the developed world, regarding how the transition to new-generation gases would be funded, is a major stumbling block as far as creating political consensus is concerned.

India's Probable Responses

The Government of India has consistently maintained that any discussion on HFCs being bypassed must be discussed under the norms set out in the UNFCCC. However, Prime Minister Manmohan Singh's signing of the G20 Communique in St Petersburg encouraging transition to newer technology bypassing HFCs has left the nation open to pressures from the US. The matter came up again in late September 2013 when Prime Minister Singh met President Obama in Washington where the setting up of an Indo-US Task Force on HFCs was contemplated. The onus now is on the Indian Prime Minister and his cabinet to reverse the lost momentum.

Succumbing to the American pressure in this matter will represent not only a financial loss but also a strategic one. India's defence forces, primarily submarines and aircrafts, make use of these refrigerants extensively. If India were to follow through on a transition to

patented, costly alternatives to HFCs, the cost of indigenous production and maintenance would go up. Further, it also throws up the danger of what would happen if there were a freeze of supply of refrigerants. In 66 years of independence, India has already faced the effect of crippling economic and technological sanctions more than once and implications of such scenario are well known.

India should use the current impasse to highlight its desired role as a leader of the developing world. With China and USA signing an agreement to transition away from HFCs, the onus is now on India. Although India, USA, Mexico, Canada, China, Brazil, South Africa and Micronesia set up an HFC 'discussion group' during the Bangkok session of the MP in June, the focus should be on ensuring a favourable outcome for the developing world. Options should be explored to establish a connection between the MP and UNFCCC frameworks (as says the third mandate of the HFC discussion group) particularly regarding financial aspects.

It is of paramount importance that India manages to acquire maximum technology transfer in this crucial matter. The MP, UNFCCC and the WTO patent norms are all made and shaped largely by the worldview of the West. If amendments to a few of those norms need to be made, the onus is on the developed world to ensure they are done for the benefit of all, instead of asking developing countries to take the fall every time.

If the West continues to level allegations suggesting that it is the pressure from industries in the developing world that is standing in the way of effective decision making, India should respond in no uncertain terms that it is only the business interests of American patent holding corporations that is forcing the US government to push for

clubbing HFCs under the MP instead of the UNFCCC as is already laid down. It shall not be forgotten that the US remains a member of the UNFCCC. India should also maintain that it is willing to transition straight from HCFCs to the latest generation of gases as long as the developed world agrees to this being redressed under the financial and technology sharing mechanism of the UNFCCC. If the US is trying to push the onus of acting on climate change onto the developing world, India should send the ball right back into its court. It is high time that the developing world led by the major powers made a concerted effort to realise the interests of the international community.