



**United Nations
Environment
Programme**

Distr.: General
30 March 2010

Original: English

**Intergovernmental negotiating committee
to prepare a global legally binding
instrument on mercury**

First session

Stockholm, 7–11 June 2010

Item 4 of the provisional agenda*

**Preparation of a global legally binding
instrument on mercury**

**Effectiveness evaluation in other conventions and possible
approaches to establishing baselines**

Note by the secretariat

Introduction

1. At its meeting held in Bangkok from 19 to 23 October 2009, the ad hoc open-ended working group to prepare for the intergovernmental negotiating committee on mercury agreed on a list of information that the secretariat would provide to the committee at its first session to facilitate the committee's work. Among other things, the secretariat was requested to provide information on effectiveness evaluation arrangements in other conventions and possible approaches to establishing baselines. The present note responds to that request.
2. The present note sets out information on a number of global and regional multilateral environmental agreements. It discusses briefly the contributions that effectiveness evaluation can make to such agreements and the various components of effectiveness evaluation arrangements and their contribution to the success of multilateral environmental agreements in achieving their goals. It also discusses why a baseline may need to be established for the mercury instrument to be developed, how baselines have been established under a number of multilateral environmental agreements and whether it was necessary to revise them after they were adopted. Based on that information, the note then discusses possible options for effectiveness evaluation for the mercury instrument to be developed.
3. For the purposes of the present note the term "effectiveness" is considered to be the extent to which a multilateral environmental agreement is accomplishing its objectives, in particular whether it is solving the environmental problem that it was intended to address. Effectiveness is thus a question of the performance of the agreement as a whole rather than the performance of individual parties.

* UNEP(DTIE)/Hg/INC.1/1.

Effectiveness can be influenced by many factors, such as how ambitious an agreement's provisions are and how clearly they are stated; how broad participation in the agreement is and whether its parties include major contributors to the problem that it addresses; the extent to which financial and technical assistance is provided to help parties to comply with their commitments; the overall level of compliance achieved by all parties; and other factors. It is important to note that a high level of compliance with an agreement may not be effective in addressing the environmental problem that the agreement is intended to address if the objectives of the agreement and the obligations imposed on parties are insufficiently ambitious.

4. A "baseline", as used in the present note and in relevant multilateral environmental agreements, is an estimate of actual levels of emissions, releases, use or trade of a given substance in a particular year, at a particular point in time or over a particular period of time, against which future levels of such emissions, releases, use or trade are measured. Baselines are calculated using the best currently available information and data. Of necessity, gaps in such information and data impair the accuracy of baselines; for that reason, parties to a multilateral agreement, subject to any conditions that they may deem appropriate, may provide for baselines to be revised in the light of additional information and data that were not available or considered at the time the baselines were established.

I. Need for effectiveness evaluation

5. In establishing a multilateral environmental agreement, States generally agree on one or more objectives to be achieved. Effectiveness evaluation enables an assessment of the success of activities undertaken in working towards the achievement of those objectives. For example, the Scientific Assessment Panel of the Montreal Protocol on Substances that Deplete the Ozone Layer produces regular reports on progress in achieving the Protocol's objectives. The latest such report, produced in 2006,¹ concluded that global ozone levels were not at that time declining as they had been from the late 1970s to the mid-1990s and that some increases in ozone levels had been observed. Those improvements in the ozone layer, the report said, had occurred during a period in which stratospheric halogen abundances had reached their peak and begun to decline, a fact that demonstrated the success of the Montreal Protocol in controlling the global production and consumption of ozone-depleting substances.

6. Highlighting the effectiveness of particular activities within an agreement may result in a greater willingness on the part of donors to fund such activities.

II. Components contributing to effectiveness evaluation arrangements in other conventions

7. Some multilateral environmental agreements, such as the Stockholm Convention on Persistent Organic Pollutants, include provisions for effectiveness evaluation. Paragraph 1 of article 16 of the Stockholm Convention provides as follows:

Commencing four years after the date of entry into force of this Convention, and periodically thereafter at intervals to be decided by the Conference of the Parties, the Conference shall evaluate the effectiveness of this Convention.

8. Article 16 goes on to provide that at its first meeting the Conference of the Parties should establish arrangements for the collection of monitoring data on the presence and regional and global transport of the chemicals covered by the Convention. It also calls for party reporting as a means of providing some of the information required for the evaluation of the effectiveness of the Convention. This party reporting requirement is in addition to the reporting requirements set out in article 15 of the Convention, which relate to information on the production, import and export of the chemicals covered by the Convention and measures taken to implement the Convention.

9. Other multilateral environmental agreements, such as the Montreal Protocol, also require parties to submit reports, including initial reports to be provided within three months of becoming a party and annual reports in respect of particular substances. While such reports are not called for with effectiveness evaluation in mind they nevertheless provide data that are key to its success.

1 "Scientific Assessment of Ozone Depletion: 2006", chap. 6, p. 6.1, available online at http://ozone.unep.org/Assessment_Panels/SAP/Scientific_Assessment_2006/index.shtml.

10. Some multilateral environmental agreements, such as the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, do not impose formal reporting requirements on parties. The Rotterdam Convention, however, does require parties to submit information on a number of subjects to the secretariat. Thus each party is required to notify the secretariat whenever it takes action to ban or severely restrict a pesticide or industrial chemical for health or environment reasons and to submit information regarding whether it will allow future imports of substances included in Annex III to the Convention.

11. Such information has made it possible for the secretariat to produce, at the request of the Conference of the Parties, regular reports on the status of implementation of the Convention by parties. Those reports allow a general assessment of the effectiveness of certain activities under the Convention, while imposing a minimal burden upon parties. It should be recalled, however, that the objectives of the Convention focus on the protection of human health and the environment from potential harm. National reporting on the import and export of substances covered by the Convention may be of limited use in assessing how well those objectives are being met, as a change in the quantity of chemicals being imported or exported may not be directly correlated with the protection of human health or the environment in the absence of effective measures to ensure that they are being sustainably managed in a safe and environmentally sound manner. National reporting on such matters as the development of chemicals management schemes, the enforcement of conditions of registration or the incidence of adverse experiences with the use of pesticides covered by the Convention might provide more valuable information with regard to the implementation of the Convention and its effectiveness.

III. Need for a baseline

12. A number of multilateral environmental agreements require the establishment of baselines against which to measure party performance. Paragraph 1 of article 3 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, for example, provides as follows:

The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.

13. The Kyoto Protocol establishes a mechanism for determining the baseline referred to in article 3, which is based upon data submitted by the parties listed in annex I to the Protocol. The reported data are used to establish for each party its level of carbon stocks in 1990 and to enable an estimate to be made of changes in those stocks in subsequent years.

14. The Montreal Protocol makes extensive use of baselines in respect of the production and consumption of ozone-depleting substances, with the aim of progressively decreasing permitted levels of production and consumption. For example, article 2A of the Protocol provides for progressive reductions in the production and consumption of chlorofluorocarbons by limiting them to percentages of the baseline production and consumption levels for those substances, which it defines as the level of production and consumption in 1986. The percentages apply to stated periods of time and decline over time, eventually reaching zero. Similar baselines exist for the other substances controlled under the Protocol.

15. Other conventions that control the use of certain substances, such as the Stockholm Convention, do not rely as heavily on the use of baselines. Thus, article 3 of the Stockholm Convention, which sets out measures to reduce or eliminate releases from intentional production and use, provides as follows:

Each Party shall:

- (a) Prohibit and/or take the legal and administrative measures necessary to eliminate:
 - (i) Its production and use of the chemicals listed in Annex A subject to the provisions of that Annex; and
 - (ii) Its import and export of the chemicals listed in Annex A in accordance with the provisions of paragraph 2; and

(b) Restrict its production and use of the chemicals listed in Annex B in accordance with the provisions of that Annex.

16. Given that article 3 requires is simply action to eliminate the production, use, import and export of specified chemicals, a baseline is not essential. A baseline might provide useful information and facilitate the monitoring of progress towards elimination, which could in turn facilitate party access to funding or other assistance contingent upon continuing, measurable progress towards achieving the objectives of the Convention. A baseline is not, however, necessary for compliance with the basic obligation imposed by the article.

IV. Options for the mercury agreement

17. Based on the above cases, it can be seen that a number of ways to approach effectiveness evaluation have been used in other multilateral environmental agreements. The most appropriate mechanism will depend on the provisions included in any mercury instrument developed by the intergovernmental negotiating committee; a detailed discussion of options is therefore not included here at the present stage. In general terms, however, options include:

(a) Inclusion of mechanisms for reporting, monitoring, effectiveness evaluation and the establishment of a baseline in the text of the mercury instrument to be adopted;

(b) Inclusion of only some of the mechanisms indicated above in the text of the instrument, with the instrument's governing body given the responsibility to develop other relevant mechanisms;

(c) Inclusion of provisions in the instrument to establish a process by which the secretariat would prepare periodic reports to the governing body on progress in implementation.

18. In considering the need for a mechanism for effectiveness evaluation for the mercury instrument, in addition to the best options for such an evaluation, the intergovernmental negotiating committee may wish to consider the types of obligations that it wishes to establish in the mercury instrument, the reporting requirements relating to those obligations and the mechanism for their implementation. It may also wish to consider the interaction between effectiveness evaluation and compliance mechanisms.
