
Translated from Spanish

Permanent Mission of Cuba to the United Nations

NV/9/2015

The Permanent Mission of Cuba to the United Nations presents its compliments to the Office of the Secretary-General of the United Nations and has the honour to transmit herewith a note verbale setting forth the comments of Cuba on the topic “Protection of the atmosphere” considered in the report of the International Law Commission (A/69/10), in which the said Commission requests States to provide relevant information, by 31 January 2015, on domestic legislation and the judicial decisions of the domestic courts in relation to that topic.

In this regard, the Republic of Cuba wishes to state that the domestic legislation incorporating elements related to the topic in question is set forth below. No related court decisions are provided.

National legislation relating to the topic of protection of the atmosphere:

1. Article 27 of the Constitution of the Republic of Cuba stipulates that citizens have a duty to care for the atmosphere.

2. Title VI, chapter VII, of Act No. 81 (the Environment Act) regulates protection of the atmosphere. Its provisions have been implemented by means of the following decisions issued by the Minister of Science, Technology and the Environment of the Republic of Cuba, covering the implementation of the Montreal Protocol throughout the country, and relating to the protection of the ozone layer:

(a) Decision No. 29 of 2004 establishing a national programme entitled “Voluntary Declaration for the Protection of the Ozone Layer”;

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(b) Decision No. 107 of 2004 banning the deliberate release into the atmosphere of substances that deplete the ozone layer in the refrigeration sector, and stipulating that said substances must be recovered, and then recycled or destroyed, during the inspection, maintenance and repair of refrigeration equipment or before it is taken apart or dismantled, by means of generally accepted environmentally friendly methods;

(c) Decision No. 116 of 2005 updating the national time frame for controlling substances that deplete the ozone layer;

(d) Decision No. 126 of 2012 adopting the national programme for the elimination of hydrochlorofluorocarbons (HCFCs) 2012-2030 and the plan for the elimination of hydrochlorofluorocarbons (HCFCs);

(e) Decision No. 127 of 2012 updating the national time frame for controlling substances that deplete the ozone layer;

(f) Decision No. 132 of 2009 stipulating that the prevailing technical air quality and atmospheric emissions standards must be applied in environmental impact assessment processes;

3. Legislative Decree No. 200 of 1999 on environmental offences, article 12 of which establishes offences relating to the protection of the atmosphere.

4. The Penal Code (Act No. 62), article 194.1(c) of which defines the failure to comply with regulations on the protection of the atmosphere as an offence.

The Permanent Mission of Cuba to the United Nations also wishes to draw attention to the annex to the present note verbale, which comprises the full texts of the aforementioned Cuban legislation, and to the enclosed digital medium (CD) containing the full texts of the decisions issued by the Minister of Science, Technology and the Environment of the Republic of Cuba.

The Permanent Mission of Cuba to the United Nations takes this opportunity to convey to the Office of the Secretary-General of the United Nations the renewed assurances of its highest consideration.

New York, 3 February 2015

- Article 27 of the Constitution of the Republic of Cuba stipulates that citizens have a duty to care for the atmosphere.

Article 27: The State shall protect the country's environment and natural resources. It shall recognize their close linkage with sustainable economic and social development for the purpose of making human life more rational and ensuring the survival, well-being and safety of current and future generations. The competent organs shall implement this policy. Citizens have a duty to contribute to the protection of water and the atmosphere, and to the preservation of the soil, flora, fauna and nature's rich bounty.

- Title VI, chapter VII of Act No. 81 (the Environment Act) regulates protection of the atmosphere. Its provisions have been implemented by means of the following decisions issued by the Minister of Science, Technology and the Environment of the Republic of Cuba, covering the implementation of the Montreal Protocol throughout the country, and relating to the protection of the ozone layer:

Chapter VII: Atmosphere

Article 118: The bodies and organs responsible for protection of, or whose activities affect, the atmosphere shall ensure that their actions are consistent with the following principles:

- (a) Ensuring that atmospheric pollution does not exceed the admissible levels of foreign substances under established standards;
- (b) Reducing and controlling the release of pollutants into the atmosphere from artificial or natural sources, whether stationary or mobile, so as to ensure that air quality complies with regulatory standards, for the purpose of protecting the environment and, in particular, human health, and fulfilling the country's international commitments.

Article 119: The Ministry of Science, Technology and the Environment, in coordination with the Ministry of Public Health and other relevant bodies and organs, shall establish or propose, as appropriate, and ensure compliance with, provisions relating to:

- (a) Air quality;

(b) Admissible levels for the concentration of substances in isolation or in combination and particles capable of harming, damaging or causing deterioration in goods or the health of persons, animals or plants;

(c) Bans, restrictions and requirements relating to technological processes and imports of technologies, with regard to gas and particle emissions, including those that damage the ozone layer or cause climate change;

(d) Technical standards for setting up, operating and maintaining systems for monitoring air quality and pollutant sources;

(e) Preparation of an inventory and up-to-date register of stationary sources of pollution and assessment of their emissions;

(f) Preventive and corrective measures in the event of environmental contingencies resulting from atmospheric pollution;

(g) Establishment of promotional systems and economic incentives for stimulating activities that use technologies and fuels that substantially reduce, modify or eliminate the release of pollutants into the atmosphere;

(h) Specific aspects suitable for implementing the corresponding sanctions regime;

(i) Any other standards that are considered suitable for achieving the goals of the present Act.

- Decision No. 29 of 2004 establishing a national programme entitled “Voluntary Declaration for the Protection of the Ozone Layer” (see enclosed CD)
- Decision No. 107 of 2004 banning the deliberate release into the atmosphere of substances that deplete the ozone layer in the refrigeration sector, and stipulating that said substances must be recovered, and then recycled or destroyed, during the inspection, maintenance and repair of refrigeration equipment or before it is taken apart or dismantled, by means of generally accepted environmentally friendly methods (see enclosed CD)
- Decision No. 116 of 2005 updating the national time frame for controlling substances that deplete the ozone layer (see enclosed CD)
- Decision No. 126 of 2012 adopting the national programme for the elimination of hydrochlorofluorocarbons (HCFCs) 2012-2030 and the plan for the elimination of hydrochlorofluorocarbons (HCFCs) (see enclosed CD)

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- Decision No. 127 of 2012 updating the national time frame for controlling substances that deplete the ozone layer (see enclosed CD)
 - Decision No. 132 of 2009 stipulating that the prevailing technical air quality and atmospheric emissions standards must be applied in environmental impact assessment processes (see enclosed CD)
 - Legislative Decree No. 200 of 1999 on environmental offences, article 12 of which establishes offences relating to the protection of the atmosphere

Article 12: The following are deemed offences relating to the protection of the atmosphere and fines shall be imposed as established for each case:

(a) violating technical regulations governing air quality and the admissible levels of foreign substances, 200 pesos and 5,000 pesos;¹ and

(b) failing to carry out prescribed measures for recovering, regenerating, recycling and destroying potentially ozone-depleting refrigerants, 250 pesos and 2,250 pesos.¹

- The Penal Code (Act No. 62), article 194.1 (c) of which defines the failure to comply with regulations on the protection of the atmosphere as an offence.

Section 5: Water and atmospheric pollution. Article 194.1. The penalty is three months to one year of incarceration and/or a fine of 100 to 300 times the minimum wage for: (c) failing to comply with legal provisions on the prevention of atmospheric pollution by gases, substances or any other material that is harmful for health and released by industrial or other facilities or sources.

¹ Translator's note: According to article 4.1 of Legislative Decree No. 200 of 1999, the first value is the fine applicable to an individual and the second is the fine applicable to a legal entity.