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Conference of Plenipotentiaries on the
Protocol on ~~Chlorofluorocarbons~~ to the
Vienna Convention for the Protection of
the Ozone Layer

Ozone - Depleting
Substances

Montreal, 14-16 September 1987

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Seventh Revised Draft Protocol on [Chlorofluorocarbons]
[and Other Ozone-Depleting Substances]

SEVENTH REVISED DRAFT PROTOCOL ON [CHLOROFLUOROCARBONS]
[AND OTHER OZONE DEPLETING SUBSTANCES]*

PREAMBLE

Being Parties to the Vienna Convention for the Protection of the Ozone Layer, adopted at Vienna on 22nd March 1985,

Mindful of their obligation under that Convention to take appropriate measures to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer,

Recognizing the possibility that world-wide emissions of fully halogenated chlorofluorocarbons can significantly deplete and otherwise modify the ozone layer, which is likely to result in adverse effects on human health and the environment,

Recognizing also the potential climatic effects of chlorofluorocarbons emissions,

Determined to protect the ozone layer by taking precautionary measures to control total global emissions of chlorofluorocarbons,

Mindful of the precautionary measures for controlling emissions of chlorofluorocarbons that have already been taken at the national and regional levels,

Aware that measures taken to protect the ozone layer from modifications due to the use of chlorofluorocarbons should be based on relevant scientific and technical considerations,

Mindful that special provision needs to be made in regard to the production and use of chlorofluorocarbons for the needs of developing countries and low-consuming countries,

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* Draft prepared by the Legal Drafting Group during its meeting in The Hague 6-9 July 1987 on the basis of the Sixth Revised Draft Protocol on Chlorofluorocarbons, Vienna, 27 February 1987 (UNEP/WG.167/2, Annex 1), together with Articles proposed at the Third Session of the Ad hoc Working Group of Legal and Technical Experts for the Preparation of a Protocol on Chlorofluorocarbons to the Vienna Convention for the Protection of the Ozone Layer (Vienna Group), Geneva 27-30 April 1987 (UNEP/WG.172/2) and taking into account the results of Brussels, 29-30 June 1987, and Geneva, 1-4 July 1987, ~~and~~ informal consultations.

Considering the importance of promoting international co-operation in the research and development of science and technology on the control and reduction of chlorofluorocarbons emissions, bearing in mind, in particular, the needs of developing countries and low-consuming countries,

HAVE AGREED AS FOLLOWS:

ARTICLE ¹I: DEFINITIONS

For the purposes of this Protocol:,

1. "Convention" means the Vienna Convention for the Protection of the Ozone Layer, adopted at Vienna on 22nd March 1985;
2. "Parties" means, unless the text otherwise indicates, Parties to this Protocol;
3. "Secretariat" means the secretariat of the Convention;
- [4. "Chlorofluorocarbon" or "CFC" means any fully halogenated chlorofluoroalkane.]
5. "Controlled substance" means a substance listed in Annex A to this Protocol, whether existing along or together with any other substance, but does not include a product or a mixture where the substance listed in Annex A constitutes less than [20] percent, by weight or volume, of the product or mixture.
6. "Production" means the amount of controlled substances produced minus the amount destroyed by techniques approved by the Parties.
7. "Consumption" means production plus imports minus exports of controlled substances.

ARTICLE 2: CONTROL MEASURES^{1/}

1. Each party shall ensure that within one year of the entry into force of this Protocol, production in and imports into its jurisdiction of the controlled substances do not exceed the level of production and the level of imports respectively in 1986. This paragraph shall remain in effect until four years after the entry into force of this Protocol^{2/}.

X [2. Each party shall ensure that within three years of the entry into force of this Protocol, production in and imports into its jurisdiction of Halons 1211 and 1301 do not exceed the level of production and the level of imports respectively in 1986]^{3/}. of

1/ All of the figures in this Article, whether or not in square brackets, were inserted by the Executive Director after his informal consultations in Brussels, 29-30 June. The structure of the draft text was prepared by the Legal Drafting Group, which was mandated to deal with "outstanding legal and institutional matters".

X 2/ In the opinion of the Legal Drafting Group, the formulation of paragraph 1, 2 and 3 does not make it sufficiently clear how the control measures are to apply to States which became Parties to the Protocol after its entry into force. This question could be dealt with by adding a paragraph, at an appropriate place in the Protocol, along the following lines: "Any State or regional economic integration organization which becomes a Party to this Protocol after its entry into force, shall fulfil forthwith the sum of the obligations under Article 2, subject to Article 5, that apply at the date to the States and regional economic integration organization⁵ that became Parties on the date the Protocol entered into force".

X 3/ The Legal Drafting Group did not attempt to revise the formulation of Article 2 paragraph 2. Questions remain regarding whether and, if so, how Halons should be dealt with the Protocol. For example, should the control measures which apply to CFCs apply to Halons also? An alternative to this paragraph in the form of a resolution of the Montreal Conference has been proposed as follows:

Recognizing that there is serious concern about the likely adverse effects on the ozone layer of Halons 1211 and 1301, and that there is a need for more data and information regarding their use, emission rates and ozone depleting potential,

Alternative 1

[Decides that these compounds shall be frozen at their 1986 production levels within the scope of the Protocol, at the first meeting of the Parties following the first scientific review in 1990].

Alternative 2

X [Decides that a decision on the freeze of these compounds at their 1986 production levels, within the scope of the ~~Protocol~~, shall be made at the first meeting of the Parties to be held after the first scientific review in 1990.] Protocol

A question is also raised regarding whether the reference to the year 1990 in the first and second alternatives for the second paragraph of this draft resolution is correct. Article 6 suggests that perhaps the date for the first scientific review should be 1989.

3. Each party shall ensure that within four years of the entry into force of this Protocol, production and consumption in its jurisdiction of the controlled substances do not exceed eighty percent of the level of production and the level of consumption respectively in 1986.^{4/}

4. Each Party shall ensure that within [eight] [ten] years of the entry into force of this Protocol, production and consumption in its jurisdiction of the controlled substances do not exceed fifty percent of the level of production and the level of consumption respectively in 1986, unless the Parties decide otherwise by a two-thirds majority representing at least fifty percent of global consumption^{5/} of those substances in the light of the assessments referred to in Article 6. Such decision shall be taken not later than four years after entry into force of the Protocol.

5. Based on assessments made pursuant to Article 6, Parties shall decide by [two-thirds majority] [a majority] vote representing at least fifty percent of global consumption:

- (a) whether substances should be added to or removed from Annex A;
- (b) whether further reduction from 1986 levels should be undertaken with the objective of eventual elimination of production and consumption of the controlled substances except for uses for which no substitutes are commercially available.^{6/}

[6. Productions are permitted to transfer from one country to another if these transmissions are certain not to cause an increase of production.]^{7/}

4/ The Legal Drafting Group notes that in paragraph 3 and 4 of Article 2, the year "1986" is used as the base year for calculating production and consumption controls. However, the possibility of using "1990" as the base year for consumption controls was included as an option by the Formula sub-working group. If it is decided in Montreal to use 1990 as the base year for consumption controls, some re-drafting of these paragraphs will be necessary.

5/ The Legal Drafting Group notes that it would be unlikely that global consumption figures would be available since data would not necessarily be available from non-Parties. In Article 2 paragraphs 4 and 5 "total consumption of the Parties" could be substituted for "global consumption". See also Article ~~15~~ paragraph 1. 15

6/ The Legal Drafting Group notes that sub-paragraph (a) does not indicate what control measures should apply to substances to be added to Annex A. It further notes that paragraph 5 does not deal with the question of the entry into force of any changes to Annex A decided by the Parties. It is unclear whether changes adopted by majority vote are intended to bind all Parties, or whether the intent is that such changes would bind only Parties that have agreed to them.

7/ This paragraph, which originally appeared in the revised reduction formula developed by the Trade Group, was only briefly discussed by the Legal Drafting Group as it was realized that the idea behind this provision required further elaboration.

ARTICLE 3: CALCULATION OF CONTROL LEVELS

For the purposes of Articles [] each Party shall calculate its levels of:

- (a) production, imports, and exports of the controlled substances, by:
 - (i) multiplying its annual production, imports and exports of each controlled substance by the ozone depletion potential specified in Annex A; and
 - (ii) adding together the multiplication products from subparagraph (i);
- (b) ^c Consumption of the controlled substances, by adding together its levels of production and imports and ~~subtracting~~ its level of exports. *Subtracting*

ARTICLE 4: CONTROL OF TRADE WITH NON-PARTIES^{8/}

1. Within [one] year of the entry into force of this Protocol, each Party shall ban the import [and export] of the controlled substances from [or to] any State not Party to this Protocol.

2. Alternative 1

Shall Within [four] years of the entry into force of this Protocol, each Party ~~shall~~ ban imports of products identified in Annex B containing controlled substances from any State not Party to this Protocol. The Parties shall periodically review, and if necessary, amend Annex B].^{9/}

^{8/} Incorporates results of consultations of the Trade subgroup in Brussels, 29-30 June 1987. It was agreed by the group that the years in paragraphs 1 and 2 of this Article should be the same as the years used in paragraphs 1 and 3 of Article 2 respectively.

^{9/} There are a number of provisions in the draft text - see Article 2 paragraph 5 and Article 4 - where changes or amendments to Annexes and the adoption of new annexes are envisaged. It was not clear from the draft text what procedures were intended by the drafters for the adoption of such changes. The Convention provides procedures for the amendment and adoption of annexes and for amendments to Protocols. (See Articles 9 and 10 of the Convention). The Legal Drafting Group noted that Article 10 paragraph 1 of the Convention provides that annexes "shall be restricted to scientific, technical and administrative matters", and it would be up to the meeting in Montreal to decide whether the proposed annexes are of that character; or indeed whether these matters could be dealt with in the main body of the Protocol or could be considered as part of the normal implementation of the Protocol. There was also discussion among the legal experts as to, inter alia, if ~~the~~ procedures other than those specifically provided for in the Convention are adopted by the Parties, how far they can vary from the Convention provisions on this point. These issues should be addressed in Montreal.

Alternative 2

[Within [four] years of the entry into force of this Protocol, each Party shall ban or restrict imports of products containing controlled substances from any State not Party to this Protocol. At least one year prior to the time such measures take effect the Parties shall elaborate in an annex a list of the products to be banned or restricted and standards for applying such measures uniformly by all Parties].

3. Within [four-six] years of the entry into force of this Protocol, the Parties shall determine the feasibility of banning or restricting imports of products produced with controlled substances from any State not Party to this Protocol. If determined feasible, the Parties shall ban or restrict such products and elaborate in an annex a list of the products to be banned or restricted and standards for applying such measures uniformly by the Parties.

4. Each Party shall discourage the export of technology to any State not Party to this Protocol for producing and using the controlled substances.

5. Parties shall not conclude new agreements to provide to States not Party to this Protocol bilateral or multilateral subsidies, aid, credits, guarantees or insurance programmes for the export of products, equipment, plants or technology for producing the controlled substances.

6. The provisions of paragraphs 4 and 5 shall not apply to products, equipment, plants or technology which improve the containment, recovery, recycling or destruction of the controlled substances, or otherwise contribute to the reduction of emissions of these substances.

7. Notwithstanding the provisions of this Article, imports referred to in paragraphs 1, 2 and 3 may be permitted from any [State not Party] [signatory] to this Protocol for a period not to exceed [two] [three] years from entry into force of the Protocol if that State is in full compliance with Article 2 and this Article and has submitted data to that effect, as specified in Article 7. [Extension of the exemption period beyond 2-3 years shall be granted by Parties only upon a determination at a meeting of the Parties that: (a) all conditions specified in this paragraph have been met and (b) such extension for an additional period not to exceed [two-three] years is fully consistent with the objectives of this Protocol to protect the ozone layer].^{10/}

^{10/} The Legal Drafting Group considered that further work to define the objectives of this paragraph needs be carried out before satisfactory legal drafting can be done.

ARTICLE 5: LOW CONSUMING COUNTRIES 11/

1. Any Party whose consumption in 1986 of the controlled substances was less than [0.1] [0.2] kg. per capita shall be entitled to delay its compliance with the provisions of paragraphs 1 to 4 of Article 2 by [five] [ten] years after that specified in that Article and to substitute [] in place of 1986 as the base year. 12/

2. The Parties shall make all possible efforts to assist Parties referred to in paragraph 1 to make expeditious use of environmentally safe alternative chemicals and technology.

3. The parties shall encourage^{13/} bilateral and multilateral subsidies, aid, guarantees or insurance programmes to the developing countries for the use of alternative technology and substitute products.

11/ ★ The Legal Drafting Group, was aware of the importance of the Article on the low consuming countries but noted that the substantive work had not been completed on this Article. The Group, therefore, confined itself to the material available at the time of its meeting and merely introduced necessary drafting improvements. The Group draws attention to the need for this Article to be given a special priority by the preparatory meeting in Montreal and to be addressed at an early stage.

★ It was decided during the Brussels consultations to retain in brackets the following provisions, taken from the revised reduction formula developed by the Trade Group, pending completion of the Article on Low Consuming Countries:

[Any [developing] country, or group of [developing] countries, not producing CFCs at the time of the signing of the Protocol shall be permitted to produce or have produced for it by any Party to the Protocol, substances referred to in Article 2, to a level not exceeding its/their controlled level of imports/aggregated level of imports, as the case may be. The level of production and imports at any time will not be permitted to exceed the controlled level of imports.]

12/ The Legal Drafting Group suggested this paragraph to replace the paragraphs 1 and 2 of the draft prepared in Geneva 27-30 April 1987 as a purely drafting improvement.

13/ The meeting in Montreal may wish to consider a more precise expression than the word "encourage".

ARTICLE 6: REVIEW AND ASSESSMENT OF CONTROL MEASURES

Beginning in 1990,^{14/} and every four years thereafter^{after}, the Parties shall assess the control measures provided for in Article 2, based on available scientific, environmental, technical, and economic information. At least one year before each of these assessments, the Parties shall convene a panel of scientific experts, with composition and terms of reference determined by the Parties, to review advances in scientific understanding of modification of the ozone layer, and the potential health, environmental and climatic effects of such modification.

ARTICLE 7: REPORTING OF DATA

1. Each Party shall provide to the secretariat^a, within three months of becoming a Party, data on its production, imports and exports of the controlled substances for the year 1986 or estimates of that data where actual data are not available.
2. Each Party shall provide data on its production, exports, imports and destruction of these substances for the calendar^{15/} year during which it becomes a Party and for each year thereafter.

^{14/} The Legal Drafting Group noted that the requirement to hold the first assessment in 1990 is dependent on the Protocol being in force by that date.

^{15/} There was some discussion as to whether the fact that such data would be collected and submitted to the secretariat on a calendar year basis would create an ambiguity for measuring compliance with the control measures which, as currently drafted, would take effect a certain number of years after entry into force of the Protocol. As Article 2 is currently drafted, it is not clear whether a Party would measure its compliance to a reduction step by the data for that previous calendar year or data for the year in which the particular obligation takes effect.

**ARTICLE 8: RESEARCH, DEVELOPMENT, EXCHANGE OF INFORMATION
AND PUBLIC AWARENESS**

1. The Parties shall co-operate in promoting, directly and through competent international bodies, bearing in mind the needs of developing countries, research, development and exchange of information on:

- (a) Best practicable technologies for reducing emissions of the controlled substances;
- (b) Possible alternatives to the controlled substances;
- (c) Costs and benefits of relevant control strategies

2. The Parties, individually, jointly or through competent international bodies, shall co-operate in promoting public awareness of the environmental effects of the emissions of CFCs and other ozone modifying substances.

3. Each Party shall submit biennially to the Secretariat a summary of activities conducted pursuant to this Article.

ARTICLE 9: TECHNICAL ASSISTANCE

1. The Parties shall co-operate, taking into account in particular the needs of developing countries, in promoting, in the context of the provisions of article 4 of the Convention, technical assistance to facilitate participation in and implementation of this Protocol.

2. Any Party or Signatory to this Protocol in need of technical assistance in implementing it may submit a request to the Secretariat.

3. At their first meeting, the Parties shall begin deliberations on the ways and means of fulfilling the obligations set out in Article 8 and 9 above, including the preparation of workplans. Such workplans shall pay special attention to the needs and circumstances of the developing countries. Non-Parties to the Protocol should be encouraged to participate in activities outlined in such workplans.

ARTICLE 10: MEETINGS OF THE PARTIES

1. The Parties shall hold meetings at regular intervals. The Secretariat shall convene the first meeting of the Parties not later than one year after entry into force of this Protocol and in conjunction with a meeting of the Conference of the Parties to the Convention, if a meeting of the latter is scheduled within that period.

2. Subsequent ordinary meetings of the Parties shall be held, unless the Parties otherwise decided, in conjunction with meetings of the Conference of the Parties to the Convention. Extraordinary meetings of the Parties shall be held at such other times as may be deemed necessary at a meeting of the Parties, or at the written request of any of them, provided that, within six months of such a request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.

3. At their first meeting the Parties shall:

- (a) adopt by consensus rules of procedure for their meetings;
- (b) prepare workplans pursuant to paragraph 3 of Article 9;
- (c) adopt by consensus such rules as required by paragraph 2 of Article 12.

4. The functions of the meetings of the Parties shall be:

- (a) to review the implementation of this Protocol;
- (b) to establish, where necessary, guidelines or procedures for reporting of information as provided for in Article ~~5~~⁶ 7 and 8;
- (c) to review requests for technical assistance provided for in Article 9;
- (d) to review requests received from the Secretariat pursuant to Article 11;
- (e) to reassess, pursuant to Article ~~2~~⁶, the control measures provided for in Article 2;
- (f) to consider and adopt proposals for amendment of this Protocol [in conformity with Articles 9 and 10 of the Convention];
- (g) to consider and adopt the budget for implementation of this Protocol;
- (h) to consider and undertake any additional action that may be required for the achievement of the purposes of this Protocol.

5. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Party to this Protocol, may be represented at meetings of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to the protection of the ozone layer which has informed the Secretariat of its wish to be represented at a meeting of the Parties as an observer may be admitted unless at least one-third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Parties.

ARTICLE 11: SECRETARIAT

The Secretariat shall:

- (a) Arrange for and service meetings of the Parties provided for in article 10;
- (b) *Distribute Annually to the parties data received pursuant to*
- (c) ~~(b)~~ Prepare and distribute to the Parties regularly a report based and information received pursuant to article ~~5~~⁶ 7 and 8;
- (d) (c) Notify the Parties of any request for technical assistance received pursuant to article 9 so as to facilitate the

article 7;

*new
insert*

provision of such assistance to the extent possible;

- (e) (d) Perform such other functions for the achievement of the purposes of the Protocol as may be assigned to it by the Parties;
- (f) (e) Where possible, encourage Non-Parties to attend the meetings of the Parties as observers and to act in accordance with the provisions of the Protocol;
- (g) (f) Where possible, provide the information referred to in sub-paragraphs (b), (c) and (d) above to such Non-Party observers.

ARTICLE 12: FINANCIAL PROVISIONS

1. The funds required for the operation of this Protocol, including those for the functioning of the Secretariat related to this Protocol, shall be charged exclusively against contributions from the Parties.
2. The Parties at their first meeting shall adopt by consensus financial rules for the operation of this Protocol, including rules for assessing contributions from the Parties, taking into account the special situation of the developing countries.

ARTICLE 13: RELATIONSHIP OF THIS PROTOCOL TO THE CONVENTION

The provisions of the Convention relating to its protocols shall apply to this Protocol, unless otherwise ~~provided~~ *herein provided.*

ARTICLE 14: SIGNATURE

This Protocol shall be open for signature at Montreal on 16 September 1987, in Ottawa from 17 September 1987 to 16 January 1988, and at U.N. Headquarters in New York from 17 January 1988 to 16 September 1988.

ARTICLE 15: ENTRY INTO FORCE

1. The Protocol shall enter into force on the same date as the Convention enters into force, provided that at least [nine] instruments of ratification, acceptance, approval of or accession to the Protocol have been deposited [by States or regional economic integration organizations representing at least sixty percent of 1986 global production of the controlled substances].^{16/} In the event that [nine] such instruments have not been deposited by the date of entry into force of the Convention, this Protocol shall enter into force on the [ninetieth] ^{17/} day following the date of deposit of the [ninth] instrument of ratification, acceptance, approval of or accession to the Protocol [by States or regional economic integration organizations representing at least sixty percent of 1986 global production of the controlled substances].^{16/}

2. For the purposes of paragraph 1, any instrument deposited by a regional economic integration organization referred to in Article 12 of the Convention shall not be counted as additional to those deposited by member States of such organizations.

3. After the entry into force of this Protocol, any State or regional economic integration organization referred to in Article 12 of the Convention shall become a Party to it on the [ninetieth] ^{17/} day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

^{16/} Resulting from Executive Director's consultations in Brussels on 29-30 June 1987. The Executive Director has requested Governments to submit data regarding their estimated imports. If sufficient data are available for the preliminary session in Montreal, a certain percentage of imports could be added to this provision.

A proposal was made to the Legal Drafting Group that would have the effect of applying similar provisions to the entry into force of amendments, additional annexes, or amendments to annexes to this Protocol. This proposal was not discussed fully because of time constraints and limited country representation. Also, a view was expressed that the proposal raised new substantive issues.

^{17/} The Convention provides that a State or regional economic integration organization may not become a Party to a Protocol unless it is, or becomes at the same time, a Party to the Convention (Article 16). It also provides that the Convention enters into force on the ninetieth day after the deposit of the twentieth instrument of ratification, and (after it has entered into force) for each ratifying State on the ninetieth day after the deposit of that State's instrument of ratification (Article 17). To prevent a situation arising in which a State's (or organization's) ratification of the Protocol might appear to be effective before the State (or organization) had become a Party to the Convention, it was necessary to substitute "thirtieth" for "ninetieth" in the article on entry into force in the Protocol. This might also be desirable in order to avoid the possibility that the Protocol might appear to enter into force before the Convention.

Final footnote

A proposal was made to the Legal Drafting Group for an Article under which, for purposes of certain Protocol articles, the geographic area of a regional economic integration organization shall be treated as a single unit. The proposal was not discussed fully because of time constraints and limited country representation. Also a view was expressed that the proposal raised new substantive issues.

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ANNEX A
CONTROLLED SUBSTANCES

Group	Chemical	Calculated Ozone Depleting* Potential (ODP)
(a) Fully halogenated Chlorofluorocarbons	CFC-11	1.0
	CFC-12	1.0
	CFC-113	0.8
	CFC-114	1.0**
	CFC-115	0.6**
[(b) Halons ***	Halon-1301	10**]
	Halon-1211	3**]

* ODP values are preliminary estimates subject to further scientific review.

** The ODP values for Halons 1211 and 1301, CFC-114, and CFC-115 are not as well established as the value for the other chemical compounds in the above table. Hence, the recommended ODP values for these chemical compounds should be considered provisional.

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