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OPEN-ENDED WORKING GROUP OF THE
PARTIES TO THE MONTREAL PROTOCOL

Tenth meeting
Nairobi, 5 - 8 July 1994

REPORT OF THE TENTH MEETING OF THE OPEN-ENDED WORKING GROUP
OF THE PARTIES TO THE MONTREAL PROTOCOL

Rapporteur: Mr. Jose Ampeso (Philippines)

Addendum

AGENDA ITEM 7 (f): RECOMMENDATIONS OF THE TEAP REGARDING METHYL BROMIDE
(continued)

Draft proposal on the mandate of the Assessment Panels

1. A draft proposal, submitted by two countries, on the mandate of the Assessment Panels was considered by the meeting. One representative speaking on behalf of a number of others and two other representatives introduced amendments to the proposal.
2. Several representatives said that control of HCFCs was decided only recently by the Fourth Meeting of the Parties and it was too early to consider any acceleration of control measures. The development of alternatives to HCFCs was still under progress. HCFCs were necessary for phase-out of CFCs, which was the number one priority. It was necessary to wait and see how the phase-out of CFCs was progressing before examining any phase-out of HCFCs. The HCFCs had important applications in air-conditioning and refrigeration. **One representative saw that** certain of them were 98 per cent more ozone-friendly than CFCs. Thus, there was no need for an earlier phase-out. The enormous replacement costs could not be imposed on the public without compensating benefits. That could even cause a backlash in terms of attitudes towards ODS. Parties needed to understand whether the environment or the economy would benefit from that. It was necessary to channel energies towards phasing out CFCs rather than HCFCs,

which had an ODP of 0.2 per cent to 0.5 per cent, compared to CFCs. While it was agreed that the matter merited further attention, those countries felt that the proposal was premature and potentially damaging to the purposes of the Montreal Protocol. One other representative, opposing the acceleration of the phase-out **schedule**, believed that, at least, the reference to Article 5 countries should be deleted. **Another representative said that, withj the ratification and entry into force of the Copenhagen Amendment, HCFCs were controlled substances and therefore should be assessed annually by TEAP without the need for a further mandate.**

3. The representative of a non-governmental organization, who also spoke on behalf of another non-governmental organization, expressed shock at the opposition to the proposal: while it might be understandable to oppose an earlier phase-out, she found it inexcusable for Parties to oppose a recommendation that the Panel should investigate the matter.

4. A number of other representatives supported the draft proposal regarding the mandate of the Assessment Panels, as the proposal represented only a request to the Assessment Panels to evaluate the issue. The outcome of the evaluations would put Parties in a better position to address the issue of a phase-out of HCFCs. The aim at the present point in time was not strictly to regulate a phase-out of HCFCs. In view of the forward-looking nature of the Montreal Protocol process, those representatives agreed that the concern of some countries for an earlier phase-out was in itself sufficient to warrant requesting the Assessment Panels to investigate the matter further.

5. One representative, while supporting the draft proposal, had reservations about the word "stringent" in paragraph (b), which it considered unnecessary.

6. One other representative said that, with regard to the phasing out of HCFCs, he would assume that the assessment panels and TEAP in particular, would already be assessing that issue. The matter should be put in such a way that an assessment was useful to the Meeting of the Parties and should not imply, in any way, a prejudgment. The question was how to ensure an objective and non-prejudicial assessment. In that context, he believed a whole list of factors, which he said was by no means exhaustive, should be given consideration. That list included: energy efficiency requirements; a scientific assessment and an assessment of comparative impacts on ozone; health and safety issues, especially flammability; other environmental issues and impacts; economic impacts and costs of controls. He believed that there was some kind of fear that a phase-out of HCFCs would somehow retard the developing countries' phase-out of CFCs **and he asked that TEAP**

look into whether there might be some basis for that fear. With regard to methyl bromide, MBTOC was still working on the issue and he assumed that **it would take into consideration the issues raised in the Danish proposal.** The law **in his country** to halt to methyl bromide production after the year 2001 contained no provisions for intermediate reduction steps. However, there had to be a flexible approach during the interim period. He noted, in particular, the importance of methyl bromide to agricultural production. A flexible approach to full phase-out of methyl bromide was one idea, but the reality was that a full phase-out was scheduled to take place in 2001 **in his country**

7. Dr Andersen, Chairman of the Technology and Economic Advisory Panel, said that the request contained in the draft proposal was fully consistent with the mandate of the Panel and within its current capabilities, and that the Panel would be happy to undertake such an investigation.

8. Noting that the Working Group was strongly divided on the proposal, the Chairman proposed that the text of the entire proposal should be incorporated in the report of the meeting in square brackets. In response to the suggestion by one representative, that the report should not contain the text of the proposal, as the Group has been unable to reach agreement on it, but, instead, should reflect the substance of the debate so that the proposers could, if they so desired, resubmit the proposal to the meeting of the Parties, he said that it was consistent with the Working Group's practice to reflect any proposal put to the Working Group and, if it failed to obtain unanimous support, to put it in square brackets.

9. Accordingly, the Working Group agreed to include the following draft proposal on the mandate of the Assessment Panels in the report of the current meeting, with the text placed in square brackets:

[To request the Assessment Panels - as an inclusion in their ongoing work - to evaluate, without prejudice to Article 5 of the Montreal Protocol, the technical and economic feasibility and environmental, scientific and economic implications for non-Article 5 countries, as well as Article 5 countries of:

(a) An earlier phase out of HCFCs; in doing so the Technology and Economic Assessment Panel is also requested to consider the ODS substitution potential brought by the available not-in-kind alternatives and alternative technologies. In assessing this matter **the Technology and Economic Assessment Panel** should consider the implications of the use of available

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alternatives to HCFCs, including factors such as energy efficiency, global warming impact, potential flammability, and toxicity;

(b) More stringent control measures for methyl bromide, in time for consideration by the Open-Ended Working Group at its eleventh meeting, bearing in mind the contents of Annexes V, VI and VII of the report of the Fifth Meeting of the Parties (UNEP/OzL.Pro.5/12);

(c) In considering these matters, the Scientific Assessment Panel shall consider the atmospheric chlorine loadings and the impact on ozone depletion.]

Definitions of "quarantine" and "preshipments" treatments

10. Dr. Banks, the convenor of the subgroup on methyl bromide definitions, introduced the proposed text of definitions of "quarantine" and "preshipment" treatments. As the subgroup had failed to reach consensus on several items, it had been necessary to leave sections of the text in square brackets.

11. In response to the question put by a representative, the Chairman said that he hoped to remove as many as of the brackets as possible and he urged representatives to seek the necessary instructions from their capitals now or at least before the Sixth Meeting of the Parties.

12. In order to provide guidance in the implementation of Article 2H, the Working Group recommended that the Sixth Meeting of the Parties should consider providing the following definitions of "quarantine" and "preshipment" treatments:

[Quarantine treatmentss, with respect to methyl bromide, treatments to prevent the introduction, establishments and/or spread of quarantine pests (including diseases), or to ensure their official control, where:

- official control is that performed by, or authorized by a national plant, animal or environmental protection, or health authority.
- quarantine pests are pests of potential importance to the area endangered thereby and not yet present there, or

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present but not widely distributed and being officially controlled].

[Pre-shipment treatments are those treatments applied [immediately] prior to export to meet the phytosanitary [or contractual] requirements of the importing country].

alternatively:

[Pre-shipment treatments are those treatments applied to goods in trade (and their means of conveyance) [immediately] prior to dispatch].

[When applying quarantine or preshipment treatment, Parties are urged to apply non-ozone-depleting technologies where possible. Where methyl bromide is used Parties are urged to minimize emissions and use of methyl bromide through containment and recovery and recycling methodologies to the extent possible].

13. With that, the Chairman said that the Working Group had concluded its consideration of agenda item 7 (h).

AGENDA ITEM 4: PROVISION OF INFORMATION ON THE SUPPLY OF CONTROLLED SUBSTANCES TO PARTIES OPERATING UNDER PARAGRAPH 1 OF ARTICLE 5 OF THE MONTREAL PROTOCOL (DECISION V/25 AND PARAGRAPH 59 OF UNEP/OzL.Pro.5/12, REPORT OF THE FIFTH MEETING OF THE PARTIES TO THE PROTOCOL) (continued)

14. The Chairman of the Subgroup on decision V/25 introduced the draft proposal which had been prepared in response to the concerns of some Parties that the requirements placed on Article 5 Parties by the current version of the decision were excessively burdensome and constituted a barrier to free trade. Many countries welcomed the proposal as a good response to the concerns of the developing countries. Many of the developing countries, however, mentioned that their concerns regarding bureaucratic delays hampering trade necessary for them were still not fully alleviated though they would not stand in the way of the adoption of the proposal by the Working Group.

15. Following a discussion of the draft proposal, the Working Group agreed to recommend the following draft decision for the consideration of the Sixth Meeting of the Parties:

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In order to facilitate implementation of the Protocol's provisions concerning the supply of controlled substances to meet the basic domestic needs of Parties operating under Article 5, paragraph 1, the Parties decided to substitute the following for Decision V/25:

1. In cognizance of the basic domestic needs provisions of Articles 2A to 2E and Article 5, [and decision I/12C*] and for the purpose of the reporting requirements under Article 7, Parties will instruct companies exporting controlled substances from their countries to notify, within [30] [60] days after the time of export, both concerned Governments of the names of exporting and importing countries and the quantities exported [and the names of companies to which exported].

2. [For each party operating under Article 5 who imports or produces controlled substances under these provisions, the report required under Article 7 shall describe the steps undertaken to ensure that such imports and/or production have been used to satisfy its basic domestic needs.]

3. The Secretariat shall prepare and distribute to the parties examples of letters that could be used by companies for the purposes described in paragraph 1 above[, and shall publish the data provided in paragraph 2 as part of its reports under Article 7].

[* Decision I/12C states: "Basic domestic needs" referred to in Articles 2 and 5 of the Protocol should be understood as not to allow production of products containing controlled substances to expand for the purposes of supplying other countries.]

16. Following the adoption of the decision, the Chairman stated that the issue of the practicality of paragraph 1, on which concerns had been expressed by a number of delegations, could be considered in the time before the Sixth Meeting of the Parties and taken up again at that Meeting, if necessary.

17. The Working Group thus concluded its consideration of agenda item 4.

AGENDA ITEM 5 (b): PROPOSAL TO GRANT SPECIAL STATUS TO THE
GROUP OF COUNTRIES WITH ECONOMIES IN TRANSITION (continued)

18. At the 6th session of the meeting, on 7 July 1994, the Chairman drew attention to a proposal circulated by Bulgaria, Hungary, Poland, Russian Federation and Ukraine, regarding contributions to the Multilateral Fund by Parties with economies in transition. He said that, following informal consultations, it had been decided that the Executive Committee should **be** urged to meet with the countries concerned in order to discuss the issues

contained in the proposal. It had been felt that an appropriate time would be during or immediately before the Sixth Meeting of the Parties. In addition, Poland, as a member of the Executive Committee **together with the Russian Federation which would attend on behalf of other countries with economies in transition**, would bring up the issue at the forthcoming meeting of the Committee. It was also clear that the basis for the meeting would be the formal response by those countries to a letter addressed to them by the Secretariat of the Multilateral Fund regarding contributions to the Fund. He understood that a meeting would be held in August 1994 to discuss the matter.

19. In the light of the explanation by Chairman, the Working Group agreed that there was no need to consider the proposal further.

20. The representative of the Russian Federation drew attention to a forthcoming meeting that had been arranged in Minsk to discuss the functioning of the Vienna Convention and Montreal Protocol in those countries that had been part of the former Soviet Union. He asked whether it would be possible for the Secretariat to consider enlarging representation by helping in funding the participation of at least one representative from an Eastern European country. The options for contributions to the Multilateral Fund would also be discussed in Minsk, where he hoped some conclusions would be reached. He also hoped that a specific agreement could be reached at the Sixth Meeting of the Parties.

21. The representative of South Africa asked whether the conclusions would also apply to other countries that considered themselves to have economies in transition.

22. The Chairman clarified that the proposed meeting was for those countries that had specially asked to discuss the situation with the Executive Committee. The conclusions would be provided to the Sixth Meeting of the Parties for its consideration.

23. The Working Group thus concluded its consideration of agenda item 5 (b).

AGENDA ITEM 3: TERMS OF REFERENCE AND MODALITIES FOR A REPORT
TO MEET THE REQUIREMENTS OF SECTION II, PARAGRAPH 4 OF
DECISION IV/18 OF THE FOURTH MEETING OF THE PARTIES
TO THE MONTREAL PROTOCOL (DECISION V/12) (continued)

24. At the 6th session of the meeting, on 7 July 1994, the Working Group

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selected the following members of the Steering Panel for the evaluation and review of the operation of the Financial Mechanism: from the Article 2 countries, Mr. Jean Quesnel (Canada), Ms. Monique Barbut (France) and Mr. Paul Horwitz (United States); from the Group of Latin American and Caribbean States, Mr. Juan Mateos (Mexico); from the Group of Asian States, Mr. _____ (India); from the Group of African States, Mr. Sateaved Seebaluck (Mauritius).

25. The representative of Australia said that in nominating the members of the Panel, **it was** the intent of the **non-Article 5** countries that the Panel members would be available for consultations with non-governmental organizations during the course of the study. Those countries hoped that individual Panel members being selected by the Article 5 countries would also be open to such consultations. It was also the belief of the **non-Article 5** countries that the Panel should elect its own Chairman after it had met as a group.

26. In nominating the Panel member from the Group of Latin American and Caribbean States, the representative of Venezuela said that the Group of Latin American and Caribbean States had opposed the financing of the review of the financial mechanism by means of a loan from the Multilateral Fund to the Ozone Secretariat. Its opposition was based on the lack of foresight on the part of the Secretariat, the fact that, in not making a provision in its budget for the costs of the review, a solution had been proposed which went against Article 10 of the Protocol, since it was not envisaged in that Article the resources of the Multilateral Fund should be employed for such purposes. The Group wished to place on record its intention to bring up its views during the 13th meeting of the Executive Committee of the Multilateral Fund, to the effect that the Fund's resources should only be used for authorized purposes, and that the **Working Group's** request should not set a precedent but should be considered only as an exceptional and once-only request. The Group also wished to draw attention to the offer made of voluntary contributions to cover the costs of the review, and expressed the hope that those offers would eventually be quantified and definite.

27. The Working Group thus concluded its consideration of agenda item 3.

AGENDA ITEM 8: OTHER MATTERS

28. In taking up agenda item 8 at the 6th session of the meeting, on 6 July 1994, the Working Group had before it a letter dated 9 May 1994 from the Deputy Secretary (Ozone), Ministry of Environment and Forests,

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Government of India, to the Coordinator, Ozone Secretariat, United Nations Environment Programme, regarding a proposal by India on modifications in the indicative list of categories of incremental costs under the Montreal Protocol.

29. The proposal was introduced by the representative of India who said that it was also being submitted on behalf of Malaysia. He said that the proposal had been put forward to rectify deficiencies in the indicative list, which, despite its name, had tended to become an immutable and the final list. The purpose of the proposal was to include, as an incremental cost, the cost of establishing new facilities or expanding existing facilities for the **purposes covered in the indicating list** in order to meet expanded demand, as permitted by the Protocol. The proposal was in the interest of protecting the ozone layer and, in the long run, would lower the overall cost to the Multilateral Fund.

30. Many representatives supported the proposal, expressing the view that it took account of the development in certain sectors. One of those representatives said that, if the proposal was not accepted, Article 5 Parties would be discouraged from accelerating the phase-out of ozone-depleting substances.

31. Other representatives, however, while recognizing the pertinence of the issue, felt that it would be ill-advised to amend the indicative list in isolation. They believed that the issue should be taken up by the Executive Committee in conjunction with the report on the evaluation of the operation of the Financial Mechanism.

32. In that connection, one representative asked whether other incremental costs would be taken into account in the review of the Financial Mechanism and, if deemed eligible for funding, whether such costs would be paid retroactively.

33. Following short discussion on **which the Chairman of the Working Group concluded that the Working Group did not have a mandate from the Fifth Meeting of the Parties to make a recommendation to the Sixth Meeting of the Parties on the proposal** the Working Group agreed that the different views expressed should be brought to the attention of the Sixth Meeting of the Parties.

34. The representative of the United States suggested that consideration should be given to a decision to establish more effective modalities to ensure that substances being imported or exported as used or recycled

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materials were indeed used or recycled. He believed that, by exempting imports and exports of such substances from the calculation of consumption, the Parties might have unwittingly created a loophole in the Protocol regime. He suggested that an ad hoc committee could be put together to consider a possible draft decision for consideration at the Sixth Meeting of the Parties.

35. The representative of Germany, speaking on behalf of the European Union, said that the Union would suggest that the Sixth Meeting of the Parties request the Technical and Economic Assessment Panel to report on the issues.

36. The representative of France suggested that the Secretariat might prepare a list of **reclamation** centres for circulation to the Parties. She said that she would raise the issue at the Sixth Meeting of the Parties.

37. The representative of Saint Lucia said that his delegation, which was participating in the Working Group for the first time, had got the feeling that the Montreal Protocol was of little relevance to the small island developing States. He believed that time was right for the small island developing States to be seen as a distinct sub-group of Article 5 countries within the framework of the Montreal Protocol. With regard to transfer of technology, he believed that a committee should be set up to look at the impact of dislocation caused by the transfer of unsound technologies to developing countries and submit a report to the Meeting of the Parties.

38. The representative of Viet Nam raised some queries regarding the Protocol. The Chairman suggested the Secretariat could answer the queries bilaterally.

39. The Working Group thus concluded its consideration of agenda item 8.
