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OPEN-ENDED WORKING GROUP OF THE
PARTIES TO THE MONTREAL PROTOCOL
Eleventh meeting
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FIRST REPORT OF THE LEGAL DRAFTING GROUP ON
POSSIBLE ADJUSTMENTS AND AMENDMENT OF THE MONTREAL PROTOCOL

1. The Legal Drafting Group has considered the proposals for adjustments and amendment of the Protocol presented to the Open-ended Working Group at its eleventh meeting. It has produced texts for consideration by the Open Ended Working Group, as follows:

Section A: Proposed Adjustments; and

Section B: Proposed Amendment.

2. The Legal Drafting Group has applied the following criteria in its use of square brackets:

(a) Square brackets have not been put around entire proposals, the brackets being considered redundant as no proposal has yet been agreed upon and each remains for discussion in its entirety;

(b) Proposals for change to existing paragraphs of the Protocol have been put in square brackets;

(c) Proposals for insertion into proposals made by others have been put in square brackets; and

(d) Matters, such as dates and percentages, where a delegation has indicated that its own proposal requires further reflection in its capital, have been put in square brackets.

3. The Legal Drafting Group regarded its task as purely technical and, therefore, the content and merits of the proposals were not assessed.

Section A

PROPOSED ADJUSTMENTS TO THE MONTREAL PROTOCOL ON
SUBSTANCES THAT DEplete THE OZONE LAYER

Article 2A to 2E (Control Measures) (India)

In paragraph 4 of Article 2A, paragraph 2 of Article 2B, paragraph 3 of Article 2C, paragraph 2 of Article 2D and paragraph 3 of Article 2E, for the words "fifteen per cent" there shall be substituted "[0][x][10] per cent".

Article 2F: [Consumption of] Hydrochlorofluorocarbons
(Sweden and Others; European Community)

Article 2F of the Protocol should read as follows:

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1996, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, the sum of:

(a) [One point five][Two point six] per cent of its calculated level of consumption in 1989 of the controlled substances in Group I of Annex A; and

(b) Its calculated level of consumption in 1989 of the controlled substances in Group I of Annex C.

2. Each Party shall ensure that for the twelve-month period commencing on 1 January [2000] and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, [fifty] per cent of the sum referred to in paragraph 1 of this Article.

3. Each Party shall ensure that for the twelve-month period commencing on 1 January [2004] and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, [twenty-five] per cent of the sum referred to in paragraph 1 of this Article.

4. Each Party shall ensure that for the twelve-month period commencing on 1 January [2007] and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, ten per cent of the sum referred to in paragraph 1 of this Article.

5. Each Party shall ensure that for the twelve-month period commencing on 1 January [2010][2015] and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed zero.

6. As of 1 January 1996, each Party shall endeavour to ensure that:

(a) The use of controlled substances in Group I of Annex C is limited to [the following applications:

- As a refrigerant in existing equipment;
- As a refrigerant in equipment manufactured until 31 December 1999;
- For the production of rigid insulating foams until 31 December 2004;
- For laboratory and medical uses;]

(b) The use of controlled substances in Group I of Annex C is not outside the areas of application currently met by controlled substances in Annexes A, B and C, except in rare cases for the protection of human life or human health; and

(c) Controlled substances in Group I of Annex C are selected for use in a manner that minimizes ozone depletion, in addition to meeting other environmental, safety and economic considerations.

Article 2H - Methyl Bromide (Australia, Canada, European Union, Japan, Malawi, Netherlands, New Zealand, Norway, South Africa, Tunisia, United States)

Article 2H of the Protocol should read as follows:

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1995, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed, annually, its calculated level of consumption in 1991. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, its calculated level of production in 1991. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1991.

[2. Each Party shall ensure that for the twelve-month period commencing on 1 January [1998], and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed, annually, [seventy-five] per cent of its calculated level of consumption in 1991. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, [seventy-five] per cent of its calculated level of production in 1991. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1991.]

[3. Each Party shall ensure that for the twelve-month period commencing on 1 January [1998] [2000] [2001] [2006], and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed, annually, [fifty] per cent of its calculated level of consumption in 1991. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, [fifty] per cent of its calculated level of production in 1991. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1991.]

[4. Each Party shall ensure that for the twelve-month period commencing on 1 January [2001][2011], and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed zero. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to [ten] [fifteen] per cent of its calculated level of production in 1991. This paragraph will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be essential.]

5. The calculated levels of consumption and production under this Article shall not include the amounts used by the Party for quarantine [and pre-shipment] applications.

[6. Each Party shall ensure that, for the twelve-month period commencing on 1 January [year] and in each twelve month period thereafter, the calculated quantity of the controlled substance in Annex E used by it in quarantine and pre-shipment applications shall be reduced by [X] per cent of the quantity used between [base year].]

Article 5: Special Situation of Developing Countries

The following paragraphs should be inserted after paragraph 8 of Article 5 of the Protocol:

Add as paragraph 8 bis:(Australia, Canada, China, European Community, India, Malaysia, Norway, United States)

Based on the conclusions of the review referred to in paragraph 8 above:

(a) With respect to the controlled substances in Group I of Annex A, a Party operating under paragraph 1 of this Article shall, in order to meet its basic domestic needs, be entitled to delay [for [six]¹ [ten]² years its compliance with the control measures set out in Article 2A] [for ten years its compliance with the control measures adopted by the Second Meeting of the Parties in London, 29 June 1990³] [except that:

[(i) The control measures related to consumption shall not apply to controlled substances in Group I of Annex A that are used in the servicing of refrigeration equipment existing at the date of the phase-out, provided that such use shall end by 1 January [2020] [2030] and that, beginning with the [three-year] period that commences on 1 January of [the year of the phase-out], and in each [three-year] period thereafter, each such Party shall reduce by [fifteen] per cent its level of consumption for servicing existing refrigeration equipment from its level in the year of the phase-out, as reported to the Secretariat;]⁴ and

[(ii) Each such Party shall ensure that there is no new manufacture of refrigeration equipment that uses the controlled substances in Group I of Annex A after 1 January [1999];]⁵

¹ The "2002" or "Fast" scenario.

²The "2006" scenario (Copenhagen + 10).

³The "2010" scenario (London + 10).

⁴The "tail".

⁵When combined with 4, the "accelerated tail".

(b) With respect to the controlled substances in Group II of Annex A, a Party operating under paragraph 1 of this Article shall, in order to meet its basic domestic needs, be entitled to delay [for [eight]^{1/} [ten]^{2/} years its compliance with the control measures set out in Article 2B] [for ten years its compliance with the control measures adopted by the Second Meeting of the Parties in London, 29 June 1990];^{3/}

(c) With respect to the controlled substances in Group I of Annex B, a Party operating under paragraph 1 of this Article shall, in order to meet its basic domestic needs, be entitled to delay [for [six]^{1/} [ten]^{2/} years its compliance with the control measures set out in Article 2C] [for ten years its compliance with the control measures adopted by the Second Meeting of the Parties in London, 29 June 1990];^{3/}

(d) With respect to the controlled substance in Group II of Annex B, a Party operating under paragraph 1 of this Article shall, in order to meet its basic domestic needs, be entitled to delay [for [six]^{1/} [ten]^{2/} years its compliance with the control measures set out in Article 2D] [for ten years its compliance with the control measures adopted by the Second Meeting of the Parties in London, 29 June 1990];^{3/}

(e) With respect to controlled substance in Group III of Annex B, a Party operating under paragraph 1 of this Article shall, in order to meet its basic domestic needs, be entitled to delay [for [six]^{1/} [ten]^{2/} years its compliance with the control measures set out in Article 2E] [for ten years its compliance with the control measures adopted by the Second Meeting of the Parties in London, 29 June 1990].^{3/}

Add as paragraph 8 ter

(Argentina, ASEAN, Australia, Brazil, Burkina Faso, Cameroon, Canada, European Community, Republic of Korea, Japan, Malawi, New Zealand, Peru, Philippines, South Africa, Uganda, United States)

Pursuant to paragraph 1 bis above:

(a) [Each Party operating under paragraph 1 of this Article shall ensure that for the twelve-month period commencing on 1 January 2000, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, its calculated level of consumption in 1999;] [A Party operating under paragraph 1 of this Article shall comply with the control measures set out in Article 2F; however, such a Party in order to meet its basic domestic needs, be entitled to delay for [five] [ten] years its compliance with the control measures set out in Article 2F [and, as the basis for its compliance with these control measures, it shall use the average of its annual calculated level of consumption for the period of 1993 to 1995 inclusive;]

(b) Each Party operating under paragraph 1 of this Article shall comply with Article 2G;

(c) With regard to the controlled substance contained in Annex E:

^{1/} The "2002" or "Fast" scenario.

^{2/} The "2006" scenario (Copenhagen + 10).

3/ The "2010" scenario (London + 10).

- [(i) As of 1 January [1997] [1998] each Party operating under paragraph 1 of this Article shall comply with the control measures set out in paragraph 1 of Article 2H, and, as the basis for its compliance with these control measures, it shall use the average of its annual calculated level of consumption and production, respectively, for the period of 1993 to 1995 inclusive;]
- [(ii) As of 1 January 2001 each Party operating under paragraph 1 of this Article shall comply with the control measures set out in paragraph 2 of Article 2H;]
- [(iii) As of 1 January 2006 each Party operating under paragraph 1 of this Article shall comply with the control measures set out in paragraph 3 of Article 2H;]
- [(iv) As of 1 January [2001] [2006] [2011] each Party operating under paragraph 1 of Article 5 shall comply with the control measures set out in paragraph 4 of Article 2H;]
- [(v) As of [date] each Party operating under paragraph 1 of Article 5 shall comply with the control measures set out in paragraph 6 of Article 2H.]

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Section B

PROPOSED AMENDMENT TO THE MONTREAL PROTOCOL ON
SUBSTANCES THAT DEplete THE OZONE LAYER

Article 1, paragraph 5 (Sweden and others, Japan)

Insert as paragraph 5 bis of Article 1 of the Protocol:

"Feedstock" means any controlled substance that undergoes transformation in a process that uses best available techniques and best environmental practice as specified in Annex X,⁶ [which should result in insignificant and trace emissions of the controlled substance] and during which process it is entirely converted into a non-controlled substance.

Article 2B Halons (Italy)

The following paragraph should be inserted after paragraph 2 of Article 2B of the Protocol:

Each Party shall ensure that, starting from 1 January 1997, no new halon dependent fire suppression and explosion inertion equipment is installed. This paragraph will apply save to the extent that the Parties decide to permit such installation for uses agreed by them to be critical.

Article 2F bis: Production of Hydrochlorofluorocarbons
(Sweden and others)

The following Article should be inserted after Article 2F of the Protocol:

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 2000, and in each twelve-month period thereafter, its calculated level of production of the controlled substances in Group I of Annex C does not exceed, annually, fifty per cent of the sum of:

(a) One point five per cent of its calculated level of production in 1989 of the controlled substances in Group I of Annex A; and

(b) Its calculated level of production in 1989 of the controlled substances in Group I of Annex C.

2. Each Party shall ensure that for the twelve-month period commencing on 1 January 2004, and in each twelve-month period thereafter, its calculated level of production of the controlled substances in Group I of Annex C does not exceed, annually, twenty-five per cent of the sum referred to in paragraph 1 of this Article.

3. Each Party shall ensure that for the twelve-month period commencing on 1 January 2007, and in each twelve-month period thereafter, its calculated level of production of the controlled substances in Group I of Annex C does not exceed, annually, ten per cent of the sum referred to in paragraph 1 of this Article.

4. Each Party shall ensure that for the twelve-month period commencing on

⁶Annex X refers to Annex 4 of the Report of the Chemical Process Agents Working Group of TEAP, dated May 1995 on the "Evaluation of the Use of Ozone Depleting Substances as Chemical Process Agents and Alternatives".

1 January 2010, and in each twelve-month period thereafter, its calculated level of production of the controlled substances in Group I of Annex C does not exceed zero.

Article 4: Control of Trade with non-Parties (Executive Director)

Article 4, paragraph 1 quater

The following paragraph should be inserted after paragraph 1 ter of Article 4 of the Protocol:

Within one year of the date of entry into force of this paragraph, each Party shall ban the import of the controlled substance in Annex E from any State not party to this Protocol.

Article 4, paragraph 2 quater

The following paragraph should be inserted after paragraph 2 ter of Article 4 of the Protocol:

Commencing one year after the date of entry into force of this paragraph, each Party shall ban the export of the controlled substance in Annex E to any State not party to this Protocol.

Article 4, paragraph 3 quater

The following paragraph should be inserted after paragraph 3 ter of Article 4 of the Protocol:

Within three years of the date of entry into force of this paragraph, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of products containing the controlled substance in Annex E. Parties that have not objected to the annex in accordance with these procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.

Article 4, paragraph 4 quater

The following paragraph should be inserted after paragraph 4 ter of Article 4 of the Protocol:

Within five years of the date of entry into force of this paragraph, the Parties shall determine the feasibility of banning or restricting, from States not party to this Protocol, the import of products produced with, but not containing, the controlled substance in Annex E. If determined feasible, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of such products. Parties that have not objected to the annex in accordance with those procedures shall ban or restrict, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.

Article 4, paragraph 5

In paragraph 5 of Article 4 of the Protocol, the words "and Annex E" should be added after "Annex C".

Article 4 paragraph 6

In paragraph 6 of Article 4 of the Protocol, the words "and Annex E" should be added after "Annex C".

Article 4, paragraph 7

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In paragraph 7 of Article 4 of the Protocol, the words "and Annex E" should be added after "Annex C".

Article 4, paragraph 8

In paragraph 8 of Article 4 of the Protocol, the following changes should be made:

After "1 ter" add "1 quater"; after "3 ter" add "3 quater"; after "2 ter" add "2 quater"; after "4 ter" add "4 quater"; after "Article 2G", add "Article 2H"

Article 4, paragraph 10

Article 4, paragraph 10, of the Protocol should be deleted.

Article 5: Special Situation of Developing Countries
(Sweden and others)

The following paragraph should be inserted as paragraph 8 quater of Article 5 of the Protocol:

Article 2F bis shall apply to Parties operating under paragraph 1 of this Article, except that any such Party shall, in order to meet its basic domestic needs, be entitled to delay for five years its compliance with the control measures set out in that Article, and, as the basis for its compliance with these control measures, it shall use the average of its calculated level of production for the period of 1993 to 1995 inclusive.

Article 5, paragraph 10 (Australia, European Community, Canada, Norway, New Zealand, Switzerland, United States)

Insert as paragraph 10 of Article 5 of the Protocol:

Notwithstanding paragraph 1, any Party operating under paragraph 1 and producing a controlled substance listed in Annex A or B prior to 1 January 1996 may export that controlled substance to another Party operating under paragraph 1, provided that:

(a) A Meeting of the Parties determines that there will be a shortfall in supplies of controlled substances for Parties operating under paragraph 1 from Parties not operating under that paragraph, during the period for which those exports are considered. The determination of such a shortfall shall be based upon updates of the Study "Meeting the Needs of Article 5 Parties for Controlled Substances During the Grace and Phase-Out Periods - An Update", or upon notifications to the Secretariat pursuant to paragraph 4 of this Article;

(b) In accordance with Decision V/25 or Decision VI/14 A of the Meeting of the Parties, the importing Party provides a letter to the exporting Party stating that the controlled substance is required to meet its basic domestic needs, and the exporting Party annually transmits the summary of such letter to the Secretariat. Such export shall also be reported separately by the exporting Party in fulfilling its obligations under paragraph 2 of Article 7 to provide annual data; and

(c) Production of controlled substances for export:

(i) Utilizes only existing production capacity and is not

produced in plants commissioned or the construction or expansion of which is commenced on or after 1 January 1996; and

- (ii) Does not exceed [ten] [fifteen] per cent of the calculated level of production of the exporting Party for 1994. A higher percentage of that calculated level of production may be exported if the Meeting of the Parties agrees that this is required to make up for any shortfall determined under subparagraph (a).

Section C

Proposal not reviewed by the Legal Drafting Group

The Legal Drafting Group was not able to complete consideration of the following proposed amendment to the Protocol. It is reproduced below in the form in which it was submitted:

"The Brazilian delegation proposes to the Open-ended Working Group when examining the clarification on basic domestic needs to take into account the following points:

- "a Basic domestic needs should not be understood as leading to undesirable barriers to the trade among Parties operating under Article 5 of the Montreal Protocol, therefore it should include export and import needs of controlled substances, as well as products containing or made with ozone depleting substances between these Parties during their grace and phase-out periods, provided that the limits established in the Article 2 of the Montreal Protocol and those imposed by the country programs of the Parties involved be respected;
- "b Basic domestic needs should not be understood as allowing dumping of excess ozone depleting substances produced in non-Article 5 countries to these Parties, in order to permit the feasibility of domestic ODS production during their grace and phase-out periods, so to assure a smoother and faster phase-out; and
- "c The aforementioned definition should reassure the needs of ODS production rationalization of Industries based in Article 5 countries."
