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

Fourth meeting
London, 20-26 June 1990

REMAINING ISSUES TO BE ADDRESSED AT THE
FOURTH MEETING OF THE WORKING GROUP

Note by the Executive Director */

I. BACKGROUND

1. The purpose of this paper is to assist delegations with their review of the items and issues to be discussed at the Working Group meeting to be held in London from 20 to 26 June 1990. Another purpose is to provide advance notice of the working groups that might be created, in order that delegation composition can be decided with these identified needs in mind. The final purpose is to provide a perspective of the decisions or recommendations that are expected to be adopted by Ministers and officials at the Second Meeting of the Parties on 28 and 29 June 1990. This document in no way attempts to influence the nature of the decisions that will be taken.

II. CURRENT STATUS OF NEGOTIATIONS - TECHNICAL ELEMENTS

A. Assessment Reports

2. International expert panel reports on the current state of the science, the technology, the impacts and the economics were on the agenda at the first meeting of the Working Group, held in Nairobi in August 1989. The reports were reviewed and adopted at the November 1989 meeting in Geneva (See UNEP/OzL.Pro.WG.II(1)/7) and constitute the basis for the proposed amendments and adjustments to the Protocol. No further discussion of the reports of these panels is expected.

*/ Based partly on input by G. Victor Buxton (Canada), Co-Chairman of the Working Group.

3. The findings of the Panel for Scientific Assessment presented at the November 1989 Working Group meeting held in Geneva (See UNEP/OzL.Pro.WG.II(1)/4) indicated clearly that strong global control action, beyond that which is currently set out in the Protocol, is urgently required. If such action is not taken soon, the Antarctic ozone hole and other adverse effects are here to stay.

B. Procedural, Legal and Policy Questions

4. A number of procedural, legal and policy questions will have to be decided at the Second Meeting of the Parties in London in June 1990.

(a) The degree of stringency the Parties wish to adopt vis-a-vis restrictions on trade with non-Parties;

(b) The modifications required to the provisions for developing countries to assist them in meeting the aims and objectives of the Protocol (reflected in proposals for amendment to both Articles 5 and 10):

- (i) The provision of financial assistance. Preliminary cost estimates are expected to be available by June 1990. Ministers and other plenipotentiaries will be expected to indicate their commitment to the provision of such assistance in accordance with the standard United Nations cost-sharing formula or based on CFC consumption in 1986. The Executive Director recommends that CFC consumption be used as a basis for contributions;
- (ii) Transfer of technology;
- (iii) Non-compliance provisions. Ministers will be asked to support the encouragement-based approach, as recommended by a working group of legal experts considering this issue, or alternatively to support a more stringent and punitive approach as strongly recommended by some delegations.
- (iv) On the legal front, it is now accepted that two separate texts will have to be prepared for the London meeting, one a formal legal instrument which would contain the amendments which would have to be submitted to Parties for ratification, and a second document requiring only a decision by the Parties on the adjustments to the Protocol.

5. With respect to the amendments, a large number of participants in the negotiations feel that, in order to avoid an unworkable situation in which there are multi-categories of Parties (States being party to one or more of the proposed amendments, but not to others), ratification should involve a single package of amendments. Also, the general line is to adopt a decision that amendments shall enter into force when ratified by one third of the Parties (currently 56 in number, and the EEC) i.e. 19 ratifications. The view during negotiations is that the current trend in international treaties is to have a reasonable, not too high, ratification figure for the entry into force of legal instruments.

III. SUMMARY OF PROPOSED AMENDMENTS

6. Article 9 of the Vienna Convention provides the terms and conditions governing amendment of the Protocol. A two-thirds majority of the Parties present and voting is required for adoption of amendments. Entry into force for those Parties which ratify the amendments will occur 90 days after the last instrument to make up the required number of ratifications has been deposited with the Secretary-General.

7. All proposed amendments are set out in document UNEP/OzL.Pro.WG.III(1)/3 (dated 14 March 1990). What follows is a summary of the items to be further reviewed by the Working Group at its last meeting in London before the items are put to the Parties for consideration.

A. Preambular Paragraphs

8. The sixth, seventh and ninth preambular paragraphs are to be revised slightly to give greater emphasis and recognition to the basic needs of developing countries including financial assistance and access to technologies.

B. Article 1 - Definitions

9. The definition of "controlled substances" (paragraph 4).

10. A new definition of "transitional substances", to cover substitute chemicals such as HCFCs.

11. The definition of "Production" (paragraph 5), to state that feedstock uses (where the original substance is chemically transformed) are to be exempted from controls.

C. Article 2 - Control Measures

12. Paragraphs 5, 6, 9 and 10 for attention.

D. Article 3 - Calculation of Control Levels

13. The last paragraph of this Article refers to prohibition of the export of controlled substances to non-Parties, commencing 1 January 1993. There is a proposal to change this date to 1992.

14. In light of the trend whereby all changes would only be effective 1 January 1993, Parties may wish to keep this Article unchanged.

E. Article 4 - Control of Trade with Non-Parties

15. Bans on import and export to non-Parties of controlled substances and newly controlled substances.

16. Elaboration, in an annex, of a list of products containing the controlled substances listed in Annex A.

17. Feasibility of banning or restricting the import from non-Parties of products produced with but not containing substances from Annex A and the newly controlled substances.

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18. Changing the words "discourage" the export of related technology to non-Parties (paragraph 5) and "refrain" from providing subsidies to non-Parties (paragraph 6) to "shall ban" such activities.

19. Status of a Party to the Montreal Protocol who chooses not to ratify the new provisions.

F. Article 5 - Special Situation of Developing Countries

20. This Article contains in paragraph 1 the clause that exempts developing countries with a consumption of CFCs and Halons of less than 0.3 kilograms per capita from implementing the control requirements for a period of ten years. Several proposed amendments are to be considered.

G. Article 7 - Reporting of Data

21. The inclusion of the base year in the reporting on substances listed in Annex B.

22. Parties operating under the regional economic organization clause (Article 2, paragraph 8, subparagraph (a)).

23. Statistical data on the end uses of the controlled substances and their products.

H. Article 9 - Research, Development, Public Awareness and Exchange of Information

24. Expansion of the application of the Article to include transitional substances (HCFCs).

I. Article 11 - Meetings of the Parties

25. Expansion of the functions of the meetings to include the consideration of transitional substances (HCFCs).

J. Article 19 - Withdrawal

26. To make it clear that any Party can withdraw in accordance with the conditions stated.

K. Additional Items

27. New annexes to be compiled to include various lists of chemicals, etc.

IV. SUB-WORKING GROUPS

28. In an attempt to reach consensus on the outstanding issues, two or more working groups may be created at the final Working Group meeting:

(a) A legal drafting group to formulate the legally correct, composite negotiating text which will be forwarded to the Parties for decisions at the following Second Meeting of the Parties to the Montreal Protocol;

(b) A possible working group on Article 4 (trade) to assist in narrowing the wide range of existing proposals for amendments concerning trade with non-Parties.