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**FIFTEENTH MEETING OF THE PARTIES
TO THE MONTREAL PROTOCOL ON
SUBSTANCES THAT DEplete THE
OZONE LAYER**

Nairobi, 10-14 November 2003

Item 3 (c) of the provisional agenda*

**Discussion on the issues and on draft decisions:
Implications of entry into force of the Beijing
Amendment, particularly in relation to trade in
and supply of hydrochloroflourocarbons (HCFCs)**

**INFORMATION PROVIDED BY THE PARTIES ON THE IMPLICATIONS OF ENTRY INTO FORCE
OF THE BEIJING AMENDMENT, PARTICULARLY IN RELATION TO TRADE IN AND
SUPPLY OF HYDROCHLOROFLOUROCARBONS**

Introduction

1. At its twenty-third meeting, held in Montreal from 7 to 11 July 2003, the Open-ended Working Group discussed the issue of the implications of the entry into force of the Beijing Amendment, particularly in relation to the trade in and supply of hydrochloroflourocarbons (HCFCs). A contact group was established to discuss the details of the issue, which was chaired by a representative of the United States of America. The report of the contact group is attached as annex V to the report of the twenty-third meeting of the Open-ended Working Group (UNEP/OzL.Pro/WG.1/23/3).

2. In the view of the contact group, the issue in question could be summarized as how to interpret article 4, paragraph 9, of the Montreal Protocol, particularly since, for the first time under the Protocol, control measures for one group of substances (HCFCs) had been imposed under two different amendments, namely, the Copenhagen Amendment and the Beijing Amendment, with the former controlling consumption and the latter controlling production. Four different interpretations of article 4, paragraph 9, had been put forward by delegations and various other points had been raised during the discussions, particularly the fact that HCFC production controls would not come into effect for Article 5 Parties until 2016, and that the Parties needed to consider the action to be taken if a consensus was not reached before the controls entered into force for non-Article 5 Parties on 1 January 2004.

* UNEP/Ozl.Pro.15/1.

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3. Recognizing the legal complexities of the issue, the Open-ended Working Group agreed that:
- (a) A meeting of the contact group of interested Parties would be held on 8 November 2003;
 - (b) The Parties would send their comments to the Ozone Secretariat by the end of August 2003;
- and

(c) The Secretariat would then consolidate those comments and distribute them among Parties by the end of September, along with two versions of article 4, paragraph 9, of the Montreal Protocol, with one version containing the Copenhagen Amendment and the other version containing both the Copenhagen Amendment and the Beijing Amendment.

It was also agreed that the United States of America would serve as the coordinator of future work on the issue and that the Ozone Secretariat would use its web site to compile the information received on the issue.

4. The Ozone Secretariat sent out reminder letters to the Parties on 27 August 2003. The letter also included a notification to the Parties regarding the possible use of Article 4, paragraph 8, which stated:

“Notwithstanding paragraph 1 of this Article, imports and exports referred to in paragraph 1 to 4 ter of this Article may be permitted from, or to, any State not Party to this Protocol, if that State is determined, by a meeting of the Parties, to be in full compliance with Article 2, Articles 2A to 2I and this Article, and have submitted data to that effect as specified in Article 7.”

5. The Secretariat's letter requested the Parties to provide the information on compliance by 28 September 2003 should the Party wish to make use of this provision. If any information is received from Parties, the Secretariat will prepare a document for the Fifteenth Meeting of the Parties, for consideration at the meeting.

6. On the issue of the implications of the entry into force of the Beijing Amendment, as of 9 September 2003 the Secretariat had received comments from nine Parties, namely, Argentina, Brazil, the European Commission, Japan, Malaysia, the Republic of Korea, Sri Lanka, Turkey and the United States of America. Those submissions have been attached to the present note as annexes I-IX.

7. In accordance with the process agreed by the Open-ended Working Group, the Copenhagen and Beijing amendments are also attached as annexes to the present note. Annex X contains Article 4 of the Montreal Protocol on control of trade with non-Parties, as adjusted and amended by the Second, Fourth, Seventh, Ninth and Eleventh Meetings of the Parties. The amendments made by the Beijing and Copenhagen amendments have been indicated in bold. Annex XI and XII contain the amendments to Article 4 made under the Copenhagen and Beijing amendments, respectively. The present report will be considered at the meeting of the contact group on 8 November 2003, immediately prior to the Fifteenth Meeting of the Parties and also at the Fifteenth Meeting of the Parties, as appropriate.

8. As agreed at the twenty-third meeting of the Open-ended Working Group, the work of the contact group will be coordinated by a representative of the United States of America, who will report on the outcome of the deliberations of the contact group and present its recommendations to the Fifteenth Meeting of the Parties.

COMMENTS OF ARGENTINA ON THE INTERPRETATION OF THE TRADE PROVISIONS OF THE BEIJING AMENDMENT

1. As acknowledged during the contact group meeting of July 9th 2003, it is necessary that the MOP agrees on an interpretation of Article 4 paragraph 9 of the Montreal Protocol in order to establish if the trade provisions for HCFCs set forth by the Beijing Amendment shall apply to the States that have not yet ratified the mentioned Amendment. Hence, it is all about the interpretation of what we understand for "State not Party to this Protocol" with respect to HCFCs.

Article 4.9. "For the purposes of this Article, the term "State not Party to this Protocol" shall include, with respect to a particular controlled substance, a State or a regional economic integration organization that has not agreed to be bound by the control measures in effect for that substance".

2. For the first time under the Protocol, control measures for a single substance (HCFCs) have been imposed in two different amendments. In Copenhagen (1992), the Parties agreed to control measures on the consumption of HCFCs. Subsequently, in Beijing (1999) the Parties agreed to control measures on the production of HCFCs. Therefore, a State could be considered as a "Party" with respect to HCFCs consumption and non Party regarding its production.
3. It would neither be equitable nor proportional to penalize a State that is a Party to at least one of the mentioned Amendments with the same restrictions than to a State that is not a Party to any of them. There would not be an additional incentive for becoming a Party to Copenhagen if the consequences of not being a Party to this Amendment remain the same.
4. On that regard, Article 4. 9 should be interpreted so that treatment as a non-Party for the purposes of trade in HCFCs turns on whether the State is bound by the consumption control measures for HCFCs –in the case it is a Party to the Copenhagen Amendment but is not a Party to the Beijing Amendment- or whether it is not bound by any of the control measures for that substance.
5. States producing HCFCs that have ratified Copenhagen but not Beijing would be subject to treatment as a non Party for the purposes of their HCFC exports but there will not be any restriction to import HCFCs as long as they are bound to control the consumption of these substance as Parties to Copenhagen.
6. Furthermore, when interpreting the term "State not Party to this Protocol", it is crucial to give special consideration to the expression "has not agreed to be bound by the control measures in effect for that substance". Once this issue is dealt with it will be possible to determine since when the trade provisions of the Beijing Amendment will be applicable to non Parties.
7. Since control measures applicable to production and consumption of HCFC have different schedules for Article 5 Parties and non Article 5 Parties it can be argued that such measures will be in effect at a different pace. For non Article 5 Parties both consumption and production control measures shall be operative by January 1, 2004 whereas for Article 5 Parties they will be applicable since

January 1, 2016. Therefore, the interpretation of the expression “control measures in effect” from the perspective of a non Article 5 Party will be different to that coming from an Article 5 Party.

8. The fact that an Article 5 Party has not agreed to be bound by the Beijing Amendment is not relevant in terms of the control measures to be applicable to such Party since they will not be in effect until 2016.
9. Consequently, it is our view that control of trade with non Parties set forth in article 4 *1quin* and *2quin* will only be applicable to non article 5 Parties during that period while they will become applicable for all kind of Parties after January, 1, 2016; and, in both cases, those provisions will be applied in accordance with the comments of paragraphs 2 to 5 of the present.

COMENTARIOS DE LA ARGENTINA SOBRE LA INTERPRETACION DE LAS NORMAS COMERCIALES DE LA ENMIENDA DE BEIJING

1. Tal como fuera reconocido durante la reunión del Grupo de Contacto del 9 de julio de 2003, es necesario que la MOP acuerde una interpretación del Artículo 4 párrafo 9 del Protocolo de Montreal para determinar si las normas comerciales para HCFC establecidas por la Enmienda de Beijing se aplicarán a los Estados que no la hayan ratificado. Se trata en consecuencia de interpretar que entendemos por “Estado que no sea Parte en este Protocolo” con respecto a los HCFC:

Artículo 4.9. A los efectos del presente artículo, la expresión “Estado que no sea Parte en este Protocolo” incluirá, por lo que respecta a cualquier sustancia controlada, a todo Estado u organización de integración económica regional que no haya convenido en aceptar como vinculantes las medidas de control vigentes en relación con dicha sustancia.

2. Por primera vez en el Protocolo las medidas de control para una sustancia en particular (HCFCs) fueron establecidas en dos Enmiendas diferentes. En Copenhague (1992), las Partes acordaron las medidas de control sobre el consumo de HCFCs. Posteriormente, en Beijing (1999) las Partes acordaron medidas de control sobre la producción de HCFCs. Por lo tanto, un Estado podría ser considerado “Parte” sólo respecto del consumo de HCFC y no de la producción de la sustancia.
3. No sería equitativo ni proporcional penalizar a un Estado que es Parte de al menos una de las Enmiendas mencionadas con las mismas restricciones al comercio que se sancionaría a un Estado que no es Parte de ninguna de las Enmiendas. No existiría ningún incentivo adicional para convertirse en Parte de Copenhague si la condición de tal no tuviera ningún efecto útil.
4. En ese sentido, el Artículo 4.9 debería interpretarse tomando en consideración si el Estado está obligado por las medidas de control para el consumo de HCFC – en caso de ser Parte de la Enmienda de Copenhague pero no de la de Beijing- o si no está obligado por ninguna de las medidas de control para esa sustancia.
5. Los Estados productores de HCFC que hayan ratificado Copenhague pero no Beijing estarán sujetos al tratamiento de no-Partes para el propósito de sus exportaciones de HCFC pero no tienen restricciones para importar HCFC dado que están obligados a controlar el consumo de la sustancia por ser parte de Copenhague.
6. Por otra parte, en la interpretación del término no Partes debe otorgarse consideración especial a la expresión “Estado (...) que no haya convenido en aceptar como vinculantes las medidas de control vigentes en relación con dicha sustancia”. La interpretación de los términos transcritos es crucial para determinar a partir de cuándo las normas comerciales serán aplicables a un Estado no Parte.

7. Dado que las medidas de control aplicables a la producción y al consumo de HCFC presentan cronogramas diferenciados entre los países del Artículo 5 y los que no operan bajo el Artículo 5, puede discutirse que esas medidas estarán vigentes en distintos momentos. Para los países que no operan bajo el Artículo 5 las medidas de control tanto para el consumo como para la producción serán operativas a partir del 1° de enero de 2004, mientras que para los países del Artículo 5 serán aplicables a partir del 1° de enero de 2016. Por consiguiente, la interpretación de la expresión “medidas de control vigentes” desde la perspectiva de una Parte que no opera bajo el Artículo 5 será diferente que aquella proveniente de una Parte del Artículo 5.
8. El hecho que una Parte del Artículo 5 no haya convenido en aceptar como vinculante la Enmienda de Beijing no es relevante en términos de las medidas de control aplicables a esa Parte en tanto dichas medidas no estarán vigentes hasta 2016.
9. Consecuentemente, es nuestra opinión que el control del comercio con no Partes establecido en el Artículo 4 *1quin* y *1 2quin* será aplicable solamente a Partes que no operen bajo el Artículo 5 a partir del 1 de enero de 2004, mientras que a partir del 1 de enero de 2016 será aplicable para todas las Partes y, en ambos casos, esta aplicación se hará de acuerdo con los comentarios vertidos en los párrafos 2 a 5 del presente.

FAX**ANNEX II****MINISTRY OF ENVIRONMENT
Brazil**

TO: Mr. Marco Gonzalez
Executive Secretary

Organization: Ozone Secretariat/UNEP

FAX Number: (254-20) 62-3601 or 62-3913. **Phone:** (254-20) 62-3850 or 62-1234. **DATE:** 15/08/03

FROM: Mr. Fernando Vasconcelos de Araújo
Brazilian Ozone Unit

PHONE: 55-61-317-1017 **FAX:** 55-61-226-4869

Number of pages: 1 **E-mail:** prozon@mma.gov.br
(including this one)

MESSAGE

Dear Mr. Gonzalez,

Following the recommendation of the 23rd OEWG, asking Parties to submit comments on the implications of entry into force of the Beijing Amendment, particularly in relation to trade in and supply of HCFC, I would like to inform that both Montreal and Beijing Amendments were translated to portuguese and submitted to the National Congress to be ratified.

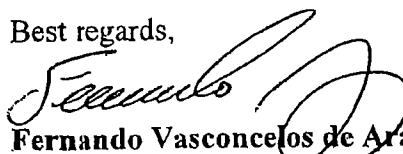
On the first semester of 2003, both amendments were approved by two internal Congress Committees and soon they will be submitted to the Plenary. We hope to have this process concluded till the end of this year. Moreover, I would like to add that the Copenhagen Amendment is already ratified (1997), as this information is correctly presented at Secretariat files and website.

In the light of discussions of the contact group regarding to "trade measures for HCFCs", I am taking this opportunity to express our understanding that the reference in Article 4(9) to "control measures" should refer only to the consumption control measures found in the Copenhagen amendment. Thus, under this view, so long as a Party has ratified Copenhagen, it should be treated as a Party of Montreal Protocol for all purposes of trade in HCFCs, as expressed in the Statement by the Coordinator of the Contact Group.

Furthermore, related to HCFCs and also to CFC, I would like to add that Brazil doesn't produce these ODS. Our CFC plant is closed since August, 1999. Nowadays, Brazil only produces CTC. So, we kindly ask you to up date any report that includes Brazil as CFC or HCFC producer.

The follow up of the trade measures to be adopted for HCFCs is something that deserves attention of all developing countries in order to avoid damages to local economies and to the process of technologic transition to an environment free of CFCs.

Best regards,


Fernando Vasconcelos de Araújo
Manager
Brazilian Ozone Unit
Ministry of Environment

SEARCHED	INDEXED	SERIALIZED	FILED
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EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT

Directorate C - Air quality, Climate change, Chemicals & Biotechnology

Brussels, 31 August 2003
ENV. C.2/TB/jr D(2003)

IMPLICATIONS OF ENTRY INTO FORCE OF THE BEIJING AMENDMENT, PARTICULARLY IN RELATION TO TRADE IN AND SUPPLY OF HCFCs

Introduction

1. At the twenty-third meeting of the Open-ended Working Group (OEWG) of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, which took place in Montreal from 7 to 11 July 2003, Parties were invited to send their comments, on the implications of the entry into force of the Beijing Amendment, to the ozone secretariat¹. This note sets out the comments of the European Community and its fifteen Member States, and the ten countries that are acceding to the European Union on 1 May 2004.

The Issue

2. At the meeting of the OEWG, a contact group was convened to discuss an issue raised by Article 4(9). The chair of the group summarised the issue in question as being –

“...how to interpret Article 4, paragraph 9, of the Montreal Protocol, particularly since for the first time under the Protocol, control measures for a single substance (HCFCs) have been imposed under two different amendments, namely the Copenhagen Amendment and the Beijing Amendment, with the former controlling consumption and the latter controlling production”.

The position of the EC and its Member States

3. The chairman of the contact group reported on four different interpretations of paragraph 9 of Article 4. The second view reported was-

“...that with respect to trade in HCFCs, the reference in paragraph 9 of Article 4 to “control measures” should refer to both the consumption control measures found in Copenhagen AND the production control measures found in Beijing. Under this

¹ See paragraph 178 of the report of the OEWG (UNEP/OzL.Pro/WG.1/23/5).

² See paragraph 5 of Annex V of the report of the twenty-third meeting of the OEWG.

reading, a party would be subject to treatment as a non-party for [the] purposes [of] trade in HCFCs unless it has ratified or acceded to both the Copenhagen and Beijing Amendments.”³

4. This accurately reflects the position taken by the European Community and its Member States which is, in essence, that for the purposes of Article 4(9) of the Protocol, the term “State not party to this Protocol” means, with respect to HCFCs, a State that has not concluded both the Copenhagen and the Beijing Amendments. That view is supported by a literal reading of the text of Article 4 of the Protocol, as amended by the Beijing Amendment.
5. What is more -
 - The terms of Article 4 suggest that there was no intention to distinguish between states that produce HCFCs and states that do not, for neither Article 4(1 quin) and (2 quin)⁴ nor Article 4(9), make any such distinction. It is to be inferred that those who negotiated the Beijing Amendment did not intend any such distinction to be made. The European Community and its Member States believe therefore that any interpretation of Article 4(9) that requires such a distinction to be read into the text should be rejected;
 - All other three interpretations advanced at the last meeting of the OEWG would permit Parties to circumvent the trade controls relating to HCFCs that were introduced by the Beijing Amendment.⁵ That would run counter to the views of all the Parties to the Protocol who consider the Article 4 trade controls as important for promoting the environmental objectives of the Protocol.⁶ Such circumvention of trade controls would not be possible if the interpretation set out in this note were accepted; and
 - Article 4(9) of the Protocol must be considered in conjunction with paragraph (8) of that Article. So the interpretation of Article 4(9) set out in this note would *not* inhibit the importation of HCFCs from, and exportation of HCFCs to, states that had not ratified the Beijing Amendment, provided that such states were determined by a Meeting of the Parties to the Montreal Protocol, in accordance with Article 4(8) “to be in full compliance with Article 2, Articles 2A to 2I and [Article 4]”.

³ See paragraph 5(b) of Annex V.

⁴ Article 4(1 quin) and (2 quin) are, of course, the trade controls relating to HCFCs that were inserted into Article 4 of the Montreal Protocol by the Beijing Amendment.

⁵ If a Party to Beijing exports to a state that is not Party to Beijing, the latter state may trade in HCFCs with states that are neither Party to Beijing nor Party to Copenhagen. For example, suppose country x has concluded the Beijing and Copenhagen amendments, country y has concluded the Copenhagen amendment only and country z has concluded neither Beijing nor Copenhagen. Country x is a HCFC producer and country y is not a HCFC producer. In accordance with some of the interpretations of Article 4(9) that have been advanced, Article 4(2 quin) would not prohibit the exportation of HCFCs from country x to country y. But that would leave country y free to export HCFCs to any other country, including country z, thereby frustrating the HCFC trade control regime introduced by Beijing.

⁶ See, for example, paragraph 2, Decision VII/7: Trade in methyl bromide.

The Way Forward

6. There is to be no further meeting of the contact group until immediately before the fifteenth Meeting of the Parties. So there is little time for the Protocol Parties to work together to reach common agreement on the effect of Article 4(9) before the MOP and it may therefore prove difficult for the MOP itself to reach agreement on the matter. In view of all this, it may be helpful for Parties to search for a solution to the Article 4(9) problem that would be expressly without prejudice to the four competing legal interpretations, so that there would be no need for complete agreement on the interpretation of the relevant Articles.
7. What is more, it may be worth bearing in mind that the entry into force of the London Amendment created problems similar to those generated by the prospective entry into force of the trade controls introduced by the Beijing Amendment. The fourth Meeting of the Parties to the Protocol dealt with the problems generated by the former amendment by adopting Decision IV/17C (Application of trade measures under Article 4 to non-Parties to the Protocol)⁷, under which the Parties made a provisional determination, pending a final decision at the fifth MOP, that States that had not concluded the London Amendment would gain the benefit of the derogation set out in Article 4(8) of the Protocol provided they notified the secretariat that they were in full compliance with Articles 2 to 2E and 4 of the Protocol and submitted supporting data to that effect to the Secretariat as specified in Article 7 of the Protocol.
8. It may prove to be the case that Decision IV/17C will prove a useful point of reference, and perhaps even a precedent, for action by MOP 15.
9. In any event, the European Community and its Member States would recommend that full consideration is given to the possibility that an appropriate use of Article 4(8) may provide a solution, to the problems caused by the entry into force of the Beijing Amendment, that will satisfy all the Parties.

⁷ See also Decision V/3 (Application of Trade Measures under Article 4 to non-Parties to the London Amendment) and Decision VI/4 (Application of trade measures under Article 4 to non-Parties to the London Amendment to the Protocol).

ANNEX IV

The Japanese Position on the Interpretation of Article 4(9)
Copenhagen and Beijing Amendment regarding Trade Measures for HCFCs

29 August 2003

The Article 4, paragraph 9 of the Montreal Protocol defines the term, “state not party to this Protocol” as follow:

“State not party to this Protocol” shall include, *with respect to a particular controlled substance*, a State or regional economic integration organization that *has not agreed to be bound by the control measures in effect for that substance*.

With respect to a particular controlled substance – HCFCs, HCFCs have been imposed in two different amendments. In 1992, the consumption control measures of HCFCs introduced in the Copenhagen Amendment as the first regulatory measures and then, in 1999, the trade measures of HCFCs introduced in the Beijing Amendment.

In other words, the parties, which have ratified the Copenhagen Amendment, are bound by the control measures on consumption of HCFCs and the parties, which have ratified the Beijing Amendment, are bound by the control measures on trade and production of HCFCs. Therefore, parties which have ratified either the Copenhagen Amendment or the Beijing Amendment have agreed to be bound by the control measures in effect for HCFCs.

Accordingly, a full non-party means, with respect to HCFCs, a country that has not ratified even the Copenhagen Amendment. Therefore, a state that has ratified the Copenhagen Amendment but not the Beijing Amendment is interpreted as a party to the Protocol only with respect to the consumption control measures of HCFCs.

Under this view, Japan interprets that a state that has ratified only the Copenhagen Amendment is not subject to the trade measures with respect to HCFCs found in the Beijing Amendment.

Submission by the Republic of Korea

Dear Mr.Maco.Gonzalez

In accordance with the paragraph 178 of the 23rd open-ended working group report we submit our opinion attached file with regard to the implication of entry force of the Beijing Amendment, particularly in relation to trade in and supply of HCFCs.

In Montreal Protocol does not impose the control measures to the producing country and consuming country separately.

We think that the reference in paragraph 9 of article 4 to “control measures” should refer only to the consumption control measures found in the Copenhagen amendment because the consumption means production plus imports minus exports it includes already the definition of production.

So under this view, so long as party has ratified Copenhagen, it should be treated as a party for all purposes of trade in HCFCs.

With best regards,

Young Sang, Song
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Jld 12

Tarikh :

10 September 2003

Mr Michael Graber
Deputy Executive Secretary
Ozone Secretariat
UNEP
P O Box 30552
NAIROBI KENYA

Dear Sir,

THE COPENHAGEN AND BEIJING AMENDMENT TO THE MONTREAL PROTOCOL

I have the honour to refer to your letter dated 26 August 2003 regarding to the above matter subject.

We share the view that the existence of two amendments for HCFC could place some countries in a delicate situation. My Department view that an equitable approach is require when considering the application of the trade restriction to countries that had ratified one of the amendments with respect others countries that had not ratified either of them. We wish to participate in the contact group that proposed by 23rd OEWG meeting on 8 November 2003.

Regards

Yours sincerely,

(ISMAIL ITHNIN)

for the Director General of Environment, Malaysia

SECRETARIAT			
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DES	✓	✓	
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Submission by the National Ozone Unit, Sri Lanka

Views on Article 4 (9) Interpretation

Even the multilateral Fund of the MP provides financial assistance to comply with the MP the Article 5 countries some times find it difficult to bring in national regulations. As these developing nations are faced with many socio & economic problems already and added trade controls mean a bigger and long standing consequences.

As such in selecting an interpretation 03 factors should be given priority.

1. The effective implementation of the MP
2. Economic impacts on countries.
3. The maximum prevention of opportunity for illegal trade to build up.

Considering all the 4 interpretation the Sri Lanka NOU is of the view that, interpretations 3 & 4 are the best interpretations, which will implement the objectives of the MP and its amendments.

Considering the 2nd interpretation- this interpretation puts unnecessary pressure on the countries. If a country not producing HCFC nor there are any production or consumption of Bromochloromethane or MeBr decides not to ratify the Beijing amendment but has already ratified the Copenhagen amendment, that country will be subject to a great injustice. As this may be a common case in most Article 5 countries adopting this interpretation should reconsidered.

Also on the 2nd interpretation, most of the Article 5 countries do not have national regulations controlling trade with non- parties. As such this interpretation will bring strong economic effects on other parties as well. As such the possibility for illegal trade according o the MP is likely to rise on this interpretation.

The 3rd and 4th interpretations by far are the best interpretations. They have lesser adverse impacts on economics of the Article 5 countries. However if this interpretation is to be adopted there should be a proper and on going system to monitor establishments of HCFC production plants in countries who are not already producing HCFC and who have not ratified the Beijing amendment.

The NOU Sri Lanka is of the view that prior to adopting an interpretation on the Article 4 (9) there should be some mechanism to lessen the impact made on the economics either by TEAP or by some other means. Especially the Article 5 countries economics should be given priority.

Submission by Turkey

Rezzan Katircioglu
<rezzank@yahoo.com>

02/09/2003 11:02

To: ozoneinfo@unep.org
cc:
Subject: Re: [Ozone] The Copenhagen and Beijing Amendments to the Montreal Protocol

Dear Marco Gonzales,

With reference to your e-mail of 26 August, 2003 that was concerned with Copenhagen/Beijing Amendments.

I would like to inform you that the law No: 4118 dated 7 July 1995 concerning the accession of Turkey to the Copenhagen Amendment was promulgated on the Official Gazette No:22341 on July 1995. Relevant Ministerial Decree and the text of the Amendment were promulgated on the official Gazette No:22499 on 29 September 1995.

The Montreal Amendment and Beijing Amendment were approved by The Grand National Assembly of Turkey on 07 June, 2003 and 17 June 2003 respectively.

The Law No.4871 concerning the accession of Turkey to the Montreal Amendments was promulgated on the official Gazette No:25131 and The Law No.4880 concerning the accession of Turkey to the Beijing Amendments was promulgated on the official Gazette No:25141.

However in both Amendments, relevant Ministry Decree and the text have not promulgated on the Official Gazette yet.

We hope that their laws shall be entered into force very soon.

With my best regards from Turkey
Ministry of Environment and Forestry
Air Management Department
H. Rezzan KATIRCIOGLU
National Ozone Officer

ANNEX IX**Submission of the United States of America on the
Application of Montreal Protocol Article 4 to trade in HCFCs****Introduction:**

- The United States submits these comments in connection with the Report of the 23rd Meeting of the Open-Ended Working Group of the Parties to the Montreal Protocol (“OEWG Report”). Paragraph 178 of the OEWG Report called on the Parties to comment by the end of August 2003 with their views on the application of Article 4 of the Montreal Protocol to trade in HCFCs.

Issue:

- As noted in the OEWG Report, a series of questions have emerged regarding the proper interpretation of Montreal Protocol Article 4 with respect to trade in HCFCs.
- Article 4(1*quin*) provides that, as of January 1, 2004, each Montreal Protocol Party must “ban the import of the controlled substances in Group 1 of Annex C [i.e., HCFCs] from any State not party to this Protocol.” Article 4(2*quin*) imposes the same obligation with respect to exports of HCFCs.
- Article 4(9) provides that “[f]or the purposes of this Article, the term ‘State not party to this Protocol’ shall include, with respect to a particular controlled substance, a state or [REIO] that has not agreed to be bound by the control measures in effect for that substance.” To date, this has meant that, where an amendment imposes control measures for a substance, a state that is a party to the Protocol but is not a party to that amendment will be treated as a non-party under the Protocol for purposes of the trade measures on that substance (i.e., other states would have to ban exports from and imports to that state of the controlled substance).
- An additional relevant provision is Article 4(8), which provides that imports/exports of a substance are permitted with respect to a non-party State if the Meeting of the Parties (MOP) determines that the State is in full compliance with the Protocol’s control measures and trade provisions for that substance, and has submitted data to that effect.
- The present difficulty arises because, for the first time under the Protocol, control measures for a single substance -- HCFCs -- have been imposed in two different amendments. In Copenhagen, the Parties agreed to control measures on the consumption of HCFCs. Subsequently, in Beijing, the Parties agreed to control measures on the production of HCFCs.
- At issue, therefore, is how states should interpret Article 4 in restricting trade in HCFCs with respect to other states where the control measures for a substance are found in two separate Amendments – Copenhagen and Beijing.

U.S. Interpretation of Article 4(9):

- As noted at the 23rd OEWG Meeting, recognizing the inherent difficulty in applying Article 4 to the situation of HCFCs, where consumption and production controls are contained in different amendments, the United States has adopted a pragmatic approach to Article 4. As such, the United States does not believe that all States need to ratify both Copenhagen and Beijing Amendments to avoid being treated as a “State not party to this Protocol” for purposes of trade in HCFCs under Article 4. The U.S. view is that Article 4(9)’s definition of a non-party State needs to be interpreted according to the relevant control measures in effect for each State.
- Thus, to determine whether a state has “agreed to be bound by the control measures in effect” for HCFCs, the United States would not look simply to whether the State has joined the Copenhagen and Beijing amendments, but would also examine what a State is actually doing with respect to HCFCs. This approach would take into account the fact that a State that does not produce HCFCs and which has not joined the Beijing Amendment is functionally in the same position as a State that does produce HCFCs and which has joined Beijing. So long as it has ratified the Copenhagen Amendment, the non-producing State would have agreed to be bound by the relevant consumption control measures for it to trade in HCFCs, just as the producing State would have agreed to be bound by the relevant production control measures for it were it to ratify the Beijing Amendment.
- Under the U.S. view, therefore, a State that consumes but does not produce HCFCs needs to be a party to the Copenhagen Amendment to avoid being considered a “State not party to this Protocol” under Article 4(9). A State that not only consumes, but also produces HCFCs needs to be a party to both the Copenhagen and Beijing Amendments to avoid being treated as a “State not party to this Protocol” for purposes of Article 4.

Other Interpretations:

- Notwithstanding its interpretation, the United States recognizes that others have raised interesting points about alternative interpretations and the application of Article 4, including:
 - Whether the Beijing Amendment is even relevant to the application of Article 4 (or whether joining the Copenhagen amendment and its control measures on HCFC consumption is sufficient to avoid being considered a non-party for purposes of trade in HCFCs under Article 4);
 - Assuming that the Beijing Amendment is relevant, whether non-production of HCFCs by a State not party to Beijing is something the MOP should be taking into account, as opposed to an individual Party;
 - Whether Article 4(8)'s reference to "full compliance" and Article 4(9)'s reference to "control measures in effect" presuppose that a State that would be an Article 5 Party with respect to a particular control measure is to be judged by Article 5 standards for purposes of trade in HCFCs under Article 4.

- The United States considers that a uniform approach to the applicability of Article 4 to HCFCs is desirable. At the same time, we recognize the difficulty of the issue and the need not to prejudice various interpretations of Article 4 more generally. We are prepared to work with other Parties to see if there might be agreement on a mutually agreeable approach, for example, one that recognizes certain agreed points at this stage and provides a process for further resolution of points not yet agreed.
- The United States expects that further analysis and bilateral discussions will be necessary in advance of the November 8 meeting to see if there is room for common agreement on a single approach to this issue. We believe such discussion could focus on seeking a common way to characterize the requirements of Article 4 either (a) with respect to the HCFC production control measures under the Beijing Amendment or (b) with respect to Article 5 Parties (bearing in mind the practice to date under the Protocol with respect to this issue).

Annex XArticle 4 of the Montreal Protocol as Adjusted and Amended
by the Second, Fourth, Seventh, Ninth and Eleventh Meetings of the Parties**Article 4: Control of trade with non-Parties**

1. As of 1 January 1990, each party shall ban the import of the controlled substances in Annex A from any State not party to this Protocol.
- 1 *bis*. Within one year of the date of the entry into force of this paragraph, each Party shall ban the import of the controlled substances in Annex B from any State not party to this Protocol.
- 1 *ter*. **Within one year of the date of entry into force of this paragraph, each Party shall ban the import of any controlled substances in Group II of Annex C from any State not party to this Protocol. (Copenhagen Amendment)**
- 1 *qua*. 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.
- 1 *quin*. **As of 1 January 2004, each Party shall ban the import of the controlled substances in Group I of Annex C from any State not party to this Protocol (Beijing Amendment).**
- 1 *sex*. **Within one year of the date of entry into force of this paragraph, each Party shall ban the import of the controlled substance in Group III of Annex C from any State not party to this Protocol (Beijing Amendment).**
2. As of 1 January 1993, each Party shall ban the export of any controlled substances in Annex A to any State not party to this Protocol.
- 2 *bis*. Commencing one year after the date of entry into force of this paragraph, each Party shall ban the export of any controlled substances in Annex B to any State not party to this Protocol.
- 2 *ter*. **Commencing one year after the date of entry into force of this paragraph, each Party shall ban the export of any controlled substances in Group II of Annex C to any State not party to this Protocol. (Copenhagen Amendment)**
- 2 *qua*. Commencing one year of 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.
- 2 *quin*. **As of 1 January 2004, each Party shall ban the export of the controlled substances in Group I of Annex C to any State not party to this Protocol (Beijing Amendment).**
- 2 *sex*. **Within one year of the date of entry into force of this paragraph, each Party shall ban the export of the controlled substance in Group III of Annex C to any State not party to this Protocol (Beijing Amendment).**
3. By 1 January 1992, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of products containing controlled substances in Annex A. Parties that have not objected to the annex in accordance with those 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.
- 3 *bis*. Within three years of the date of the 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

controlled substances in Annex B. Parties that have not objected to the annex in accordance with those 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.

- 3 ter** 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 controlled substances in Group II of Annex C. Parties that have not objected to the annex in accordance with those 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. (Copenhagen Amendment)
4. By 1 January 1994, 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, controlled substances in Annex A. 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, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.
- 4 bis Within five years of the date of the 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, controlled substances in Annex B. 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.
- 4 ter.** 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, controlled substances in Group II of Annex C. 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 Section 2.1 The Montreal Protocol or restrict, within one year of the annex having become effective, the import of those products from any State not party to this Protocol. (Copenhagen Amendment)
5. Each Party undertakes to the fullest practicable extent to discourage the export to any State not party to this Protocol of technology for producing and for utilizing **controlled substances in Annexes A, B, C and E (Beijing Amendment which replaced the change made under the Copenhagen Amendment)**.
6. Each Party shall refrain from providing new subsidies, aid, credits, guarantees or insurance programmes for the export to States not party to this Protocol of products, equipment, plants or technology that would facilitate the production of **controlled substances in Annexes A, B, C and E (Beijing Amendment which replaced the change made under the Copenhagen Amendment)**.
7. Paragraphs 5 and 6 shall not apply to products, equipment, plants or technology that improve the containment, recovery, recycling or destruction of controlled substances, promote the development of alternative substances, or otherwise contribute to the reduction of emissions of **controlled substances in Annexes A, B, C and E (Beijing Amendment which replaced the change made under the Copenhagen Amendment)**.
8. Notwithstanding the provisions of this Article, imports **and exports referred to in paragraphs 1 to 4 ter of this Article (Copenhagen Amendment)** may be permitted from, or to, any State not party to this Protocol, if that State is determined, by a meeting of the Parties, to be in full compliance with

Article 2, Articles 2A to 2I (**Beijing Amendment which replaced the change made under the Copenhagen Amendment**) and this Article, and have submitted data to that effect as specified in Article 7.

9. For the purposes of this Article, the term “State not party to this Protocol” shall include, with respect to a particular controlled substance, a State or regional economic integration organization that has not agreed to be bound by the control measures in effect for that substance.
10. **By 1 January 1996, the Parties shall consider whether to amend this Protocol in order to extend the measures in this Article to trade in controlled substances in Group I of Annex C and in Annex E with States not party to the Protocol (Copenhagen Amendment).**

Annex XI

Copenhagen Amendment (1992)

L. Article 4, paragraph 2 *ter*

The following paragraph shall be inserted after paragraph 2 *bis* of Article 4 of the Protocol:

2 ter Commencing one year after the date of entry into force of this paragraph, each Party shall ban the export of any controlled substances in Group II of Annex C to any State not party to this Protocol.

M. Article 4, paragraph 3 *ter*

The following paragraph shall be inserted after paragraph 3 *bis* of Article 4 of the Protocol:

3 ter. 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 controlled substances in Group II of Annex C. Parties that have not objected to the annex in accordance with those 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.

N. Article 4, paragraph 4 *ter*

The following paragraph shall be inserted after paragraph 4 *bis* of Article 4 of the Protocol:

4 ter 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, controlled substances in Group II of Annex C. 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.

O. Article 4, paragraphs 5, 6 and 7

In paragraphs 5, 6 and 7 of Article 4 of the Protocol, for the words:

controlled substances

there shall be substituted:

controlled substances in Annexes A and B and Group II of Annex C

P. Article 4, paragraph 8

In paragraph 8 of Article 4 of the Protocol, for the words:

referred to in paragraphs 1, 1 *bis*, 3, 3 *bis*, 4 and 4 *bis* and exports referred to in paragraphs 2 and 2 *bis* there shall be substituted:

and exports referred to in paragraphs 1 to 4 *ter* of this Article

and after the words:

Articles 2A to 2E

there shall be added:

, Article 2G

Q. Article 4, paragraph 10

The following paragraph shall be inserted after paragraph 9 of Article 4 of the Protocol:

10. By 1 January 1996, the Parties shall consider whether to amend this Protocol in order to extend the measures in this Article to trade in controlled substances in Group I of Annex C and in Annex E with States not party to the Protocol.

Annex XII

Beijing Amendment (1999)

F. Article 4, paragraphs 1 *quin.* and 1 *sex.*

The following paragraphs shall be added to Article 4 of the Protocol after paragraph 1 *qua*:

1 *quin.* As of 1 January 2004, each Party shall ban the import of the controlled substances in Group I of Annex C from any State not party to this Protocol.

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

G. Article 4, paragraphs 2 *quin.* and 2 *sex.*

The following paragraphs shall be added to Article 4 of the Protocol after paragraph 2 *qua*:

2 *quin.* As of 1 January 2004, each Party shall ban the export of the controlled substances in Group I of Annex C to any State not party to this Protocol.

2 *sex.* Within one year of the date of entry into force of this paragraph, each Party shall ban the export of the controlled substance in Group III of Annex C to any State not party to this Protocol.

H. Article 4, paragraphs 5 to 7

In paragraphs 5 to 7 of Article 4 of the Protocol, for the words:

Annexes A and B, Group II of Annex C and Annex E

there shall be substituted:

Annexes A, B, C and E

I. Article 4, paragraph 8

In paragraph 8 of Article 4 of the Protocol, for the words:

Articles 2A to 2E, Articles 2G and 2H

there shall be substituted:

Articles 2A to 2I
