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

This Working Group was asked to examine the terms of the Protocol in the light of proposals made for its revision, and to identify areas where such proposals appeared to render consequential changes to the existing provisions necessary or desirable. Where possible, it has attempted to suggest solutions to the apparent inconsistencies which it has identified. However, it has found that many of its observations take the form of questions, either to the Legal Working Group to ask what was legally necessary or appropriate, or to the Parties to ask what their policy intentions would be. The Working Group was assisted by members of the Science Review Panel, to whom it offers its thanks.

The Working Group's observations are offered below article by article.

ARTICLE 1:

1. The Working Group was aware that there might be amendments to the Protocol which were adopted by some Parties and not by others. It considered that there might be a need to introduce either two or more definitions of the Protocol (as adopted on 16 September 1987 and as amended on 29 June 1990) or two or more definitions of Parties (adopting, or not adopting, the amendments of 29 June 1990). Alternatively, each reference to the Protocol or its Parties should be examined with a view to determining its applicability. It asks the Legal Working Group, or the Secretariat, to advise on precedents.

2. In view of the possible existence of groups containing only one substance, or using generic definition, the Working Group suggests that the definition of "controlled substance" should refer to substances "specified", rather than "listed" in Annex A.

3. The Working Group considered that many of the provisions of the Protocol relating to "controlled substances" might not be appropriate for HCFCs, either because Parties saw the need to accept their use to some degree, or because of the absence of any proposals for quantitative controls. A possible solution would be to place the HCFCs in a new Annex B. HCFCs could be referred to as "transitional substances" (or some other term) defined in parallel to the definition of "controlled substances".

ARTICLE 2:

4. The Working Group was aware of uncertainty as to whether the five CFCs listed in Group 1 of Annex A included the alternative isomers of those chemicals. It seems that some Parties have controlled them in implementing the Protocol, while others have not. It was informed that the alternative isomers would have different ODPs from those given in the Annex. The Group felt, subject to the views of the Legal Working Group, that this information supported the view that such isomers may not be controlled by the existing Protocol. It suggests that should the Parties want these isomers to be controlled, they could include them in any measures to control "other fully halogenated CFCs". Other options would be to add them to Group 1 of Annex A, or to resolve the question of interpretation by Decision of the Parties.

5. Article 2 paragraphs 1-4 of the present Protocol contain provision for extra production so as to satisfy the basic domestic needs of Parties operating under Article 5, and for the purposes of industrial rationalization between Parties. The Working Group considered that if the proposal to extend the provisions of Article 2 (5) to all Parties, and to extend it to the halons, was adopted in full then the reference to industrial rationalization in these paragraphs should be removed. The Parties would need to consider further whether the extra production allowable was set at the right level for the basic domestic needs of the Parties operating under Article 5 alone.

6. The Working Group considered that there should be no reference to industrial rationalization in any new paragraph covering the period after the elimination of production of controlled substances, because there would be no production to rationalize. Furthermore, if the Article 5 (1) in an amended Protocol provided for the eventual elimination of consumption in Article 5 countries, then the extra production allowance should itself be time-limited.

7. The Working Group considered the implications for any new paragraphs, covering newly controlled substances, of the fact that ODP values might not be available. It felt that it would be possible to dispense with ODP values, and with the concept of "calculated levels" of such substances by using actual tonnages, if the Parties so decided. Nevertheless, the Working Group noted that various of the provisions of the Protocol refer to the total calculated level of the controlled substances, and felt it preferable to retain this concept, and that of the ODP, for all such substances. For the "other fully halogenated CFCs" it was felt that an ODP of 1.0 could be assigned to all chemicals. The possible margin of error, thought to be within a factor of 2, was not thought to be significant given the low volumes and short commercial lifespan expected of these substances. The Working Group did not know whether an equivalent approach would be appropriate for "other halons". The Working Group understood that ODP values were available for carbon tetrachloride and methyl chloroform. As regards the HCFCs, no quantitative controls had been proposed. If the Parties adopted the approach set out in paragraph 3 above,

there might be no need to specify ODP values for these substances. If the Parties decided to adopt different regulatory strategies for different HCFCs, it might be easier to list them in different Groups of Annex B than to attempt to incorporate ODP values into any generic definitions.

8. The Working Group identified a problem associated with the later addition of new substances to a list of "other fully halogenated CFCs". It was felt that, without adjustment of the base year whenever a new substance was added, a Party could find itself instantly in breach of its obligations if a substance which it had been producing was added to the list. One solution might be to control such substances on the basis of a generic definition rather than a list of substances, although an illustrative list could accompany the definition. Another option might be to control a list of existing substances according to a reduction schedule, and to prohibit the production of any new substances, on the basis of a generic definition.

9. The Working Group asks Parties to consider whether the proposed extension to Article 2 (5) should also extend to newly-controlled substances.

10. The Working Group recommends that if industrial rationalization is extended beyond the Group 1 substances, it should not be interpreted so as to allow increases in production in one Party of one Group of substances in exchange for reduction by another Party of production of a different Group of substances. It asks the Legal Working Group to consider whether any change is needed to the definition of industrial rationalization in Article 1, paragraph 8, in order to make this clear.

11. The Working Group asks Parties to consider whether provisions equivalent to Article 2 (6) are required for newly-controlled substances and, if so, whether new dates are necessary. One solution might be to limit 2 (6) to the substances in Group 1 and 2 of Annex A and to introduce parallel provisions for new substances. Another might be to leave Article 2 (6) as it is, except for an increase in the per capita limitation contained in its last few words. This paragraph requires thorough review.

12. The Working Group considers that the requirement for all Member States of a regional economic integration organization to the Parties to the Protocol in order to take advantage of the provisions of Article 2, paragraph 8, should be reinforced. In order to take advantage of this provision in respect of their consumption obligations under an amended Protocol, each of them should be required to have adopted the amendments concerned. The Legal Working Group is requested to provide appropriate wording.

13. In Article 2, paragraph 9 (a) (ii), the reference to 1986 levels will not be appropriate if a different base year for controls is chosen for some substances. The Working Group recommends that the words "from 1986 levels" are deleted altogether.

14. The Working Group notes that Article 2, paragraph 9 (b) and (c), provides a voting mechanism for adjustments which involves all Parties. It asks Parties to consider whether participation in decisions to adjust the control measures for substances which have been added by amendment should be restricted to those Parties which have adopted the amendments concerned. Any revised wording to take this into account should address the question of which Parties the decision should be binding on. It should also consider the

consumption qualification on the two thirds majority vote. It may be wise to refer to the proportion of consumption of the particular substance or group of substances under consideration. This is an example of the general question advanced in paragraph 1 above.

15. A similar, although minor problem occurs in Article 2 (10). Although all Parties should participate in decisions as to whether new substances should be controlled, it may be that only Parties for whom a substance is controlled should decide whether to remove it.

ARTICLE 3:

16. The Working Group felt that this Article would not require significant amendment if newly controlled substances were given ODP values as in paragraph 7 above. However, the Legal Working Group should consider whether this Article is appropriate for Groups in Annex A which contain only one substance.

17. The last sentence of this Article contains a date, and reference to non-Parties. The Working Group asks Parties to consider whether a different date should be given for newly-controlled substances, and whether non-Parties should be redefined as States for whom the particular substance concerned is not controlled.

ARTICLE 4:

18. The first 4 paragraphs of this Article contain dates by which the various provisions should apply. For newly-controlled substances, the Parties should decide whether new dates should apply.

19. Throughout Article 4, reference is made to action to be taken against non-Parties. The Working Group asks parties to consider whether "non-Party" should be redefined so as to identify countries for whom the particular substance concerned is not controlled. It notes that one Party has proposed a new paragraph 9 of Article 4 to this effect.

20. This Article, and particularly paragraphs 5 to 7, provides a good example, although not the only one, of the sort of provision on the controlled substances which the Working Group considered that the Parties might not wish to extend to the HCFCs; hence its suggestion in paragraph 3 above.

ARTICLE 5:

21. Article 5 (1) contains an annual calculated level of consumption figure of 0.3 kg per capita, both to define eligibility for various provisions in the Protocol, and to limit the consumption of Parties so eligible. If parties retain the concepts of ODPs and calculated levels for newly controlled substances (see paragraph 7 above), then this figure could be revised so as to take account of the additional calculated level of consumption of the newly-controlled substances for those Parties for whom such substances are controlled. Alternatively, the 0.3 kg per capita criterion for eligibility could be retained, based only on Group 1 and Group 2 controlled substances. If so, a separate ceiling level would have to be identified for limiting the future calculated level of consumption of the newly controlled substances.

22. Article 5 (1) contains dates for the application of Article 2 control measures, and for the base year for subsequent controls. If the first option in paragraph 21 above were adopted, the same dates would have to apply to all controlled substances, as they would all be included in one per capita consumption limit. If the second option were adopted, different dates could apply to the newly-controlled substances.

23. The Working Group invites Parties to agree that the reference in Article 5 (1) to paragraphs 1 to 4 of Article 2 should be extended to cover all paragraphs in an amended Protocol which are of an equivalent nature.

ARTICLE 7:

24. The Working Group noted that for newly-controlled substances, the requirement in Article 7 (1) to report base-year data should apply within three months of entry into force for each Party of an amendment controlling the substances concerned. Also the base year for reporting should reflect base years chosen for control measures. The Working Group further noted that one Party had submitted a proposal to this effect.

25. The Working Group understood that reporting requirements for HCFCs and perhaps for methyl chloroform might be different from those for substances in Groups 1 and 2 of Annex A. It noted that in respect of HCFCs, the suggestion outlined in paragraph 3 above would help to resolve this issue. It further noted that various Parties had submitted proposals which addressed aspects of this question.

ARTICLES 9 and 10:

26. The Working Group identified these Articles as a good example, although not the only one, of the question raised in paragraph 1 above. Parties should consider whether all Parties should participate in these activities, in relation to all other Parties, and in respect of all substances, regardless of which substances were controlled for each Party.

ARTICLE 19:

27. The Working Group noted that this Article provided for withdrawal from the Protocol. It asks the Parties and the Legal Working Group whether any provisions are needed for withdrawal from amendments to the Protocol.
