



United Nations
Environment
Programme



Distr.
GENERAL



UNEP/OzL.Pro.WG.III(2)/3
22 May 1990

ORIGINAL: ENGLISH

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

Second session of the third meeting
Geneva, 9-11 May 1990

REPORT OF THE SECOND SESSION OF THE THIRD MEETING
OF THE OPEN-ENDED WORKING GROUP OF THE
PARTIES TO THE MONTREAL PROTOCOL

I. INTRODUCTION

1. The second session of the third meeting of the Open-Ended Working Group of the Parties to the Montreal Protocol was held at the United Nations Office, Geneva, from 9 to 11 May 1990, to further consider developing modalities for financial and other mechanisms to enable developing countries to meet the requirements of the Montreal Protocol, in accordance with decisions 5 and 13 of the First Meeting of the Parties to the Montreal Protocol, held in Helsinki from 2 to 5 May 1989.

II. ORGANIZATIONAL MATTERS

A. Opening of the session

2. The Chairman declared the session open and expressed the hope that the desire for constructive and expeditious work that had prevailed throughout the second session of the second meeting held two months previously would continue. He briefly informed the participants about the work of the two small sub-groups, on incremental costs and on elements of a financial mechanism, that had met immediately prior to the current session and expressed the hope that the outcome, which would be presented to the Working Group, would help to focus the deliberations.

3. In an introductory statement, the Executive Director of UNEP welcomed delegates and emphasized that the current session was the most crucial period of negotiations before the Second Meeting of the Parties, to be held in London some five weeks hence. He emphasized that, on the basis of the Working Group's previous meeting on the subject, there were no objections to

establishing a fund and a clearing-house mechanism, both under the authority of the Parties, and that the concept of additionality was agreed upon. He also highlighted the developments in respect of financial mechanisms that had taken place since the previous Working Group session on the subject.

4. Specifically, he noted the proposal by the World Bank to establish a Global Environmental Facility of one billion special drawing rights (currently equivalent to more than 1.2 billion United States dollars) as a minimum to cover ozone, climate, biological diversity and water resources. He emphasized that regardless of where the Parties decided to locate the resources of the fund, whether within the Trust Fund for the Montreal Protocol or in a special fund established by the Parties or within the new facility proposed by the World Bank, it was the clearly understood intention of the Parties that the fund should be under their authority: the Parties would establish the basis for contributions to the fund, and the policy framework and guidelines for using its resources, and they would monitor the implementation of those policies and guidelines.

5. The Executive Director introduced the paper prepared by Dr. R. Schmidt, UNEP consultant, on the proposal for co-operation by UNEP, UNDP and the World Bank with respect to the implementation of the Montreal Protocol by developing countries.

6. He then informed the Working Group about the meeting organized in co-operation with the World Intellectual Property Organization (WIPO) on the role of intellectual property in technology transfer as provided for under the Montreal Protocol.

7. He also informed the Working Group about his consultations convened in Geneva on 8 May 1990 together with the Secretary-General of the International Chamber of Commerce (ICC), with the participation of industry representatives and some Governments, regarding industry's role in transfer of technology to developing countries. The industry representatives had presented their views on priorities for transfer of technology and freely available technologies.

8. Finally, he emphasized the need for the Working Group to agree on the basic elements of the financial mechanisms in order not to leave too many issues open at the Second Meeting of the Parties.

B. Attendance

9. The session was attended by delegations from the following Contracting Parties: Australia, Austria, Belgium, Brazil, Canada, Chile, Denmark, Egypt, European Economic Community, Finland, France, Federal Republic of Germany, Ghana, Greece, Ireland, Japan, Kenya, Malaysia, Maldives, Malta, Mexico, Netherlands, New Zealand, Nigeria, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom, United States of America and Venezuela.

10. In addition, the following non-contracting States attended the session: Argentina, Bangladesh, China, India, Morocco, Philippines, Poland, Republic of Korea and Rwanda.

11. Observers from the following United Nations bodies and specialized agencies were also present: United Nations Economic Commission for Europe (ECE), United Nations Industrial Development Organization (UNIDO), United Nations Development Programme (UNDP), World Bank, World Intellectual Property Organization (WIPO) and World Meteorological Organization (WMO).

12. The following other intergovernmental organization was represented: African Development Bank.

13. The following organizations were also represented: Air-Conditioning and Refrigeration Institute (ARI), European Council of Chemical Manufacturers' Federations (CEFIC), Friends of the Earth International, Halogenated Solvents Industry Alliance, International Chamber of Commerce (ICC), Japan Association for Hygiene of Chlorinated Solvents (JAHCS) and Natural Resources Defense Council.

C. Election of officers and adoption of the agenda

14. In accordance with the decision of the first session of the first meeting of the Open-Ended Working Group, the following Bureau elected at that session remained in office:

Chairman:	H.E. Mr. Ilkka Ristimäki (Finland)
Vice-Chairmen:	Mr. Yuji Ikeda (Japan) Prof. Clement Dorim-Adzobu (Ghana)
Rapporteur:	Mr. Nicholas Christoforides (EEC)

15. The meeting adopted the following agenda, as contained in document UNEP/OzL.Pro.WG.III(2)/Rev.1:

1. Opening of the session.
2. Adoption of the agenda.
3. Follow-up of the report on the second session of the second meeting of the Open-Ended Working Group, Geneva, 26 February-5 March 1990:
 - (a) Costs that might be covered by a funding mechanism:
 - (i) Types and categories of costs;
 - (ii) Country-specific case-studies;
 - (iii) Estimated amount of costs;
 - (b) Elements of financial mechanisms, including contributions and guidelines for their administration.
4. Transfer of technology:
 - (a) Note by the Executive Director;
 - (b) UNIDO proposed programme of activities to assist developing countries to meet the requirements of the Montreal Protocol.

5. Proposed amendments to the Montreal Protocol.
6. Other matters.
7. Adoption of the report.
8. Closure of the session.

III. SUBSTANTIVE MATTERS

16. Some delegates presented the present status of their country studies to the Working Group. Brazil, China, Egypt and India indicated that tentative results to illustrate the incremental costs could be available by the time of the next meeting, in London in June 1990. The Chairman, noting that the results of the studies were at such a preliminary stage that they did not yet add much to the estimate of costs, urged the countries to complete them expeditiously.

17. When addressing the elements of the financial mechanism and, in particular, the principles of additionality and burden-sharing, one delegation expressed, inter alia, its support for a mechanism within the World Bank to provide financial assistance to Article 5 countries to meet agreed incremental costs arising out of their obligations under the Montreal Protocol. Funds for such a mechanism should come from existing Bank resources and no additional funding should be required from donor countries, although voluntary contributions could be accepted.

18. In response to that statement, many delegates expressed their concern and disappointment about the position of the delegation concerned. All other delegates who took the floor on the issue supported the principle of additionality as agreed at the second session of the second meeting of the Working Group (see paragraph 41 of the report on the work of that session (UNEP/OzL.Pro.WG.II(2)/7)) as well as the establishment of a fund, a clearing-house mechanism and an executive committee of the Parties.

19. In a joint statement, the States members of the Group of 77 attending the meeting and China emphasized the importance of establishing a financial mechanism to enable the developing countries implement the provisions of the Protocol. They stressed that agreed incremental costs for developing countries would have to be met as a grant from a multilateral fund under the control of the Parties. The funds to be provided to developing countries would have to be additional to existing financial flows of development aid and financing. The developing countries also expressed their deep dismay over the position of the delegation referred to in paragraph 17 above and urged that delegation to quickly review its position and join the global efforts to save the ozone layer, by shouldering its obligations.

20. The representative of the World Bank indicated that President of the Bank was willing to place before its Board of Directors a request from the Parties that the Bank take responsibility for assisting the implementation of investment programmes in this area. That willingness was based on the understanding that funding would be additional and on grant or concessional terms. He added that the Bank could assume responsibility and accountability for the success of these programmes only on the basis of additional funding.

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21. After some discussion the Working Group agreed on the list of incremental costs as part of the proposal for a financial mechanism on the understanding that, in accordance with existing international agreements, no distinction should be made between national and international industries with regard to the possibility of receiving funds to cover such costs. The list of incremental costs is contained in annex II to the present report.

22. Many delegates noted that the agreed incremental costs for any developing country should be met as a grant, in all cases, if they result in a net financial burden on that country.

23. One delegation stated its reservation about the exclusion of the cost of imports from the list of incremental costs, and indicated that it would return to the issue at the next session of the Working Group.

24. The Working Group decided to postpone until its next session further discussions on the issue of the estimated total requirement of funds for the first three-year period.

25. With regard to a financial mechanism for the implementation of the Montreal Protocol a proposal was made by the Chairman. All delegates welcomed the proposal and emphasized that it constituted a good basis for further negotiations and for taking a formal decision on the issue at the Second Meeting of the Parties. Some delegates indicated that there were a few elements on which they could not commit themselves at the present stage. The Working Group recommended that the Second Meeting of the Parties consider for adoption the proposed financial mechanism, which is contained in annex I to this report, subject to further consideration of the details.

26. Some delegates expressed, as initial comments on the proposal, their concern that contributions to the financial mechanism should be of a voluntary nature. One delegation also indicated that contributions in kind should be possible not only in exceptional cases.

27. The Executive Director of UNEP presented a paper on transfer of technology, including a series of specific proposals on how the amendment of Article 5 that had been circulated to all Parties could be reviewed with a view to reaching agreement on language that could meet as many differing views as possible. Several delegates found the suggestions helpful for future discussion at the June meetings in London. The Working Group decided to include the suggestions in annex III of the present report and expressed the hope that delegates would consider these suggestions and return to them at the next session of the Working Group.

28. Some delegations made the point that transfer of technology should be clearly dealt with in the Protocol in a special article.

29. One delegation stated that, while it agreed with the idea that a financial mechanism should become operational as soon as possible, it felt that any decision on the subject should be compatible with the corresponding amendment to the Protocol and that the mechanism concerned should be provisional.

IV. OTHER MATTERS

30. One delegation indicated its intention to raise the issue of the definition "Article 5 countries" at a later stage.

V. ADOPTION OF THE REPORT

31. The present report together with its annexes was adopted by the Working Group at the final meeting of the session, on 11 May 1990, on the basis of the draft report contained in document UNEP/OzL.Pro.WG.III(2)/L.1 and Add.1-3.

VI. CLOSURE OF THE SESSION

32. The Chairman informed the Working Group that it was the intention to address the issues of the financial mechanism during the two first days of the fourth session of the Open-Ended Working Group of the Parties, to be held in London from 20 to 26 June 1990. Then, after the customary exchange of courtesies, the Chairman declared the session closed at 6.15 p.m. on 11 May 1990.

Annex I

**FINANCIAL MECHANISM FOR THE IMPLEMENTATION
OF THE MONTREAL PROTOCOL**

1. The Contracting Parties to the Montreal Protocol shall establish a Financial Mechanism to provide financial and technical co-operation including the transfer of technology to Parties operating under Article 5 of the Protocol to enable their compliance with the Protocol. The Financial Mechanism shall cover all agreed incremental costs of countries operating under Article 5. Contributions under the Financial Mechanism shall be additional to other financial flows to such countries.
2. Under the Financial Mechanism the Parties shall set up a Multilateral Fund. The Financial Mechanism also includes other multilateral funding and bilateral co-operation. Bilateral co-operation can, up to a certain percentage and according to criteria to be adopted by the Parties, count as a part of agreed contributions to the Multilateral Fund.
3. The Multilateral Fund will:
 - (a) Cover, on a grant or concessional basis, as appropriate and according to criteria to be adopted by the Parties, all the agreed incremental costs, as defined in annex II to the present report;
 - (b) Perform clearing-house assistance functions;
 - (c) Finance Fund secretarial services and other support costs.
4. The Multilateral Fund shall be under the authority of the Contracting Parties who shall determine the overall policies of the Fund. The Parties shall establish an Executive Committee on the basis of a balanced representation of Parties operating under Article 5 and Parties not operating under Article 5. The Executive Committee will develop and implement specific operational policies and administrative arrangements to achieve the objectives of the Fund. These arrangements shall be implemented in co-operation with the World Bank, UNEP, UNDP or any other appropriate agencies.
5. Contributions to the Multilateral Fund shall be made by Parties not operating under Article 5 on the basis of the [scale of assessments of the United Nations] [calculated 1986 consumption level of controlled substances]. Contributions by other Parties shall be encouraged. The contributors' percentages and figures for each three-year fiscal period shall be adopted by the Parties. Contributions to the Fund will be made in convertible currency or, exceptionally, in kind.
6. Under the Multilateral Fund resources will be channelled with the concurrence of the Governments of developing countries.
7. Under the clearing-house function, the Multilateral Fund will:
 - (a) Assist countries operating under Article 5 to determine their needs for co-operation;

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(b) Facilitate and monitor bilateral, regional and other multilateral co-operation available to developing countries operating under Article 5;

(c) Facilitate technical studies, the distribution of information and other relevant materials, the holding of workshops and training sessions, and other related activities.

Annex II

INCREMENTAL COSTS

1. In the context of international financial mechanisms, "transfer of technology" means "facilitating access to environmentally safe alternative substances and technologies for Parties that are developing countries and assist them to make expeditious use of such alternatives" (Article 5, paragraph 2, of the Montreal Protocol) by meeting the incremental costs associated with transition from the controlled substances to alternatives and substitutes.*

2. The evaluation of requests for financing costs of a given transition project would take into account the following general principles:

(a) The most cost effective and efficient option should be chosen, taking into account the national industrial strategy of the recipient country:

It should be considered carefully to what extent the infrastructure presently used for CFC production could be put to alternative uses, thus resulting in decreased capital abandonment, and how to avoid deindustrialization and loss of export revenues.

(b) Consideration of project proposals by the appropriate process set by the Parties within the financial mechanism should involve the careful scrutiny of cost items listed in an effort to ensure that there is no double-counting;

(c) Savings or benefits that will be gained at both the strategic and project levels during the transition process should be taken into account on a case-by-case basis as provided by the rules established by the Parties;

(d) The reimbursement of incremental costs is intended as an incentive for early adoption of ozone protecting technologies:

In this respect the Parties to the Protocol shall agree which time scales for reimbursement of incremental costs are appropriate in each sector.

* The insertion of the words "non-commercial terms" into the definition of the term "transfer of technology" in this paragraph was discussed. It was concluded that this proposal should be considered under the issue of transfer of technology. It was noted that Article 5 of the Protocol was being considered for amendment and it was suggested that the definition of the term "transfer of technology" should be remodelled in accordance with the amendments to that Article.

3. Incremental costs that might be covered by the international financial mechanism would include those listed below. If other incremental costs than those mentioned below are identified and quantified, a decision as to whether they are to be covered by the financial mechanism shall be taken according to guidelines to be laid down by the Parties. The incremental recurring costs shall apply only for a transition period to be defined. The following list is indicative:

(a) Supply of substitutes

- (i) Cost of conversion of existing production facilities:
 - cost of patents and designs and incremental cost of royalties;
 - capital cost of conversion;
 - cost of retraining of personnel, as well as the cost of research to adapt technology to local circumstances;
 - (ii) Subject to agreement on a cut-off date, costs due to premature retirement or enforced idleness:
 - of productive capacity previously used to produce substances controlled by existing and/or revised Protocol provisions; and
 - where such capacity is not replaced by converted or new capacity to produce alternatives;
 - (iii) Cost of establishing new production facilities for substitutes of capacity equivalent to capacity lost when plants are converted or scrapped:
 - cost of patents and designs and incremental cost of royalties;
 - capital cost;
 - cost of training, as well as the cost of research to adapt technology to local circumstances;
 - (iv) Net operational cost including the cost of raw materials;
 - (v) Cost of import of substitutes;
- (b) Use in manufacturing as an intermediate good:
- (i) Cost of conversion of existing equipment and product manufacturing facilities;
 - (ii) Cost of patents and designs and incremental cost of royalties;

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- (iii) Capital cost;
 - (iv) Cost of retraining;
 - (v) Cost of research and development;
 - (vi) Operational cost;*
- (c) End use:
- (i) Cost of premature modification or replacement of user equipment;
 - (ii) Cost for collection, management, recycling and destruction (if cost-effective) of ozone-depleting substances;
 - (iii) Cost for providing technical assistance to reduce consumption and unintended emission of ozone-depleting substances.

* Including the cost of raw materials except where otherwise provided for.

Annex III

TRANSFER OF TECHNOLOGY

Proposal by the Executive Director

1. With the completion of the work of the Working Group on the financial mechanism for the implementation of the Montreal Protocol it is becoming very hopeful now that the Parties would agree a concrete proposal in this respect when they meet in London in June 1990. The mechanism is expected to finance on a grant or concessional basis all the incremental costs agreed by the Parties. It seems to be that the general understanding is that such financing will be on a grant basis when it finances incremental costs that constitute a net burden on the countries operating under paragraph 1 of Article 5; i.e. costs that do not lead to net profit by the country concerned.

2. In the light of the above the Executive Director is recommending:

(a) That the proposed Article 10 bis ("Transfer of technology and financial assistance") should deal only with the financial mechanism in the form that would be recommended by the Working Group to the Parties;

(b) That the transfer of technology would be dealt with in Article 5 only.

3. To facilitate the deliberations of the Party on the proposed amendments regarding the transfer of technology the Executive Director is suggesting the following:

(a) To retain paragraph 2 of Article 5;

(b) To delete paragraph 3 of Article 5, since the financial arrangements are to be dealt with in detail under the financial mechanism in proposed Article 10 bis;

(c) Add to Article 5 the following new paragraph 3 based on paragraph 4 of the proposed amendment to Article 5 and paragraph 1 of the proposed Article 10 bis:

"The obligation of the Parties under paragraph 1 of Article 5 to comply with the schedule of the control measures set out in Article 2, paragraphs ---- to ----, will be subject to the financial assistance as provided by Article 10 bis and the transfer of technologies for the recycling and conservation of controlled substances, manufacture of substitute substances, raw materials required for manufacturing substances, equipment and products using such substances and, for the modification of user equipment."

4. The Executive Director further recommends that the declaration to be adopted by the Parties should include a call on industry to treat the subject of transfer of technology to countries acting under paragraph 1 of Article 5 of the Protocol on a preferential and non-commercial basis because of the significance of such transfer in the protection of human and other forms of life on earth.

5. With regard to the financial mechanism the Executive Director intends to present to the Parties:

(a) Draft paragraphs 1, 2, 3, 4, 5 and 6 in language that could be included in the Protocol based on the proposal on the subject in annex I to the report on the work of this session of the Working Group;

(b) A draft decision on the establishment of the financial mechanism to which would be attached the following annexes:

- (i) Terms of reference of the Fund;
- (ii) The list of incremental costs as now recommended by the Working Group;
- (iii) The terms of reference of the Executive Committee;
- (iv) The terms of reference of the clearing-house;
- (v) A list of the percentages to be contributed by each Party and the actual figures of such a contribution calculated on the basis of the two options enunciated in paragraph 5 of Annex I of the report on the work of this session of the Working Group.
