



United Nations
Environment
Programme



Distr.
LIMITED

UNEP/OzL.Pro/WG.1/5/3
5 December 1990

ORIGINAL: ENGLISH

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

Fifth meeting
Nairobi, 3-5 December 1990

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

I. INTRODUCTION

1. The fifth meeting of the Open-ended Working Group of the Parties to the Montreal Protocol took place at the headquarters of the United Nations Environment Programme in Nairobi from 3 to 5 December 1990. It was held to consider problems arising under the trade provisions of the Protocol, in respect of both trade between parties and trade with non-parties, including issues related to free-trade zones, in accordance with decision II/15 of the Second Meeting of the Parties to the Montreal Protocol, held in London from 27 to 29 June 1990, and to develop a list of products containing controlled substances for the purposes of article 4, paragraph 3 of the Protocol.

II. ORGANIZATIONAL MATTERS

A. Opening of the meeting

2. Mr. M.K. Tolba, Executive Director of UNEP, opened the meeting and welcomed the participants to Nairobi. He emphasized that the most important issues to be addressed by the Working Group were:

(a) The most appropriate modalities for the transfer of technologies designed for the protection of the ozone layer, which was important not only for activities under the Protocol, but also in work related to future international agreements on such issues as biological diversity and climate;

(b) Issues related to the implementation of article 4, especially regarding GATT rules, and the question of intellectual property and its implications for technology transfer, as well as free-trade zones;

(c) Development of a list of products containing controlled substances;

(d) The exact quantities of controlled substances which would be needed by developing countries over the coming years to cover their basic domestic needs.

B. Attendance

3. The meeting was attended by representatives from Australia, Burundi, Canada, Colombia, Congo, Egypt, Finland, France, Germany, Ghana, Greece, Guinea, Japan, Kenya, Malawi, Malaysia, Mexico, the Netherlands, Norway, Pakistan, Singapore, South Africa, Sweden, United Republic of Tanzania, Thailand, Uganda, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America, and the European Economic Community.

C. Election of officers and adoption of the agenda

4. The following officers were elected by the meeting:

Chairman:	Mr. Steve Lee-Bapty (United Kingdom)
Vice-Chairman:	Mr. Paul Mungai (Kenya)
Rapporteur:	Mr. Phua Kia Chew (Singapore)

5. The meeting adopted the following agenda, as contained in document UNEP/OzL.Pro/WG.1/5/1:

1. Opening of the meeting:

(a) Statement by the Executive Director of UNEP.

2. Organization of the meeting:

(a) Election of officers;

(b) Adoption of the agenda.

3. Substantive matters:

(a) Note by the Executive Director;

(b) General debate:

(i) Status of implementation of article 4 of the Montreal Protocol;

(ii) Planned national activities under article 4 of the Montreal Protocol;

(iii) Development of the list of products containing controlled substances;

(iv) Problems arising from the provisions in article 4;

- (v) Issues related to the General Agreement on Tariffs and Trade;
 - (vi) Article 2 on control measures: supply of controlled substances to developing countries;
 - (vii) Issues of industrial rationalization: transfer of production capacities.
4. Other matters.
 5. Adoption of the report.
 6. Closure of the meeting.

Status of implementation of article 4 of the Montreal Protocol and planned national activities under article 4 of the Protocol

6. Representatives of most parties present at the meeting reported that they had implemented or taken steps to implement paragraph 1 of article 4. The Working Group strongly urged the parties that had not done so to implement that provision expeditiously and report on its implementation to the Secretariat.

7. Representatives of several parties indicated that they had legislation in place to implement paragraph 2 of article 4 as amended. Some had initiated legislation for the implementation of paragraphs 1 bis and 2 bis of article 4 as amended, on new controlled substances.

8. A few representatives informed the Working Group that their Governments had implemented paragraphs 5 and 6 of article 4, while others reported concern at, or difficulty with, the implementation of those paragraphs. The Working Group urged parties to make available to the Secretariat and to other parties any information they had on the implementation of those provisions of the Protocol.

Development of the list of products containing controlled substances

9. A subgroup of the Working Group was formed to elaborate on the list provided as an annex to the Executive Director's note (UNEP/OzL.Pro/WG.1/5/2).

10. The subgroup discussed the merits, complications, enforcement and other issues relating to the article 4 provisions on control of trade with non-parties in products containing CFCs and halons. The following concerns were debated by the subgroup:

(a) The extent to which the trade provisions under the Protocol are an incentive for countries to join, to remain in compliance with its terms, and for companies in countries not party to the Protocol to halt the use of CFCs and halons in order to serve world markets;

(b) Whether or not restrictions on products containing CFCs and halons will be necessary in light of the fact that many countries have joined the Protocol and many other countries are now considering joining;

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(c) The extent to which trade provisions will complicate international business transactions;

(d) The challenges of enforcing restrictions on a potentially long list of products possibly containing incidental or small quantities of CFCs and halons;

(e) The enforcement of trade restrictions, and how to resolve questions of compliance if restricted products are imported from non-parties;

(f) Whether or not it is desirable to restrict products intended to contain CFCs and halons but shipped to market uncharged. It was concluded that such a restriction would certainly require modification of the Protocol. Therefore, products shipped uncharged and not containing CFCs or halons would not be restricted;

(g) Whether or not the restriction need apply to the transport of personal or household effects or similar normally exempted cases.

11. A preliminary proposal for consideration in capitals and at the next meeting of the Working Group is annexed to this report. The Working Group requested the Secretariat to circulate it as a proposed annex to the Montreal Protocol in accordance with article 10 of the Vienna Convention for the Protection of the Ozone Layer. The Working Group noted that that would not prevent further discussion and amendment of the list prior to or at the Third Meeting of the Parties.

Problems arising from the provisions in article 4

12. The Working Group requested the Secretariat to seek information from the parties on their efforts to implement article 4, paragraphs 5 and 6 and any difficulties they faced in implementing those paragraphs.

13. Several delegates urged the Secretariat to establish a procedure for prompt notification of the status of ratification of the Montreal Protocol and its amendment to all parties.

III. SUBSTANTIVE MATTERS

Issues related to the General Agreement on Tariffs and Trade

14. The Working Group concluded that there appeared to be no conflict between GATT rules and article 4, paragraphs 1, 1 bis, 2, 2 bis and 5 to 8 and other articles of the Montreal Protocol. The Working Group further concluded that no specific conflict between GATT rules and article 4, paragraphs 3, 3 bis, 4 and 4 bis could be identified. However, the implementation of those provisions might raise specific problems. Hence consideration of the implementation of those provisions should be undertaken with that possibility in mind.

15. It was pointed out that restrictions on products produced with, but not containing, controlled substances might be hard to justify under the General Agreement on Tariffs and Trade if it proved difficult to determine whether such products actually were produced with the controlled substances.

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Article 2 on control measures:
supply of controlled substances to developing countries

16. The Working Group noted that the Technology Review Panel had been requested to include in its work programme an analysis of the quantities of controlled substances required by parties operating under article 5, paragraph 1 for their basic domestic needs, both at present and in the future, and the likely availability of such substances. It was also noted that the Panel would be assisted in that task by country case-studies.

17. The Working Group therefore concluded that, pending the completion of that work, no further action by the Ozone Secretariat was needed at the present stage, especially as the Working Group could identify no immediate problems in the supply of the controlled substances to countries operating under article 5, paragraph 1.

Issues of industrial rationalization

18. The Working Group noted that only a few developing countries had reported complete data on their production, imports and exports of controlled substances, and considered that as an interim measure producer parties should be allowed to increase their production by up to 10 per cent of their 1986 calculated level of production so as to satisfy the basic domestic needs of those countries temporarily categorized by the Secretariat as operating under article 5, paragraph 1.

19. However, to prevent such an arrangement from acting as a disincentive to the reporting of complete data, it should be based on the condition that any developing country benefiting from the arrangement should inform the Ozone Secretariat of any difficulties it faced in reporting complete data, so that suitable measures could be taken to rectify the situation. That interim arrangement should be reviewed by the parties at their third meeting.

Technology transfer and intellectual property

20. The Working Group was of the opinion that the issues of technology transfer and intellectual property required careful attention and detailed discussion. It therefore decided to defer consideration of those issues to a subsequent meeting, when it could also take into account the results of the efforts undertaken under the interim financial mechanism established by decision II/8 of the parties and any deliberations under the auspices of GATT and WIPO.

Free trade agreements between countries

21. The Working Group was not aware of any particular difficulties with regard to bilateral or regional free trade agreements in implementing article 4. However, it encouraged any parties that were experiencing or might experience conflicts between their obligations under the Montreal Protocol and their obligations under bilateral or regional trade agreements to seek to resolve those difficulties through negotiation and discussion. In that context the Working Group noted the relevant provisions of the Vienna Convention on the Law of Treaties.

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Free-trade zones within particular countries

22. The Working Group concluded that no particular difficulties with regard to the interpretation of the Montreal Protocol appeared to arise regarding free-trade zones within a country, since such zones were under the jurisdiction of that country. It was the opinion of the Working Group that the existence of free-trade zones did not absolve parties from complying with the Protocol. The Working Group was not aware of any specific examples of difficulties, but there might be problems relating to the reporting of data. The Working Group encouraged the Ad Hoc Group of Experts on the Reporting of the Data to address this issue.

Transshipment

23. With regard to the transshipment of controlled substances, the Working Group requested the parties to consider the problems, if any, of compliance with the Protocol caused by transshipment.

24. The Working Group also requested the Ad Hoc Group of Experts on the Reporting of Data to consider the issue of transshipment, and in particular to examine the relevance of the issue, the documentation available and possibilities for improving transshipment documentation, if necessary.

25. One representative, supported by another, stated that for the purposes of the Protocol the exporter should be considered the country of origin and the importer the final destination. Another representative pointed out the practical difficulties involved in identifying the country of origin or destination of consignments which were transshipped.

Other matters

26. The Working Group requested the Secretariat to approach the Parties and remind them of their obligation to inform it of the measures adopted by them in implementation of the Protocol, especially article 4. Further, the Working Group was interested to know of regulations which would restrict trade in certain products containing or made with controlled substances. The Secretariat was requested to carry out a survey to obtain such information and submit the results to the sixth meeting of the Working Group for consideration as a separate agenda item.

Adoption of the report

27. The meeting adopted the present report, on the basis of the draft report contained in document UNEP/OzL.Pro/WG.5/L.1 and its addenda, on 5 December 1990.

Closure of the meeting

28. After the customary exchange of courtesies, the Chairman declared the meeting closed at 5.00 p.m. on Wednesday, 5 December 1990.

Annex

A PRELIMINARY LIST FOR DISCUSSION

The Working Group presents the following preliminary proposal in accordance with article 4, paragraph 3 of the Protocol. This preliminary proposal is a basis for further discussion in capitals and at the next meeting of the Working Group. A comprehensive list of products containing CFCs or halons is attached, including some products that are difficult to distinguish from products not containing CFCs or halons, some products that are hard to identify, some products that are traded only in small quantities and some products that contain CFCs or halons that are difficult to detect.

In pursuit of the goal of environmental protection and the necessity of enforcement it is recommended that products for the final list be selected with consideration of the quantity of CFCs and halons traded, the ease of product identification and chemical detection of the CFC and halon content, and other practical considerations.

A short list is:

1. Automobile and truck air conditioning (whether incorporated in vehicles or not)
2. Refrigeration appliances
 - Refrigerators
 - Freezers
 - Dehumidifiers
 - Water coolers
 - Ice machines
3. Aerosol products, except medical
4. Portable fire extinguishers
5. Insulation boards, panels and pipe covers

UNEP should immediately notify parties when countries ratify or accede to the Protocol.

B. A COMPREHENSIVE LIST FOR REFERENCE

<u>Process group</u>	<u>Product group</u>	<u>Chemical</u>
Refrigeration	Packaged process equipment	CFC-11, 12, 500, 502
	Packaged commercial	
	Display refrigerators	CFC-12
	Display freezers	CFC-12, 500, 502

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<u>Process group</u>	<u>Product group</u>	<u>Chemical</u>
	Manufacturing refrigeration	
	Solvent machines	CFC-12
	Dehumidification	
	Other	
	Refrigerated transport	CFC-12, 500 and 502
	Trucks	
	Trailers	
	Train cars	
	Ships	
	Containers	
	Refrigerators	CFC-12
	Freezers	CFC-12 and 500
	Beverage vending	CFC-12 and 500
	Bulk beverage dispensers	CFC-12
	Dehumidifiers	CFC-12 and 500
	Water coolers	CFC-12
	Ice machines	CFC-12
	Display cases	CFC-12, 500 and 502
Air conditioning		
	Packaged chillers	CFC-11 and 12
	Packaged heat pumps	CFC-12
	Mobile air conditioning	CFC-12
	Automobiles	
	Trucks	
	Buses	
	Trains	CFC-11 and 12
	Aeroplanes	CFC-12
	Ships	CFC-11, 12 and 114
Note:	Most small-window, split-system and residential air conditioning uses HCFC-22, which is not a controlled substance.	
Rigid foams		
	Rigid polyurethane foams	CFC-11
	Insulating board	
	Building panels	
	Windows and doors	
	Insulating pipe	
	Packaging	CFC-11 and 12
	Automobile	CFC-11 and 12
	Dashboards, bumpers, etc.	
	Insulated tanks	CFC-11
	Insulated trucks	CFC-11
	Trailers, containers,	
	Train cars and ships	
	Refrigerators	CFC-11
	Freezers	CFC-11

<u>Process group</u>	<u>Product group</u>	<u>Chemical</u>
	Beverage vending machines	CFC-11
	Bulk beverage dispensers	CFC-11
	Water coolers and heaters	CFC-11
	Ice machines	CFC-11
	Decorative moulding/panels	CFC-11 and 12
	Foam-in-place flotation	CFC-11 and 12
	Flotation devices	CFC-11 and 12
	Rigid phenolic foams	CFC-11
	Rigid extruded polystyrene	CFC-12
	Insulating boards	
	Building panels	
Note: Extruded foam used for food and product packaging and flexible polyurethane slabstock and moulded foam used for cushioning and padding are considered on this list as made with but not containing CFC.		
Chemical ingredients/blends		
	Pre-polymer mix	CFC-11, 12 and 113
	Polyurethane	
	Polystyrene	
	Phenolic	
	Polyvinyl chloride	
	Polypropylene	
	Polyethylene	
	Sterilant blends	CFC-12
	Electronic cleaner	CFC-113
	General-purpose	
	Computer head	
	Tuner	
	CD and VCR	
	Metal cleaners	CFC-113
	Clothes cleaners	CFC-113
	Mould release	CFC-12 and 113
	Adhesives	CFC-11, 12 and 113
	Aircraft de-icing	CFC-11 and 113
Miscellaneous		
	Transformers	CFC-11 and 113
Aerosol		
	Medical	CFC-12
	Cosmetic	CFC-12
	Hair products	
	Shaving cream	

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<u>Process group</u>	<u>Product group</u>	<u>Chemical</u>
	Perfumes	
	Deodorants	
	Air fresheners	
	Insecticides	CFC-11, 12 and 113
	Freeze-and-test	CFC-12
	Dust removal	CFC-12
	Tyre inflator	CFC-12
	Noise makers	CFC-12
	Party	
	Boat	
	Security	
	Bicycle	
	De-icer	
Fire extinguishers		
	Portable	Halon-1211 and 1301
	Packaged	Halon-1211 and 1301
	Equipment with halon	Halon-1211 and 1301
	Aerosol filling	
	Soldering machines	
	Solvent equipment	
	Dust hoods/conveyers	
	Mining machinery	
	Mobile equipment	Halon-1211 and 1301
	Ships	
	Aeroplanes	
	Armoured combat vehicles	
