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IMPLEMENTATION COMMITTEE UNDER THE
NON-COMPLIANCE PROCEDURE FOR
THE MONTREAL PROTOCOL
Ninth meeting

Nairobi, 3 October 1994

REPORT OF THE IMPLEMENTATION COMMITTEE UNDER THE NON-
COMPLIANCE PROCEDURE FOR THE MONTREAL PROTOCOL
ON THE WORK OF ITS NINTH MEETING

I. INTRODUCTION

1. The ninth meeting of the Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol was held at the headquarters of the United Nations Environment Programme (UNEP), Nairobi, on 3 October 1994.

II. ORGANIZATIONAL MATTERS

2. The meeting was opened by Mr. Hugo Schally of Austria, who had been elected President of the Committee at its eighth meeting. The President welcomed all those participating in the meeting.

3. The meeting was attended by Committee members from Argentina, Austria, Bulgaria, Burkina Faso, Chile, Jordan, Netherlands, Republic of Korea and Uganda. Representatives from implementing agencies and the Fund Secretariat were also present. The meeting was also attended by representatives of the following Governments who had been invited to meet with the Committee: Algeria, Antigua and Barbuda, Central African Republic, Iran, and Syrian Arabic Republic. The representatives of Poland and Romania were also invited to attend. The list of participants is annexed to the present report.

4. The Committee adopted the following agenda, contained in document UNEP/OzL.Pro/ImpCom/9/1:

1. Opening of the meeting.
2. Organizational matters:
Adoption of the Agenda.
3. Substantive matters:
 - (a) Exchange of views on data reporting with some non-reporting Parties to the Montreal Protocol;

(b) Consideration of the data and information reported pursuant to Decision V/3 of the Fifth Meeting of the Parties.

4. Other matters.
5. Adoption of the report.
6. Closure of the meeting.

III. SUBSTANTIVE MATTERS

Exchange of views on data reporting with some non-reporting Parties to the Montreal Protocol

5. Introducing the item, the representative of the Secretariat said that since the publication of the Secretariat's report on reporting of data by the Parties, contained in document UNEP/OzL.Pro.6/5, the following additional Parties had reported data for 1992: Barbados, Belarus, Botswana, Burkina Faso, Chile, Cuba, Egypt, Ghana, Indonesia, Kenya, Niger, Philippines, Senegal and Ukraine; and the following Parties had reported data for 1993: Argentina, Barbados, Belarus, Botswana, Brazil, Bulgaria, Burkina Faso, Chile, China, Cuba, Czech Republic, Denmark, Egypt, Hungary, Indonesia, Israel, Kenya, Malaysia, Maldives, Mauritius, New Zealand, Norway, Niger, Philippines, Singapore, Sri Lanka, Thailand, Tunisia and Venezuela. The representative of Jordan pointed out that his country, although not listed in the report, had in fact reported its data for both 1986 and 1992.

6. Since the eighth meeting of the Implementation Committee, the representative of the Secretariat said, there had been a marked improvement in data reporting, especially in the preceding three weeks. The improvement was an encouraging sign, which he believed was due to the able leadership of the Committee. However, some Parties operating under Article 5 consistently failed to report data, despite the fact that financial and other assistance had been provided to them in that respect. Following the eighth meeting of the Committee, the Secretariat had sent a letter to 10 Parties which had been beneficiaries through the Fund, requesting them to submit data by 15 September 1994 or, failing that, inviting them to attend the ninth meeting of the Implementation Committee to explain why they had failed to report data. Three of those countries had provided the necessary data. The following Parties had therefore been invited to attend the present meeting: Algeria, Antigua and Barbuda, Central African Republic, Iran, Lebanon, Swaziland and Syrian Arab Republic. However, Lebanon and Swaziland did not attend.

7. Agreeing that the trend towards better reporting of data was encouraging for the implementation of the Montreal Protocol, the President asked the representatives of the Parties invited to offer their comments with regard to their failure to provide data.

8. The representative of Algeria said that he had with him a copy of the data submitted to the Secretariat on 23 July 1994 and would be glad to furnish the Secretariat with that data. The President expressed his satisfaction with the representative's information.

9. The representative of the Central African Republic drew attention to the fact that his country lacked the necessary resources to implement the Montreal Protocol and depended to a great extent on the Multilateral Fund and the implementing agencies, for which assistance he was extremely grateful. In answer to the President's question regarding when his country could actually submit the data to fulfil its legal obligations under the

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Protocol, the representative replied that, once the country programme was completed, the data would be provided, hopefully at the end of the year. The President suggested that the Secretariat contact UNEP's Industry and Environment Programme Activity Centre (IE/PAC) to see if even provisional data could be provided soon. The Committee should be satisfied with the comments given, he said, but should keep under review the difficulties faced by least-developed countries in implementing the Protocol.

10. The representative of IE/PAC emphasized that, in its cooperation with developing countries, data reporting was at the centre of activities. An expert would soon be sent to the Central African Republic to assist in collecting and formulating data. Turning to another issue, he expressed concern that the implementing agencies had not been invited to attend the present meeting, which he considered to be of relevance to them. Indeed, it would be preferable for the implementing agencies to be invited to all meetings of the Committee. The President agreed and asked the Secretariat to ensure that the implementing agencies should have a standing invitation to all meetings of the Committee.

11. The representative of Antigua and Barbuda explained that there was one main factor behind his country's problems in providing data: non-participation in the Montreal Protocol process. However, his country was now well on the way towards implementing the country programme. A visiting consultant had carried out the first phase. It was hoped that within six months or so his country would be able to submit a first draft. In answer to the President's suggestion that even a rough draft, submitted as soon as possible, would help the Secretariat, the representative said that he would convey that concern to the authorities in his country. The President thanked the representative for his outline of the situation and said that the situation should be kept under review.

12. Speaking by way of clarification, the representative of the Secretariat pointed out that the Montreal Protocol itself made provision for the submission of initial estimates in cases where actual data were not available. Subsequently, based on actual surveys, correction to data was permitted.

13. The representative of Iran said that a country programme had been prepared in 1993, three projects were currently being implemented in his country and others were proposed. Iran had recently sent the required data to the Secretariat and could submit a further copy to it at the present meeting. The President welcomed the information given.

14. The representative of the Syrian Arab Republic said that his country had a country programme and projects had been set up. However, it faced particular problems in collecting data on consumption, especially with regard to halons and Annex C substances. The required data had been sent to the Secretariat at the end of the preceding week and a copy could be made available to the Secretariat at the present meeting. The President expressed his satisfaction at this information.

15. Pointing out that, for the time being at least, the reporting of data by Parties seemed to be progressing satisfactorily, the President said that deficiencies remained and had to be kept under close review. The situation could easily change in the coming year. In that context, turning to draft decision VI/2, on implementation of Articles 7 and 9 of the Protocol, contained in document UNEP/OzL.Pro.6/L.1, the President asked the Committee if it could support the text as given or whether any members had any proposals for amendment to present to the Preparatory Meeting.

16. The representative of Burkina Faso said that he would have liked the draft decision to contain a recommendation that the Executive Committee

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take action to support the least-developed countries' efforts to meet their legal obligations under the Protocol. In view of the problems encountered by some developing countries in forwarding data, the Implementation Committee should at least recommend to the Executive Committee that it should study the possibility of supporting the training of the persons responsible for the ozone programmes in developing countries, to enable them to carry out the collection of data better, in response to the provisions of Article 7 of the Montreal Protocol. The representative of the Multilateral Fund replied that such a recommendation had already been adopted at the thirteenth meeting of the Executive Committee.

17. The President said that the member's proposal would be reflected in the report of the Committee and suggested that the Implementation Committee direct a recommendation to the Executive Committee as proposed by the representative of Burkina Faso. The President then thanked the representatives of the invited Parties and the implementing agencies for their contribution to the discussion of the item.

B. Consideration of the data and information reported pursuant to Decision V/3 of the Fifth Meeting of the Parties

18. The President considered that this agenda item had already been covered by the comments made by the Secretariat and the discussion held on the previous item and no further discussion was needed.

IV. OTHER MATTERS

Draft decisions contained in document UNEP/OzL.Pro.6/L.1

19. The President explained that the Chairman of the Preparatory Meeting of the Sixth Meeting of the Parties had asked the Implementation Committee for its opinion on several of the draft decisions contained in document UNEP/OzL.Pro.6/L.1. Concerning draft decision VI/4, on application of trade measures under Article 4 to non-Parties to the London Amendment to the Protocol, Malta and Jordan had requested that the decision reflect their change of status. In addition, Poland and Turkey wished their status to be clearly reflected in that draft decision. Concerning Malta and Jordan, he said, their inclusion in the decision was a non-issue, since both countries had acceded to the London Amendment and were now not covered by Article 4. The representative of the Secretariat explained that, after receiving data from Poland and Turkey, and information on the ratification of Malta and Jordan, the Secretariat had formally communicated that information to all countries. Although the concern of Poland and Turkey was relevant, he agreed that it was superfluous to mention Malta and Jordan in the draft decision.

20. The representative of Jordan said he believed that the four countries should be included because of the reference to them contained in decision V/3 of the Parties. In reply, the President pointed out that the Secretariat report on reporting of data by the Parties, contained in document UNEP/OzL.Pro.6/5, in its paragraph 19 clearly showed that decision V/3 did not apply to Jordan and Malta. Therefore, he saw no reason to amend draft decision VI/4 in that respect, and would report back to the Preparatory Meeting appropriately.

21. Turning to the question of the issue raised by Poland and Turkey with regard to draft decision VI/4, the President drew attention to an informal hand-written statement by Poland and Turkey before the present meeting. He suggested an amendment along the lines of an insertion within the text of the draft decision and asked the representative of Poland for his views.

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22. The representative of Poland emphasized that Poland and Turkey should enjoy some exemption, along the lines contained in paragraph 4 of decision V/3, but referring to the seventh meeting of the Parties and extending the dates in that paragraph by one year.

23. As there were no objections, the President agreed that the Implementation Committee would forward to the Preparatory Meeting an amended decision VI/4 to read:

"1. To note the information reported by Poland and Turkey pursuant to decision V/3 (Application of trade measures under Article 4 to non-Parties to the London Amendment) of the Fifth Meeting of the Parties and to note that these two countries have thereby submitted data demonstrating that in 1993 they were in full compliance with Articles 2, 2A-2E and 4 of the Montreal Protocol and have submitted supporting data to that effect as specified in Article 7 of the Protocol.

2. To request those countries to submit data on their compliance with the above Articles of the Protocol by 31 March 1995 in order to establish their continued eligibility under Article 4 paragraph 8 to treatment as Parties during the year 1995-1996."

24. With regard to sub-paragraph (a) (ii) of draft decision VI/5, the President introduced a proposal made at the Preparatory Meeting by Italy that the phrase "in this case the extension period shall not be more than two years" be added at the end of the subparagraph. It was generally agreed that that was an acceptable amendment.

25. With regard to sub-paragraph (a) (iii) of draft decision VI/5, the President said there had already been very detailed discussions on the topic in July and consensus had been reached. He believed that the provision "within one year" marked an attempt to favour a constructive approach and concerns about it being too strict were not justified. Some incentive for fulfilling obligations was needed and one year was not overly harsh.

26. The representative of Korea said he believed that the provision was too strict for least-developed countries which were unable to submit data on time and therefore some leeway was needed. He then suggested the addition of the phrase "unless otherwise decided by the meeting of the Parties" at the end of the sub-paragraph.

27. The representative of Jordan pointed out that a country programme did not always include all the data needed by the Secretariat. The representative of the Multilateral Fund agreed with that statement, but said that in elaborating country programmes, and with the implementing agencies and the institutional strengthening projects, Article 5 countries had been requested and encouraged to report data back to the Ozone Secretariat based on Article 7. In that context, he quoted extensively from the recommendation of the Executive Committee at its Thirteenth Meeting. The representative of Burkina Faso expressed concern that, between the period of approval of the country programme and the implementation of an institutional strengthening project, a long time could pass. Countries thus had insufficient time to collect the required data. The representative of Jordan agreed with that view. The representative of Burkina Faso quoted the example of his own country where a country programme had been approved in November 1993, but a project document between UNEP and his Government for institutional strengthening had been concluded in July 1994.

28. After a further exchange of views amongst several representatives, the

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President agreed to report to the Preparatory Meeting that it had been decided to insert the phrase "unless otherwise decided by the Meeting of the Parties" at the end of the sub-paragraph.

29. With regard to paragraph (d) of draft decision VI/5, on status of certain Parties vis-à-vis Article 5 of the Protocol, the representative of Korea expressed the wish to have the last sentence removed, since he believed it was not meaningful in legal terms and could prove to be harmful.

30. The representative of the Secretariat said that the draft decision had been taken without amendment from the report of the Tenth Meeting of the Open-ended Working Group in July 1994. The representative of Korea replied that no agreement on the subject had been reached at that meeting and his delegation had registered a clear objection.

31. The President said that the sentence in question did not represent a legal obligation, but had been the suggestion of a vast majority of the delegates at the Tenth Meeting of the Open-ended Working Group. He believed that the Committee was not attaining any consensus on the subject and said he would report to the plenary session on the discussion of the subject and the failure to find a common position.

32. Concerning the use of square brackets in the first sentence of the paragraph (e) of draft decision VI/5, the representatives of Argentina, Chile and Netherlands were in favour of removing them. The representative of Korea said the square brackets should be left in place since, in his view, some countries were again trying to categorize other countries.

33. After a detailed discussion of the matter, the President said he was unable to offer any better alternatives and suggested that the matter be referred back to the Preparatory Meeting.

34. Concerning draft decision VI/6, the President said he believed the Committee, given the time constraints, would not be able to reach a compromise. The matter went beyond the sphere of competence of the Committee and would have to be left to a plenary discussion.

Request for clarification by Romania

35. Introducing the question, the representative of the Secretariat said that in July 1994, the Government of Romania had addressed a letter to the Secretariat concerning an agreement with a company in Greece whereby production rights of substances contained in Annex A of the Protocol would, in accordance with Article 2, paragraph 5, be transferred to permit that company to use a percentage of Romania's own production rights. The Secretariat had provided a preliminary answer to Romania saying that, under Article 2, paragraph 5, unless Romania was bound to implement reduction measures for producing ozone-depleting substances, it was unable to transfer its production rights to a company in Greece, since the latter was a Party operating under Article 2 of the Protocol. However, the Government of Romania had insisted that the issue be dealt with by the Sixth Meeting of the Parties and it had been decided that the Implementation Committee should be the first to consider it.

36. The President asked how a country with no limits could transfer production rights to a country with limits. The two Parties in question did not operate under the same regime and he therefore concurred with the answer given by the Secretariat.

37. The representative of Romania explained that he had no specific instructions from his Government and he agreed that the rules would have to

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be interpreted as the representative of the Secretariat had explained them. He left the decision on the matter up to the Implementation Committee. He had no instructions to withdraw the letter in question or to accept any compromise.

38. The representative of Chile said that nowhere in Article 2 were the Parties under paragraph one of Article 5 excluded. Such countries were free to agree on a baseline. There was no clear-cut answer, as the issue was very complicated and called for a more careful and longer discussion. He agreed to present a further analysis of the situation at the next meeting of the Implementation Committee.

39. In conclusion, the President said he would report to the Preparatory Meeting that a preliminary discussion had been held and, with the agreement of the representative of Romania, the issue would be addressed in a more detailed manner at the next meeting of the Implementation Committee.

Request by Poland with respect to reduction of CFC consumption
in 1994/1995

40. The representative of Poland explained that he wished the Preparatory Meeting to formulate a decision concerning the problem faced by Poland in implementing a reduction of CFC consumption in the years 1994 and 1995. He had recently received information that many CFC manufacturers intended to stop production in 1995. Poland was an importing country and had no technical or financial possibilities for immediate change to substitutes. The country therefore wished to join together the limits for the two years and import the maximum possible in 1994 and 1995, in order to avoid tensions within Polish industry and the economy.

41. The President stated that Article 2 (A) paragraph 3 of the Protocol was quite specific and clear. The Implementation Committee could only judge an issue on the basis of the text of the Protocol. A combined approach, as requested by Poland, represented a difficulty, since it meant going beyond the text of the Protocol. The representative of the Netherlands agreed with that view, pointing out that the stoppage of CFC manufacture concerned only EEC countries and Poland was free to import from elsewhere. The representative of the Secretariat further pointed out that Poland had not yet ratified the Copenhagen Amendment, which was the basis of the present question, and was therefore not legally bound by Article 2, paragraph 3 of the Protocol. On the other hand the President remarked that Poland would have to provide data on its compliance with Article 2, paragraph 3 in order to qualify for treatment under Article 4, paragraph 8 of the Protocol.

42. The representative of Poland said that he understood that the Committee had no possibility to go beyond the Montreal Protocol and he accepted its view. He agreed that it was necessary for his country to ratify the Copenhagen Amendment and it would endeavour to do so as soon as possible.

43. In conclusion, the President said that, once Poland had ratified the Copenhagen Amendment, under paragraph 4 of the Non-Compliance Procedure Poland was free to explain its non-compliance with the Amendment. That would be one way of promoting a full discussion of the problem raised. He agreed to report to the Preparatory Meeting on the results of the Committee's discussions.

44. The representative of Burkina Faso then expressed a wish not to schedule the meetings of the Implementation Committee in parallel with other meetings under the Montreal Protocol, because simultaneous meetings caused problems for smaller delegations. He further expressed the view

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that it might be advisable to have the meetings of the Committee in more than one language. In reply, the President said that he fully supported the first suggestion. With regard to the second proposal, he said that the Implementation Committee was a small, operative committee and he preferred discussions to be informal and without interpretation. Efforts should however be undertaken to assist members of the Committee in connection with any linguistic difficulties.

V. ADOPTION OF THE REPORT

45. In accordance with past practice, the Committee delegated the approval of the report to the President.

VI. CLOSURE OF THE MEETING

46. After the customary change of courtesies, the meeting was closed at 5.55 pm on 3 October 1994.

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