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OPEN-ENDED WORKING GROUP OF THE PARTIES TO  
THE MONTREAL PROTOCOL ON SUBSTANCES THAT  
DEplete THE OZONE LAYER  
Fifteenth meeting  
Nairobi, 3-6 June 1997  
Item 3 of the provisional agenda\*

CONSIDERATION AND CONSOLIDATION OF THE AMENDMENTS  
AND ADJUSTMENTS PROPOSED BY PARTIES

Note by the Secretariat

Addendum

Proposal by Canada

The Secretariat is circulating, in the annex to this note, the adjustments and amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer proposed by Canada.

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\* UNEP/OzL.Pro/WG.1/15/2/1.

Annex

ADJUSTMENTS AND AMENDMENTS PROPOSED BY CANADA TO THE MONTREAL  
PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

A. Controlled substance in Annex E

1. Canada notes paragraph 3 of decision VIII/4 which states that the 1997-1999 Multilateral Fund replenishment "includes a sum of US\$ 10 million to enable Parties operating under Article 5 to apply measures contained in paragraph 2 of decision VII/8 of the Seventh Meeting of the Parties and to assist those Parties to start the implementation of any recommendations that might arise from the Ninth Meeting of the Parties on this matter".

2. Canada proposes for adoption, by the Ninth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, on the basis of the assessments made pursuant to Article 6 of the Protocol, the adjustments and reductions of production and consumption of the controlled substance in Annex E to the Protocol as follows:

"Article 2H: Methyl bromide

"Article 2H of the Protocol shall read as follows:

- "1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1995, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed, annually, its calculated level of consumption in 1991. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, its calculated level of production in 1991. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1991.
- "2. Each Party shall ensure that for the twelve-month period commencing on 1 January 1998, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed, annually, seventy-five per cent of its calculated level of consumption in 1991. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, seventy-five per cent of its calculated level of production in 1991. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1991.

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- "3. Each Party shall ensure that for the twelve-month period commencing on 1 January 2001, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed zero. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production in 1991. This paragraph shall apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses.
- "4. The calculated levels of consumption and production under this Article shall not include the amounts used by the Party for quarantine and pre-shipment applications.

"Article 5, paragraph 8 ter, Special situation of developing countries

"Subparagraph (d) of paragraph 8 ter of Article 5 of the Protocol shall read as follows:

- "(d) With regard to the controlled substance contained in Annex E:
- "(i) Each Party operating under paragraph 1 of this Article shall comply with the control measures set out in paragraph 2 of Article 2H commencing on 1 January 2002 and, as the basis for its compliance with these control measures, it shall use the average of its annual calculated levels of consumption and production, respectively, for the period of 1995 to 1997 inclusive.
- "(ii) Each Party operating under paragraph 1 of this Article shall ensure that for the twelve-month period commencing on 1 January [2005], and in each twelve-month period thereafter, its calculated levels of consumption and production of the controlled substance in Annex E does not exceed, annually, seventy-five per cent of the average of its annual calculated levels of consumption and production, respectively, for the period of 1995 to 1997 inclusive.

- "(iii) Each Party operating under paragraph 1 of this Article shall ensure that for the twelve-month period commencing on 1 January [ ], and in each twelve-month period thereafter, its calculated levels of consumption and production of the controlled substance in Annex E does not exceed, annually, [ ] per cent of the average of its annual calculated levels of consumption and production, respectively, for the period of 1995 to 1997 inclusive.
- "(iv) Each Party operating under paragraph 1 of this Article shall ensure that for the twelve-month period commencing on 1 January [2011], and in each twelve-month period thereafter, its calculated levels of consumption and production of the controlled substance in Annex E does not exceed zero. This paragraph shall apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses.
- "(v) The calculated levels of consumption and production under this subparagraph shall not include the amounts used by the Party for quarantine and pre-shipment applications."

B. Non-compliance with the Montreal Protocol

3. Further to decision VII/9 which calls for Parties to consider, by the Ninth Meeting of the Parties, "introducing a mechanism to ensure that imports and exports of controlled substances should only be permitted between Parties to the Montreal Protocol which have reported data and demonstrated their compliance with all relevant provisions of the Protocol", and further also to decision VIII/26 which notes that further deliberation is required on, "inter alia, the need for controlling exports of ODS from Parties not operating under Article 5 found to be in non-compliance with their obligations under the Protocol to Parties operating under Article 5", Canada proposes for adoption, at the Ninth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, a modification to the Protocol through an amendment to the effect that a Party found to be in non-compliance with the Protocol shall be deemed a "State not Party to this Protocol" for the purposes of Article 4. While we believe that one possible approach to follow would be to proceed with an amendment to paragraph 9 of Article 4, we note however that other approaches are also possible. These possible approaches would be usefully discussed at the fifteenth meeting of the Open-ended Working Group and the Ninth Meeting of the Parties.

4. Canada also believes that an amendment as described above should be accompanied by a decision to modify, as appropriate, the non-compliance procedure to complement the amendment. The following aspects of the non-compliance procedure, inter alia, would need to be addressed:

- (a) Role of the Implementation Committee under the Montreal Protocol

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and the Meeting of the Parties in determining a state of non-compliance and a return to a state of compliance;

- (b) Timing of a Party's being declared in non-compliance;
- (c) Different types of non-compliance, for example, non-compliance with production and consumption control measures;
- (d) Effects of non-compliance;
- (e) Equitable treatment of non-complying Parties.

5. By tabling one proposal for an amendment to deal with this issue, we are putting this important issue on the agenda for the Ninth Meeting of the Parties and therefore subject to discussion and negotiations in the lead-up to, and in, Montreal.

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