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**Open-ended Working Group of the Parties to
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Deplete the Ozone Layer**
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Item 15 of the provisional agenda*

**Proposed amendment by the
European Community for expedited
amendment of the Montreal Protocol**

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Note by the Secretariat

The secretariat is circulating, in the annex to the present note, a proposed amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer put forth by the European Community. If adopted, the proposed amendment would provide for expedited amendment of the Montreal Protocol. The text of the annex is circulated as received from the European Community and has not been formally edited by the Secretariat.

* UNEP/OzL.Pro/WG.1/24/1/Rev.1

Annex

PROPOSAL FOR EXPEDITED AMENDMENT OF THE MONTREAL PROTOCOL

The European Community has made a proposal for the amendment of the Montreal Protocol. That amendment would provide a procedure for expedited amendment (referred to below as “modification”) of the Protocol.

The purpose of this note is to describe the effect of the EC’s proposed amendment.

The Annex to this note sets out Article 2(10) of the Protocol, as it would be amended, and the new Article 2(10*bis*) that would be inserted into the Protocol, if the EC’s proposal was adopted and entered into force.

Purposes of amendment

The proposed amendment would allow the Protocol to be modified with a view to making new substances “controlled substances” within the meaning of Article 2(4) of the Protocol. Powers would be given to apply control measures with respect to those substances.

Moreover it is proposed that there might be a more general power to modify the Protocol to deal with matters arising out of or related to the control of those new substances. This power could be used by the MOP, for example, to introduce new trade measures relating to the new substances by the modification of Article 4, or to introduce new reporting requirements relating to the new substances by the modification of Article 7.

If the amendment were adopted there would then be three ways of changing the wording of the Protocol, namely-

- "adjustment" pursuant to Article 2(9) of the Protocol;
- "amendment" pursuant to Article 9 of the Convention; and
- "modification" pursuant to the new provisions introduced in Article 2(10) and (10*bis*) of the Protocol.

The procedure for modification

The modification procedure would be as follows -

- any decision to modify the Protocol would be adopted in the same way that an amendment to the Protocol would be adopted; and
- the modification decision would enter into force for Parties within two years; except that
- the decision would not enter into force for those Parties that had, within that same period of time, notified the depositary (i.e. the Secretary General of the UN – see Article 20 of the Vienna Convention) that they were unable to accept the decision.

Any such Party could subsequently agree to be bound by the modification, if it so wished, by a further notification to the depositary.

Comments on the procedure

The procedure is designed in particular to -

- introduce procedural requirements relating to the entry into force of modifications which are lighter, and therefore more expeditious, than the current procedural requirements relating to the entry into force of amendments, and also to
- incorporate adequate procedural safeguards, so that no Party need be bound by a decision to modify the Protocol until it is in a position to comply with its obligations arising under the modification.

The proposal should not disrupt the business of the MOP. In appropriate cases amendments and modifications could be set out in the same instrument, so that what constituted an amendment for one set of Parties would constitute a modification for the rest of the Parties. Parties that agreed to be bound by the new modification procedure would simply be bound by (what was for them) a modification more quickly than the remaining Parties would be bound by (what was for them) an amendment.

Should the proposed procedure for modification of the Protocol be part of a package of amendments?

It is the normal practice for the MOP to adopt packages of amendments, so that all adopted amendments are contained in one legal instrument.

This proposal should be excepted from that practice, so that it would be separated from any other amendments adopted by the relevant MOP.

This is because it would be inappropriate to link an amendment providing for modification to other amendment(s) relating to control measures. If there was such a link, Parties that could not accept the procedure for modification would not be able to agree to be bound by the associated control measures, and could, in due course, be penalised by any trade sanctions for breach of those control measures.

Appendix I

AMENDMENT TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

Article 1: Amendment

A. Article 2, paragraph 10

In paragraph 10 of Article 2 of the Protocol-

For the words:

Article 9 of the Convention

there shall be substituted:

paragraph 10bis of this Article

In subparagraph (a), after the word:

any

there shall be added:

new

In subparagraph (a), for the words:

added to or removed from any annex to this Protocol, and

there shall be substituted:

made controlled substances,

The following word shall be added at the end of subparagraph (b):

and

The following subparagraph shall be inserted after subparagraph (b):

(c) whether any further modifications should be made to the Protocol to deal with matters arising out of or related to decisions made pursuant to subparagraphs (a) and (b).

The following paragraph shall be added after paragraph 10:

10 *bis*. The following procedure shall apply to the proposal, adoption and entry into force of any decision to modify the Protocol under paragraph 10.

- (a) A decision to modify the Protocol shall be proposed and adopted according to the procedure laid down in Article 9, paragraphs 1 to 4 of the Convention.
- (b) A decision to modify the Protocol shall be binding on the expiry of a period of two years after its adoption for all Parties that have not within that period notified the depositary in writing that they are unable to accept the decision.
- (c) Any Party that has notified the depositary pursuant to subparagraph (b) may subsequently notify the depositary that it is able to accept the decision. In that case the decision shall become binding on that Party, either from the moment of that latter notification or after the expiry of a period of two years after the adoption of the decision, whichever is later.

Article 2: Relationship to the 1999 Amendment

No State or regional economic integration organization may deposit an instrument of ratification, acceptance, approval or accession to this Amendment unless it has previously, or simultaneously, deposited such an instrument to the Amendment adopted at the Eleventh Meeting of the Parties in Beijing, 3 December 1999.

Article 3: Entry into force

1. This Amendment shall enter into force on 1 January 2006 provided that at least twenty instruments of ratification, acceptance or approval of the Amendment have been deposited by States or regional economic integration organizations that are Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. In the event that this condition has not been fulfilled by that date, the Amendment shall enter into force on the ninetieth day following the date on which it has been fulfilled.
2. For the purposes of paragraph 1, any such instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
3. After the entry into force of this Amendment, as provided under paragraph 1, it shall enter into force for any other Party to the Protocol on the ninetieth day following the date of deposit of its instrument of ratification, acceptance or approval.

Appendix II

Article 2: Control Measures

10. Based on the assessments made pursuant to Article 6 of this Protocol and in accordance with the procedure set out in paragraph 10 *bis* of this Article, the Parties may decide:

- (a) whether any new substances, and if so which, should be made controlled substances,
- (b) the mechanism, scope and timing of the control measures that should apply to those substances; and
- (c) whether any further modifications should be made to the Protocol to deal with matters arising out of or related to decisions made pursuant to subparagraphs (a) and (b).

10 *bis*. The following procedure shall apply to the proposal, adoption and entry into force of any decision to modify the Protocol under paragraph 10.

(a) A decision to modify the Protocol shall be proposed and adopted according to the procedure laid down in Article 9, paragraphs 1 to 4 of the Convention.

(b) A decision to modify the Protocol shall be binding on the expiry of a period of two years after its adoption for all Parties that have not within that period notified the depositary in writing that they are unable to accept the decision.

c) Any Party that has notified the depositary pursuant to subparagraph (b) may subsequently notify the depositary that it is able to accept the decision. In that case the decision shall become binding on that Party, either from the moment of that latter notification or after the expiry of a period of two years after the adoption of the decision, whichever is later.