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OPEN-ENDED WORKING GROUP OF THE
PARTIES TO THE MONTREAL PROTOCOL
First session of the third meeting
Geneva, 8-14 March 1990

NOTE BY THE EXECUTIVE DIRECTOR

1. In accordance with decisions 5 (a), 5 (b) and 6 of the First Meeting of the Parties to the Montreal Protocol, held at Helsinki from 2-5 May 1989, an Open-Ended Working Group of the Parties was established. Since July 1989, this Working Group has, inter alia, held two sessions designed to implement these decisions by integrating the four reports of the Assessment Panels into one Synthesis Report and by formulating proposals for adjustments and amendments to the Montreal Protocol.
2. At the second session of the first meeting of the Open-Ended Working Group, held at Nairobi from 28 August - 5 September 1989, the Working Group proposed changes to the draft Synthesis Report and adopted the second draft of the Synthesis Report ad referendum. At that session, the Working Group also developed the first draft of proposals for adjustments and amendments to the Montreal Protocol.
3. At the first session of its second meeting, held at Geneva from 13-17 November 1989, the Working Group unanimously adopted the Synthesis Report and refined proposals for adjustments and amendments to the Montreal Protocol. The Final Reports of that meeting (UNEP/OzL.Pro.WG.II(1)/5, 6 and 7) contain the formal proposals for adjustments and amendments that were put forward by the Parties at that meeting.
4. In accordance with Articles 9 and 10 of the Vienna Convention, Article 2 paragraphs 9 and 10 of the Montreal Protocol, and the recommendations made by the Open-Ended Working Group at the first session of its second meeting, these proposals for adjustments and amendments were transmitted by the Executive Director to all Governments by his letter of 14 December 1989, more than six months before the Second Meeting of the Parties.

5. In accordance with Decision 8 of the First Meeting of the Parties to the Montreal Protocol, an ad hoc Working Group of Legal Experts was established to develop and submit to the Secretariat, for submission to the Second Meeting of the Parties, proposals for procedures and institutional mechanisms for determining non-compliance with the Montreal Protocol, as well as for the treatment of Parties that fail to comply with its terms.
6. The above-mentioned Working Group met at Geneva from 11-14 July and proposed the procedure contained in UNEP/OzL.LG.1/3. The Bureau to the Montreal Protocol, at its first meeting held at Geneva 27-29 September 1989, reviewed the proposals of this Working Group, and "recommended to the Second Meeting of the Parties that the non-compliance procedures contained in the report of the ad hoc Working Group of Legal Experts on Non-compliance be adopted as an Annex to the Montreal Protocol". Accordingly, on 13 December 1989, the Secretariat transmitted this proposal on non-compliance procedures to the Parties to the Protocol as a proposal for an Annex to the Protocol.
7. Aside from the non-compliance proposal mentioned above, the adjustments and amendments that were proposed by the Parties included proposals for changes to Articles 2, 3, 4, 5, 7, 10, 19, as well as to preambular paragraphs and annexes. Many of these proposals contained numerous options that were presented as such in the proposals by the use of square brackets.
8. The legal drafting group established by the Open-Ended Working Group of the Parties noted the following:

This, however, does not mean that the Parties cannot consider proposals tabled after December 1989, so long as such proposals are sufficiently related to proposals communicated to the Parties in accordance with the Vienna Convention and the Montreal Protocol so that the Parties may be deemed to have had adequate opportunity to consider the merits of these proposals. Further, the Group noted that, depending on which proposals were accepted in June 1990, certain amendments of a purely technical nature would have to be made.
9. In the light of the above, at this session of the Working Group, the participants will review the proposals for adjustments and amendments to the Protocol and, in the process, strive either to limit the number of options that should remain for consideration by the Second Meeting of the Parties or produce compromise formulas that could be presented to the Parties at their Second Meeting to facilitate their deliberations.
10. To facilitate the deliberation of the Working Group at its current session, the Executive Director proposes the following for its consideration:

A. Reduction of halons

<u>Year</u>	<u>Reduction</u>
1995	50 per cent consumption and production
2000	100 per cent production
2005	100 per cent consumption (extra 5 years allowed for consumption that could come from the existing banks of halons)

A special provision should be included to allow satisfaction of basic domestic needs for Article 5 countries and industrial rationalization up to 10 per cent of the 1986 calculated level of production.

B. Additional reduction of CFCs

<u>Year</u>	<u>Reduction</u>
1992	50 per cent production and consumption
1996	85 per cent production and consumption
2000	100 per cent production and consumption

A special provision should be included to allow satisfaction of basic domestic needs for Article 5 countries and industrial rationalization up to the following percentage of the 1986 calculated level of production:

- (i) 10 per cent in 1992;
- (ii) 10 per cent in 1996;
- (iii) No such provision for 2000.

C. Reduction of other fully halogenated CFCs: Group III of Annex A

<u>Year</u>	<u>Freeze and Reduction</u>
First day of the seventh calendar month following the date on which the provision of this paragraph enters into force for a Party (EIF+ 6 months)	Freeze at 1989 calculated level production and consumption
1995	50 per cent reduction in production and consumption
1998	85 per cent reduction in production and consumption
2000	100 per cent reduction in production and consumption

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Special provisions should be included to allow satisfaction of basic domestic needs for Article 5 countries and industrial rationalization of up to 10 per cent of the 1989 calculated level of production and consumption for freezing and reduction 50 per cent by 1995 and 85 per cent by 1998; no provision for domestic needs or industrial rationalization by 2000.

The last sentence of paragraph 4 on page 7 of the English text of UNEP/OzL.Pro.WG.II(1)/5, which appears in square brackets, needs to be discussed further.

D. Amendments to Annex A, Group VII (other halons)

1. The Working Group would need to agree on the level of vapour pressure and/or boiling point for other halons to be included in Annex A.
2. The Executive Director notes that no proposals were made for the control of these additional halons in the document that was circulated to the Parties six months before the meeting of Contracting Parties (UNEP/OzL.Pro.WG.II(1)/5). The Working Group needs to define the way in which the Contracting Parties could deal with other halons.

E. Limits on carbon tetrachloride Annex A, Group IV

<u>Year</u>	<u>Freeze and reduction</u>
First day of the seventh Calendar month following the date on which this provision enters into force for a Party (EIF+ 6 months)	Freeze
1992	50 per cent reduction in production and consumption
1996	85 per cent reduction in production and consumption
2000	100 per cent reduction in production and consumption

A special provision should be included to allow satisfaction of basic domestic needs for Article 5 countries and industrial rationalization up to the following percentage of the 1989 calculated level of production:

- (i) 10 per cent in 1992;
- (ii) 10 per cent in 1996;
- (iii) No such provision for 2000.

F. Limits on methyl chloroform: Group V of Annex A

<u>Year</u>	<u>Freeze and reduction</u>
First day of the seventh Calendar month following the date on which this provision enters into force for a Party (EIF+ 6 months)	Freeze
1992	50 per cent reduction in production and consumption
1996	85 per cent reduction in production and consumption
2000	100 per cent reduction in production and consumption

A special provision should be included to allow satisfaction of basic domestic needs for Article 5 countries and industrial rationalization up to the following percentages of the 1989 calculated level of production:

- (i) 10 per cent in 1992;
- (ii) 10 per cent in 1996;
- (iii) No such provision for 2000.

G. HCFCs

The proposals to control these substances differ from the other control measures in that they are long-term regulations. The proposals as contained in UNEP/OzL.Pro.WG.II(1)/5 should be further refined.

On HCFCs, two main points need to be carefully considered:

- (i) What sort of period would industry require/need to invest in the development and production of such substances; and
- (ii) The need to review carefully the global warming potential (GWP) of each HCFC in the light of the findings of the Intergovernmental Panel on Climate Change (IPCC).

General comments

The issue of the date (1 July or 1 January) for the implementation of the control measures needs to be settled by the Working Group for recommendation to the Parties.

H. Article 2, paragraph 5: 25 kilotonne transactions

The last proposal which appears under this chapter in square brackets referring to "date to be determined" could be replaced by 1 January 2000.

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I. Article 2, paragraph 6

This proposal needs to be carefully considered, since the present wording would be contrary to the intention of the Protocol. The Executive Director understands that what is meant is to ensure that those developing countries that start above 0.3 kilograms per capita do not benefit for the grace period of 10 years when they reach the calculated level of consumption below 0.3 kilograms per capita.

III. Article 4: Control of Trade with Non-Parties

A. Paragraph 2

The Executive Director proposes the date 1 January 1992, in line with the date of several other control measures.

D. Paragraph 5 and E. Paragraph 6

The Executive Director is of the opinion that the terms "discourage" and "refrain from providing" are not quantifiable and therefore are difficult to be implemented in internationally binding instruments.

V. Article 7: Reporting of data

1. The Executive Director is of the opinion that the proposal for amendments needs to refer to all substances in all annexes, since the information will be expected after the Second Meeting of the Contracting Parties in June. The last part of the comment therefore needs further consideration.
2. The proposal for a new paragraph 3 needs to be considered further in view of the obligations of each State Party to the Protocol, even if it is a member State of a regional economic integration organization.

VI. Article 10: Technical Assistance

1. bis. The Executive Director suggests that ["by date"] be replaced by 1 January 1992.

The comment concerning the reference to "participation in and implementation of this Protocol" should be clarified further.

VII. Article 10 bis: Transfer of Technology and Financial Assistance

1. The proposals under this Article benefit from the results of the Informal Consultations held by the Executive Director at Nairobi in January.

Article 10 bis: an alternative to the words "non-commercial basis" on the fourth line of this additional Article could be "non-profit basis".

2. The following language may be worth consideration: "An International Trust Fund shall be established within UNEP to be used together with existing bilateral and multilateral financial institutions to meet fully the incremental costs to be incurred ..."

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X. Proposed changes to Annex A

Annex A Group VI (HCFCs)

The Executive Director recommends Alternative II; this approach would minimize the need for further amendments, since all new chemicals with such ozone-depleting potential (ODP) would thus be included.
