

Distr.  
GENERAL

UNEP/OzL.Pro.5/10  
22 September 1993

ORIGINAL: ENGLISH

FIFTH MEETING OF THE PARTIES TO  
THE MONTREAL PROTOCOL ON SUBSTANCES  
THAT DEplete THE OZONE LAYER

Bangkok, 17-19 November 1993

ISSUES RELATING TO THE RECLASSIFICATION OF DEVELOPING COUNTRY  
PARTIES INITIALLY CLASSIFIED AS NOT OPERATING UNDER  
PARAGRAPH 1 OF ARTICLE 5 OF THE MONTREAL PROTOCOL

*Note by the Secretariat*

1. At its ninth meeting, held in Geneva from 30 August to 1 September 1993, the Open-ended Working Group of the Parties to the Montreal Protocol requested the Secretariat to place before the Fifth Meeting of the Parties to the Protocol a comprehensive study on the issues raised during the Working Group's discussion on reclassification of developing country Parties initially classified as not operating under paragraph 1 of Article 5 of the Protocol on the basis of data reported to the Secretariat. The present note has been prepared in response to that request.

2. Article 5, paragraph 1, of the Protocol states, *inter alia*, that:

"Any Party that is a developing country and whose annual calculated level of consumption of the controlled substances in Annex A is less than 0.3 kg. per capita on the date of the entry into force of the Protocol for it, or any time thereafter until 1 January 1999, shall, in order to meet its basic domestic needs, be entitled to delay for ten years its compliance with the control measures set out in Articles 2A-2E."

Article 5, paragraph 2, states that any Party operating under paragraph 1 of the Article shall exceed neither the annual consumption limit for Annex A substances (0.3 kg. per capita) nor an annual calculated level of consumption of controlled substances listed in Annex B of 0.2 kg. per capita.

3. According to Article 10 of the amended Montreal Protocol (financial mechanism), the mechanism is established "for the purposes of providing financial and technical cooperation, including the transfer of technologies to Parties operating under paragraph 1 of Article 5 of this Protocol to enable their compliance with the control measures set out in Articles 2A-2E". Paragraph 6 of the Article states, *inter alia*, that "the Multilateral Fund of the financial mechanism shall be financed by contributions from Parties not operating under paragraph 1 of Article 5 ... Contributions by other Parties shall be encouraged."

4. The list of countries to be considered developing countries for the purposes of the Protocol (130 countries) was established by Decision I/12E of the First Meeting of the Parties. The Third Meeting of the Parties decided to add Turkey to this list (Decision III/5, para. (b)).

5. A developing country is classified as operating or not operating under paragraph 1 of Article 5 on the basis of the data it submits under Article 7 of the Protocol, which requires each Party to submit its base-year production and consumption data for the controlled substances within three months of becoming a Party. Data for the year in which it becomes a Party, and for each subsequent year, has to be submitted by the end of the ninth month of the following year. Through its decision II/10, the Second Meeting of the Parties requested "the Secretariat to publish, in its annual report on data an updated list of developing countries which, on the basis of complete data submissions, were considered to be operating under paragraph 1 of Article 5. The Secretariat shall also publish a list of developing countries that, having submitted incomplete or estimated data, appear to qualify as Parties operating under paragraph 1 of Article 5. In accordance with the provisions of Article 5 of the Protocol, no Party shall be eligible for paragraph 1 of Article 5 treatment until it submits complete data to the Secretariat establishing that its annual calculated per capita level of consumption is below 0.3 kg."

6. For the convenience of the Parties, the Secretariat circulates a monthly report on the status of ratification of the Vienna Convention and the Montreal Protocol. Annex to the status report are lists of developing countries categorized as operating under Article 5, paragraph 1, and a list of those *temporarily* categorized as operating under that paragraph on the basis of:

(a) Incomplete data submitted by the Party; or,

(b) Information available to the Secretariat from other sources. The classification remains temporary until complete data has been received. In case of some developing countries that have not submitted data, information available with Secretariat resulted in the classification of these countries as not operating under Article 5, and they have not been listed in the annexes to the monthly report. The lists are regularly placed before the Implementation Committee and the Meetings of the Parties.

7. The Developing countries that become Parties and classified as not operating under paragraph 1 of Article 5 are included in the list of contributors to the Multilateral Fund and their contributions are fixed for the year in which they become Parties and for the two subsequent years. When such developing country Parties subsequently furnish data which prove that their consumption was below the ceilings prescribed in Article 5 in a year or years for which a contribution from them to the Multilateral Fund had been fixed, they may question their liability to pay that contribution. For example, Bahrain ratified the Protocol in 1990. Its base-year (1986) data for Annex A substances, submitted in November 1990, indicated that it was not entitled to operate under Article 5. It next submitted data on 20 February 1993. In this submission, it corrected its Annex A baseline data and provided data for 1991. These data show it to be eligible for classification as operating Article 5, paragraph 1. The Secretariat reported to the Third Meeting of the Parties in June 1991 that Bahrain, Jordan, Malta, Singapore and United Arab Emirates were to be classified as not operating under Article 5 on the basis of their data submissions. Jordan protested that the data which it had reported earlier was not correct. The Parties gave Jordan time to present its correct data and, subsequently, Jordan was classified as operating under paragraph 1 of Article 5 on the basis of its revised data. The other countries did not dispute the classification. Hence, the Third Meeting of the Parties included Bahrain, Malta, Singapore and United Arab Emirates in the list of contributors to the Multilateral Fund for the years 1991, 1992 and 1993.

/...

The same four Parties, together with the Republic of Korea, were included in the list of contributors by the Fourth Meeting in November 1992 for the years 1993 and 1994. On 29 March 1993, Malta submitted its data for 1986, 1990, 1991 and 1992, which prove that it is eligible to operate under paragraph 1 of Article 5 for 1991 and 1992.

8. Nine developing countries are currently classified as not operating under Article 5: Bahrain, Brunei Darussalam, Cyprus, Kuwait, Malta, Republic of Korea, Saudi Arabia, Singapore and United Arab Emirates. Bahrain and Malta have submitted their complete data for 1991 and are eligible for reclassification as operating under Article 5. Data from Cyprus, The Republic of Korea and Singapore show that so far their consumption is higher than the limit set under Article 5. Brunei Darussalam, Kuwait, Saudi Arabia and United Arab Emirates have not submitted their data and have been classified as not operating under Article 5 based on the Secretariat's information. The control schedules for all these nine Parties oblige them to phase-out the consumption of controlled substances of Annexes A and B, except halons by 1 January 1996 and halons by 1 January 1994. This implies that they may very soon reduce their consumption below the limits specified in Article 5 and, once they do so, they will be eligible for classification under Article 5. However, this information may not be available to the Secretariat until nine months after the end of the year in which they reduce their consumption below the ceiling prescribed in Article 5. In the meantime, specific contributions would have been fixed for those countries to be paid to the Multilateral Fund. When these Parties request reclassification, there are consequences for their schedule for implementation of the control measures, their liability to pay to the Multilateral Fund and their eligibility to obtain assistance from the Multilateral Fund.

9. The following paragraphs provide the comments of the Secretariat on the questions raised on this matter at the ninth meeting of the Open-ended Working Group, as reflected in the report of that meeting (UNEP/OzL.Pro/WG.1/9/7 and Corr. 1, para 109).

10. *Would the reclassified Parties exercise their right to a 10-year grace period and, if so, what would be the implications for ozone depletion?* The nine Parties referred to in paragraph 8 above have been requested to inform the Secretariat whether they would exercise their right to a 10-year grace period should they be reclassified at a future date. The Co-Chairs of the Assessment Panels have been requested to comment on the impact on the ozone layer if the Parties, on reducing their consumption to just below 0.3 kg. per capita, exercised their right to a 10-year grace period.

11. *What would be the impact of reclassification on eligibility for support from the Multilateral Fund?* In terms of Article 10, it has to be assumed that any Party, on reclassification, will be eligible for support from the Fund for the years for which it is reclassified as operating under Article 5, paragraph 1. A related question is whether the Fund should consider projects (other than country programme preparation) only for developing country Parties that have provided complete data and are classified as operating under paragraph 1 of Article 5 and not for those temporarily so classified.

12. *What would be the impact on the Fund of such eligibility?* There may be two kinds of impacts:

(a) The impact on the Multilateral Fund if the Parties seek funds to meet the incremental costs of phasing out their production and consumption. The Fund Secretariat has estimated the cost of phase-out of consumption in

these countries to be about US\$ 450 million, with a further US\$ 186 million required for the phase-out of the production facilities in the Republic of Korea. These amounts are additional to the impacts discussed in

/...

subparagraph (b) below;

(b) The impact on the Fund if these Parties request, and if the request is accepted:

- (i) A waiving of their payments for the current and past years fixed at the earlier Meetings of the Parties;
- (ii) That no contributions should be fixed for them for future years.

The impact of a waiver of payments for current and past years is analysed in the paragraphs below. Regarding the impact of no contributions being fixed for future years, theoretically the Fund may not be affected as the remaining Parties not operating under Article 5, paragraph 1, would be expected to meet the requirements of the Fund, if the Meeting of the Parties so decides. The combined contribution of the nine Parties to the Fund amounts 2.6% of the total, with the share of each Party being as follows: Bahrain (0.034%), Brunei Darussalam (0.034%), Cyprus (0.023%), Korea (0.8%), Kuwait (0.29%), Malta (0.01%), Saudi Arabia (1.10%), Singapore (0.14%) and United Arab Emirates (0.24%).

13. *Impact on the Fund of waiving the payments for current and/or past years.* The pledges and payments of the nine Parties for 1991, 1992 and 1993 are as follows:

	<u>1991</u>	<u>1992</u>	<u>1993</u>
	(United States dollars)		
Bahrain	12,553 (unpaid)	16,904 (unpaid)	39,971 (unpaid)
Brunei Darussalam	-	-	14,127 (unpaid)
Cyprus	-	-	26,647 (unpaid)
Kuwait	-	-	286,549 (unpaid)
Malta	6,276 (paid)	8,452 (paid)	13,324 (paid)
Republic of Korea	-	-	919,330 (unpaid)
Saudi Arabia	-	-	756,928 (Unpaid)
Singapore	69,041 (paid)	92,973 (paid)	159,883 (paid 90,883)
United Arab Emirates	119,253 (unpaid)	160,950 (unpaid)	279,796 (unpaid)
Total unpaid contributions	131,806	177,854	2,392,348

14. *If the contributions of countries reclassified as operating under Article 5, Paragraph 1 were cancelled, would the amount involved be considered a simple loss to the Multilateral Fund or should it be divided among the other contributors on a pro-rata basis? For the current or past*

/...

years, it may not be practicable to demand from any Party any amount beyond that approved by the previous Meetings of the Parties. To that extent, there will be a simple loss to the Fund for the current and the past years if the contributions from the reclassified Parties are cancelled. However, since the Fund is expected to meet all the agreed incremental costs of the Parties operating under Article 5, paragraph 1, this loss will have to be made up in future years by the remaining Parties not operating under Article 5, paragraph 1, with the amount involved being factored into their contributions to the Fund.

15. *Would a distinction be shown between Parties that provided data on time and those that did not?* If a developing country Party provides data on time and if this data leads to its reclassification as operating under Article 5, paragraph 1, before the Meeting of the Parties in that year, the meeting would have an opportunity to exclude it from the list of contributors for subsequent years. For example, if Malta and Bahrain had given their 1991 data by the due date, i.e. 30 September 1992, the Fourth Meeting of the Parties held in November 1992, might not have fixed a contribution for them for 1993 and the non-Article 5 Parties would have borne the full burden. Bahrain has not paid its 1991-1993 contributions, while Malta has paid. It is not possible to collect Bahrain's 1993 share from others. The provision of data on time, therefore, is relevant. Timely submission of data would ensure minimization of cases where a Party eligible to operate under paragraph 1 of Article 5 in a given year is included in the list of contributors to the Fund. However, even if every Party reports data on time, there will be some cases of this type. The Parties may wish to develop a principle to deal with such cases, if the reclassified Parties request for a waiver of their contributions.

16. *Would contributions already paid be refunded?* The answer to this question will depend on the decision on the issue raised in paragraph 15 above. Paragraph 6 of Article 10 of the Protocol encourages contributions by "other Parties". It will not be possible to recover the contributions, if refunded, from any other Party.

17. *Would a distinction be shown between Parties which paid their contributions and those which did not?* If a principle is developed for the issue raised in paragraph 15 above, it may have to be applied equitably to the Parties which paid and those which did not.

18. *Could Parties correct their own data and benefit from such corrections?* Some Parties do send in corrections to data previously submitted on the grounds that more accurate data have been obtained by them since their previous submission. The Secretariat accepts the corrections in the interests of accuracy. It will be a fair principle that reclassification of Parties that will give them financial or other advantage should not be approved on the basis of such corrected data. The decision of the Third Meeting in respect of Jordan should perhaps be treated as the last exception to this principle.

19. *Since the reclassified Parties agreed to the earlier decision of a Meeting of the Parties regarding their contribution, can they ask for a change in that decision?* There have been instances of the Meetings of the Parties modifying their earlier decisions. Rule 9 of the rules of procedure for Meetings of the Parties to the Protocol prescribes the procedure for any Party to propose an item for the agenda of each Meeting. The reclassified Parties can request for a change in earlier decisions. It is up to the Meeting of the Parties to take appropriate decisions.

20. To sum up, the Fifth Meeting of the Parties may wish to consider the following issues and take appropriate decisions:

(a) Should the Secretariat continue to classify developing countries temporarily as operating or not operating under Article 5 where the Parties provide no data or submit incomplete or estimated data?

/...

(b) Should the Executive Committee continue to consider projects (other than country programme preparation) from Parties temporarily classified as operating under Article 5, paragraph 1?

(c) Should Parties be allowed to correct their data? Can a reclassification be made on the basis of corrected data?

(d) What are the principles for consideration of a request by a reclassified Party for a waiver of its contributions for current or previous years, considering that it cannot be made good by collecting from other Parties?

(e)(e) What are the guidelines for the Executive Committee to assist the reclassified Parties?

-----