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

Bangkok, 17-19 November 1993

TRANSFER OF PRODUCTION RIGHTS UNDER ARTICLE 2
OF THE MONTREAL PROTOCOL

Note by the Secretariat

1. At the ninth meeting of the Open-ended Working Group of the Parties to the Montreal Protocol the Secretariat was requested to study the conditions to be fulfilled by Parties wishing to produce for the basic domestic needs of developing countries and the impact of this in the case of transfer of production rights under Article 2, paragraph 5, of the Protocol including when such production is transferred to an Article 5, paragraph 1 Party, and place the information before the Fifth Meeting of the Parties (UNEP/OzL.Pro/WG.1/9/7 and Corr.1). The present note has been prepared in response to that request.

2. Article 2, paragraph 5, of the amended Protocol states:

"Any Party may, for one or more control periods, transfer to another Party any portion of its calculated level of production set out in Articles 2 A to 2 E and Article 2 H, provided that the total combined calculated levels of production of the Parties concerned for any group of controlled substances do not exceed the production limits set out in those Articles for that group. Such transfer of production shall be notified to the Secretariat by each of the Parties concerned, stating the terms of such transfer and the period for which it is to apply."

3. At the same time, the allowed levels of production of controlled substances under Articles 2 A to 2 E and 2 H of the amended Protocol may be exceeded by a specified percentage of the Party's base year calculated level of production of the substance concerned "in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5". For example, Article 2 A, paragraph 4, of the Protocol as adjusted at Copenhagen provides *inter alia*, that:

"Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances 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 1986."

4. The First Meeting of the Parties, in decision I/12 C, that the term "'Basic domestic needs' referred to in Articles 2 and 5 of the Protocol should be understood as not to allow production of products containing controlled substances to expand for the purpose of supplying other countries".

5. The issues to be considered concerning transfer of production rights under Article 2, paragraph 5, are:

(a) Can a Party transfer to another Party its right to produce controlled substances to meet the basic domestic needs of the Parties operating under Article 5, paragraph 1?

(b) What are the guidelines to be observed before a Party produces and supplies controlled substances for the basic domestic needs of a Party operating under Article 5, paragraph 1? Should the Party operating under Article 5, paragraph 1, make a formal request to the supplier for the substance and certify that the supply of the substance is to meet its basic domestic needs? Should all such requests be reported by the producers to the Meetings of the Parties through the Secretariat?

(c) Can a Party transfer its production rights to a Party operating under Article 5, paragraph 1?

These issues are discussed in paragraphs 6-8 below.

6. Concerning the question in paragraph 5 (a) above, it appears that the term "calculated level of production" contained in paragraph 5 of Article 2 includes production to meet the basic domestic needs of the Parties operating under Article 5, paragraph 1. Therefore, a Party can transfer to another Party its right to produce to meet the basic domestic needs of the Parties operating under Article 5, paragraph 1.

7. Regarding the issue referred to in paragraph 5 (b) above, it may be appropriate for the Parties to set some guidelines to ensure that the volume of production by a Party to meet the basic domestic needs of Parties operating under Article 5, paragraph 1, is no greater than the amount needed to satisfy those needs. Therefore, the Parties may choose to prescribe that any Party operating under Article 5, paragraph 1, Article 5 which requires controlled substances may furnish to the Government of the supplying Party a certificate regarding the volume of each substance required and a statement that the substances are for the purpose of meeting their basic domestic needs. The Party supplying the controlled substances may be requested to report to the Secretariat annually the details of the requests received from Parties operating under Article 5, paragraph 1, and copies of the certificates received. The Secretariat could analyse this information and place its report before the Implementation Committee and the Meetings of the Parties.

8. Regarding the issues referred to in paragraph 5 (c) above, Article 2, paragraph 5, permits transfer of production rights under the condition that "the total combined calculated levels of production of the Parties concerned for any group of controlled substances do not exceed the production limits set out in ... Articles [2 A to 2 E and Article 2 H] for that group". Since production limits are applicable to Parties operating under paragraph 1 of Article 5 only from 1 January 1999, it appears that transfer of production rights to those Parties will not take place until after that date.
