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SEVENTH MEETING OF THE PARTIES TO
MONTREAL PROTOCOL ON SUBSTANCES
THAT DEplete THE OZONE LAYER
Vienna, 5-7 December 1995

REPORT OF THE EXECUTIVE DIRECTOR TO THE SEVENTH MEETING
OF THE PARTIES TO THE MONTREAL PROTOCOL

Addendum

A. DUMPING OF SUBSTANCES IN ANNEXES A AND B OF THE PROTOCOL
AND OF PRODUCTS CONTAINING SUCH SUBSTANCES

1. In accordance with a decision made by the Open-ended Working Group of the Parties at its eleventh meeting, the World Trade Organization (WTO) was invited to provide its comments on a draft decision to curb dumping of products containing ozone-depleting substances and equipment manufactured with such substances in any country. Some questions on the proposed draft decision were raised by the WTO secretariat. Those questions were circulated to all Parties to seek their views. The views of the Parties that have responded to the questions are annexed hereto.

Proposal for action. The Parties may wish to take an appropriate decision on the issue.

B. VENUE FOR THE EIGHTH MEETING OF THE PARTIES TO THE
MONTREAL PROTOCOL

2. The Governments of Costa Rica and Egypt have both offered to host the Eighth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer in 1996, in San Jose and Cairo respectively.

Proposal for action. The Parties may wish to decide on the venue of the Meeting in the light of the two offers.

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Annex

REPLIES FROM PARTIES TO THE QUESTIONS CIRCULATED BY THE
WORLD TRADE ORGANIZATION AT THE TWELFTH MEETING OF THE
OPEN-ENDED WORKING GROUP OF THE PARTIES

AUSTRALIA

[Original: English]

Australia considers that a decision of the Parties would be all that is appropriate or achievable. The decision would be framed as a clarification of the application of Article 4, paragraph 5, concerning the transfer of technology.

A useful system for trade measures would be one that is multilaterally devised and that is implemented by the Parties on the basis of bilateral cooperation. The trade measures should not be unilaterally devised.

A system based on bilaterally agreed prior informed consent, within a multilaterally devised framework and which includes a standard for provision of information and, possibly, also for labelling and reporting requirements, would be useful. As trade measures could be implemented on a basis of bilateral cooperation, notification and information exchange could also be bilateral and would not need to be channelled through a Secretariat.

CZECH REPUBLIC

[Original:English]

This problem is not so important in Czech Republic, as in April this year the Parliament passed the significant Act No. 86/1995 S.B. on protection of the ozone layer, which prescribes measures in favour of the environment. Production, import and export of controlled substances and of products containing such substances are possible only on the basis of a licence issued by the Ministry of the Environment. Production, import and export of products containing halons and freons (CFCs) are forbidden by this Act, with the exception of emergency cases (health protection, life security, nuclear equipment security). In the Czech Republic, there is only one producer of CFCs, which will stop production by 1 January 1996. Its facilities will be used for reclamation of freons to an extent sufficient to meet requirements in the Czech Republic.

Therefore, the Czech Republic can accept any solution approved by the majority of member States.

FINLAND

[Original: English]

Finland is of the view that clear rules on the use of trade measures need to be established for the benefit of negotiators of multilateral environmental agreements (MEAs). Analytical work on the subject as well as on the related subject of dispute settlement has been taking place in WTO and elsewhere, but no decisions on the way to proceed have been reached yet. Therefore, at this stage it is very difficult to take a firm position on this very concrete issue regarding the Montreal Protocol.

As a general principle, it is of course possible to note that the compliance with multilateral environmental agreements should be encouraged, and undermining the agreed environmental objectives of the agreements should be avoided. In this regard, it is understandable that certain agreements, for the effectiveness of which trade measures are deemed unavoidable, do contain these measures and that also in the future these measures may be deemed necessary.

Without taking a position concerning the eventual consequences of the proposal in question, it might, in case the Parties decide to proceed with the matter, be useful to reconsider the use of the word "dumping", in the light of the international discussion that has taken place.

GERMANY

[Original: English]

The legal status of the proposal should be a decision of the Parties.

The choice of trade measures as well as the circumstances and the modalities of their application should preferably be decided by the Parties to the Montreal Protocol collectively. If left to the discretion of each Party, a decision to apply trade measures should only be taken in consultation with the Article 5 Party concerned.

The reference to "labelling requirements" in the proposal seems to be indeed at present only illustrative.

Germany supports the notification of trade measures through the Secretariat. These notifications should be made available also to WTO members through the WTO secretariat.

Germany does not agree suggestion to include in the proposal to the WTO rights and obligations of WTO members that are Parties to the Montreal Protocol, because it could lead to the impression that WTO rights and obligations take precedence over those of the Montreal Protocol.

The formal dispute dealt with in the last question of WTO should be handled within the negotiations of the Montreal Protocol.

INDONESIA

[Original: English]

The proposal should not become an amendment to the Montreal Protocol, but a decision of the Parties.

Trade measures should be permitted only within the grace-period. A decision to apply trade measures should be taken only in consultation with or at the request of the Article 5 (importing) country.

The trade measures envisaged should refer to labelling requirements.

Trade measures applied should be notified through the Ozone Secretariat and the notification could also be made available to WTO members through WTO secretariat.

It is envisaged to include a reference in the proposal to the WTO rights and obligations of WTO members that are Parties to the Montreal Protocol.

It should not be called "dumping" but should be treated as access to products containing ODS for Article 5 Parties during the grace-period.

JAPAN

[Original: English]

Generally, the rules of export and import regarding ozone-depleting substances should be harmonized with the existing international trade rules.

KUWAIT

[Original: English]

The legal status of the proposal should be a decision of the Parties.

The trade measures to be applied should be left to the discretion of each Party, and the decision should be taken in consultation between an Article 2 exporting country and an Article 5 importing country.

The trade measures envisaged should include a number of items to be discussed which conform with the Montreal Protocol and ensure that production does not exceed the basic requirements to satisfy the domestic needs.

It is essential that these trade measures be notified through the Ozone Secretariat, and also be made available to WTO secretariat.

As the proposal should conform to the rules of international trade, it is advisable to include a reference to the WTO rights and obligations of WTO members who are Parties to the Montreal Protocol.

Should a dispute arise, it should be handled through the Ozone Secretariat and WTO secretariat. However, if the proposal ensures that the trade measures are left to the discretion of each Party and that the decision is taken in consultation between the exporting and importing countries, such disputes should rarely arise.

MAURITIUS

[Original: English]

WTO and its related mechanisms do not have a ready made solution to the problem. Neither is WTO in a position to deliberate early enough in order to provide timely guidance for a decision to be taken by the Seventh Meeting of the Parties. WTO has in fact initiated what could be a very long process in order to arrive, if at all, at a conclusion.

At the twelfth meeting of the Open-ended Working Group, the proposal in question had been passed for adoption by the Seventh Meeting of the Parties with only the word "dumping" within square brackets.

To all intents and purposes, the only contentious issue is the use of the word "dumping". As soon as this is resolved, the decision can be adopted by the Seventh Meeting of the Parties.

POLAND

[Original: English]

The proposal, if adopted, should be in the form of a decision of the Parties to the Montreal Protocol, not in the form of an amendment. The circumstances in which trade measures are to be applied, should be decided by the Parties rather than being left to each Party's discretion. This issue should be discussed by the Parties. The trade measures applied under the proposed decision should be notified through the Ozone Secretariat, and WTO should also be informed. It is not recommended to include in the proposal the reference to the WTO rights and obligations of WTO members who are Parties to the Montreal Protocol.

VENEZUELA

[Original: Spanish]

Venezuela, as well as the other countries operating under Article 5, is opposed to the proposal with respect to which WTO has formulated its questions insofar as it refers to exports of controlled substances, since the proposal arbitrarily favours the Article 2 countries to the detriment of Article 5 countries, such as Venezuela, that export the substances.

At the eleventh and twelfth meetings of the Open-ended Working Group, some countries argued that the proposal could be contrary to the obligations established in the framework of WTO. That explains the consultation and the questions of WTO.

Independently of this, the delegation of Venezuela in the Open-ended Working Group has affirmed that the proposal is contrary to the spirit of the Montreal Protocol and, for that reason, will not accept an imposition of restrictions not provided for in the Protocol on Venezuelan exports of controlled substances. At the same time, Venezuela also stated that it is prepared to accept the monitoring of its exports, in order to rule out any suspicion of "irresponsible exports". Finally, it indicated, together with other countries, that there is sufficient evidence that the aggressive marketing and low prices of controlled substances have not originated in the Article 5 countries but in the countries operating under Article 2, particularly in Eastern Europe.
