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Ad Hoc Working Group of Legal and Technical Experts for  
the Harmonization of Data on Production, Imports  
and Exports of Substances that Deplete the Ozone Layer

Second meeting  
The Hague, 24-26 October 1988

Harmonization of data on production, imports and exports of substances  
controlled under the Montreal Protocol on Substances that Deplete  
the Ozone Layer and other outstanding issues arising under  
the resolutions of the Final Act of the Conference of  
Plenipotentiaries and under the Montreal Protocol

Note by the Executive Director of UNEP

Introduction

1. Resolution 3, on reporting of data, of the Final Act of the Conference of Plenipotentiaries on the Protocol on Chlorofluorocarbons to the Vienna Convention for the Protection of the Ozone Layer, adopted at Montreal on 16 September 1987:

(a) Stated that "the timely reporting of complete and accurate data on the production and consumption of controlled substances is critical to the effective and efficient implementation" of the Montreal Protocol;

(b) Called upon "all Signatories to take, expeditiously, all steps necessary to acquire data and report on the production, import and export of controlled substances in a complete and timely fashion";

(c) Invited "Signatories to consult with other Signatories, and to seek advice and assistance from the United Nations Environment Programme (UNEP) and other relevant international organizations, as necessary, in designing and implementing data reporting systems";

(d) Called upon "the Executive Director of UNEP to convene, within six months of the adoption of this Resolution, a meeting of governmental experts with the assistance of experts from relevant international organizations to make recommendations for the harmonization of data on production, imports and exports to ensure consistency and comparability of data on controlled substances".

2. The 1st meeting of the Ad Hoc Working Group of Legal and Technical Experts for the Harmonization of Data on Production, Imports and Exports of Substances that Deplete the Ozone Layer was held in Nairobi, 9-11 March 1988 in accordance with resolution 3. The report of this meeting (UNEP/WG.185/5/Rev.1) has been distributed to all countries together with the invitation to the 2nd meeting of the Ad Hoc Working Group called for in article 16 of the report.

1. Entry into force of the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer

3. At the first meeting of this Working Group the problem of timely entry into force of the Montreal Protocol and its relation to the Vienna Convention was discussed.

4. With the deposit of the 20th instrument of ratification by Uganda on 24 June 1988 the Vienna Convention enters into force on 22 September 1988, securing as legal basis for entry into force of the Montreal Protocol.

5. Article 16 of the Montreal Protocol ("Entry into Force"), provides that the "Protocol shall enter into force on 1 January 1989, provided that at least eleven instruments of ratification, acceptance, approval of the Protocol or accession thereto have been deposited by States or regional economic integration organizations representing at least two-thirds of 1986 estimated global consumption of the controlled substances. To date seven countries (Mexico, USA, Norway, Sweden, Canada, New Zealand and Egypt) have ratified the Protocol representing approximately 38% of the global consumption of the substances controlled by the Protocol. The consumption is based upon the data contained in document UNEP/WG. / . Twenty-nine other countries have signed the Protocol, see UNEP/WG. /Inf. 1.

6. It is crucial for the timely entry into force of the Protocol that at least 6 more countries ratify the Protocol representing at least 40% of the global consumption.

2. Data collection for the purposes of article 16 ("Entry into force") of the Montreal Protocol

7. At the first meeting of the Ad Hoc Working Group the experts agreed on a format for data and/or estimates of data (production, imports and exports of CFC's and Halons in 1986) to be submitted to UNEP for the purposes of article 16 of the Montreal Protocol. The following countries have to date reported at least their 1986 - consumption data: Australia, Austria, Bahrain, Bangladesh, Burundi, Canada, Central African Republic, Chile, Cyprus, Czechoslovakia, Denmark, Dominica, Ecuador, Ethiopia, Egypt, Finland, Gambia, Guatemala, Guinea, Honduras, Hungary, Indonesia, Jamaica, Japan, Kenya, Kuwait, Lao People's Democratic Republic, Liberia, Liechtenstein, Malaysia, Malta, Mexico, New Zealand, Norway, Panama, Philippines, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, United Arab Emirates, United States of America, Vanuatu, Yugoslavia and the EEC. UK, FRG and Spain have informed the secretariat that data from these countries would be included in the EEC data and thus not reported separately.

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8. On 5 May 1988 the interim secretariat sent letters to all other Governments urging them to report data for their countries. In the same letter it was indicated that if no data were received by 15 August the secretariat would estimate the 1986-consumption figure for the purpose of entry into force. The estimate to be used was indicated in the letter.

9. As a result of this the UNEP estimate of the 1986 global consumption of CFC's and halons controlled by the Protocol is 1,150,000 tonnes. The secretariat has on the basis of this figure indicated the percentage of global consumption for each country in Annex I. The Executive Director seeks recommendation from the Working Group to use these figures for the purpose of entry into force of the Protocol.

3. Data collection in accordance with Articles 3 ("Calculation of Control Levels") and ("Reporting of Data") of the Protocol

Reporting data

10. For the purpose of applying control measures according to the Montreal Protocol, in particular regarding the obligations of the parties under articles 2 and 5, and in order to ensure timely and accurate calculation of control levels on the basis of article 3, article 7 of the Protocol states as follows:

"1. Each Party shall provide to the secretariat, within three months of becoming a Party, statistical data on its production, imports and exports of each of the controlled substances for the year 1986, or the best possible estimates of such data where actual data are not available.

"2. Each Party shall provide statistical data to the secretariat on its annual production (with separate data on amounts destroyed by technologies to be approved by the Parties), imports, and exports to Parties and non-Parties, respectively, of such substances for the year during which it becomes a Party and for each year thereafter. It shall forward the data no later than nine months after the end of the year to which the data relate."

11. At the first meeting of the Working Group it was agreed that the units of measurement to be used for the reporting system should be the metric tonne.

12. The interim secretariat has prepared a draft reporting form (attached as Annex II) to be used for the annual reporting of data. The Executive Director seeks the approval of a reporting form to be used for this purpose.

13. At the first meeting it was suggested that further clarification of Article 1, paragraph 2 of the Protocol would be needed with regard to the reporting period. In the note from the Executive Director to be first meeting of the Working Group the following was put forward for consideration:

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(a) Until the secretariat to the Montreal Protocol is established, should the responsibilities of the secretariat as provided in article 7 regarding the collection of data be performed by the UNEP secretariat in its capacity as interim secretariat to the Protocol?;

(b) Is it the common understanding that "year" in the phrase, "for the year during which it becomes a Party and for each year thereafter" in paragraph 2 of article 7 means the calendar year, thus each Party shall submit to the secretariat data of its annual production, imports and exports of controlled substances not later than 30 September of each year starting with the calendar year during which it became a Party? Or do the nine months referred to in article 7 start after the end of the twelve-month periods referred to in paragraphs 1-4 of article 2?

14. Industry indicates that these reporting periods are not coincident with normal accounting periods used by industry and hence the provision of data by industry for the purpose of determining compliance will be - from their point of view - costly due to duplication of detailed annual accounting procedures required for normal business purposes. Without detailed accounting over a twelve-month period, accurate returns could not be guaranteed.

15. This point needs to be considered by the meeting and guidelines established. The advisory group to the Executive Director was of the opinion that "although remedial action could only be taken in the form of an amendment to the Protocol by the Parties, a possible solution for consideration would be to require an 'odd' twelve month reporting only for the opening control period and for the transitional periods between the subsequent reduction phases (1993-1994 and 1998-1999), coupled with calendar year reporting. This would also ensure that Protocol reporting is consistent with other international calendar year statistics".

16. The Working Group is asked to consider a recommendation on the reporting procedure to be presented for the Group of Legal Experts.

#### 4. Confidentiality of data

17. At the first meeting the confidentiality of data was extensively discussed and appreciable difference of view emerged among the experts. However, it was noted that, since for the purpose of the entry into force of the Protocol only the 1986 aggregated consumption data was required, the problem of confidentiality was not a major one.

18. In the light hereof is the percentage of the 1986-global consumption for each country not regarded as confidential.

19. Before the question of confidentiality is presented for the Group of Legal Experts the Executive Director requests the Working Group to consider the following questions.

- (a) To which extent should production figures be regarded as confidential? Would it make any difference if there are only one or two producers or three or more in country? What about amounts destroyed by approved technologies?
- (b) To which extent should import and export figures be regarded as confidential? Would it make any difference if there are few or many importers/exporters in a country? What about figures on trade with non-parties?

In the note by the Executive Director for the first meeting it was stated that: "Calculated levels of consumption and calculated total (aggregated) levels of production, imports and exports cannot be regarded as confidential". To which extent should consumption figures be regarded as confidential?

- (d) Would there be any period of time after which data should no longer be considered as confidential?
- (e) Is there a conflict between a request for confidentiality and the control measures of the Protocol?

5. Definitions or clarifications of definitions to be recommended to the first meeting of the Conference of the Contracting Parties

20. Several definitions were discussed during the first meeting of the Working Group and although consensus was reached for some of the proposed definitions and clarifications others remain to be discussed.

21. The clarification of the definition of controlled substances (transport in bulk) will be put forward at the first meeting of the Conference of the Parties as it appears in the report of the first meeting of the WG (UNEP/WG.185/5/Rev.1)

Basic domestic needs

22. The term "basic domestic needs" is very difficult if not impossible to define. It is clear that it was included to reflect the special situation of developing countries and facilitate their development and a solution might be to indicate which situations that are not covered by the term "basic domestic needs. Such situations could be e.g. not to allow production of products containing controlled substances to expand for the purpose of supplying other countries.

Developing countries

23. A list of countries currently members of the Group of 77 is attached as Annex III to this note. The Executive Director requests countries to use this list as the basis for considering which countries should be included on list to be presented at the first meeting of the Conference of the Parties.

Recycling

24. The following clarification of the definition of "production" was put forward at the first meeting of the Working Group.

25. The definition of "production" in Article 1 paragraph 5 does not explicitly recognize that contaminated controlled substances may be purified in factories used for the production of controlled substances. Such a purified product would be indistinguishable from virgin production. Examples are used refrigerants and halons returned to producers. Possible solution are

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that the Parties to the Protocol agree that the definition of production in Article 1 paragraph 5 should be interpreted to mean "net" production rather than "gross" production. That is, production is equal to sales by producers minus purchases of controlled substances for purposes of recycling. Exports and imports of used or recycled controlled substances would be treated in the same way as trade in "virgin" or "new" controlled substances. Alternatively, production could be taken to mean "gross" production. In this case, it was suggested, recycling should be encouraged by allowing production by Parties to rise by the amount of controlled substances that are recycled by the Party. This would require amendment to the Protocol. As in the first option, imports and exports of all controlled substances would be treated the same way, whether "new" or "used" or recycled. These two options should be considered at the second meeting of this Working Group.

26. Another problem which should be brought to the attention of the Working Group is when a substance is imported for reuse, e.g. CFC 113 used first as a solvent and then exported in bulk for use in making insulation foam. This would lead to double accounting of the quantity.

#### Industrial rationalization

27. In his note for the first meeting of the Working Group (UNEP/WG.185/3) the Executive Director addressed the question of a clarification of the term "Industrial rationalization".

28. Article 2 of the Protocol allows for an increase of a Party's production by 10% of its 1986 production level (15% from 1 July 1998) provided that the increase aims at satisfying either basic domestic needs of the Parties operating under Article 5 or for the purposes of industrial rationalization between Parties.

29. It was stated in the Executive Director's note that a third possibility exists although the wording of the Protocol does not reflect it. A country could increase production up to 10% over its 1986 level provided that it decreases its imports by a corresponding amount, thus resulting in no net change in domestic consumption.

#### Clarification of the definitions of "import" and "export".

30. At the first meeting of the Working Group it was agreed that a shipment becomes an export upon departure from one country and became an import upon arrival in another. It is likely that any discrepancies in accounting resulting from shipments in transit would not be large.

31. It was also agreed that it would be useful to study customs statistics in that context and a suggestion on "Modification of the Harmonized Commodity Description and Coding System in order to Facilitate Collection and Comparison of Data under the Montreal Protocol" was annexed to the Report of the meeting (Annex II, UNEP/WG.185/5/Rev.1).

#### Clarification of Article 26 of the Protocol

32. Article 26 of the Protocol allows a Party not operating under Article 5 to add to its 1986 production level (for calculation purposes) production from new facilities completed by 31 December 1990, provided that the facilities were under construction or contracted for prior to 16 September 1987 and provided for in national legislation prior to 1 January 1987. Such production may not raise a Party's annual calculated level of consumption of the controlled substances above 0.5 kg pr. capita.

33. The Wording of the Article opens for the possibility for increasing the production for export purposes, and since the Protocol does not explicitly ban exports from countries not operating under its article 5 this could appear to be a loophole in the Protocol.

34. However, it is the opinion of the Executive Director, that countries in accordance with Article 18 of the Convention on the Law of Treaties, Vienna, 23 May 1969, by their signature or ratification are obliged to abstain from acts which would defeat the object and purpose of a treaty. Since the object and purpose of the Protocol is to significantly reduce the production and use of CFC's and halons, Article 2.6 of the Protocol or any other provision does not allow an increase in production to be exported to non-parties so that the reduction in global consumption is not obtained in accordance with the object of the Protocol.

#### Ozone Depleting Potential for Halon 2402

35. In the Montreal Protocol On Substances that Deplete the Ozone Layer, Annex A, Halon 2402, is included in group II of the controlled substances with a note that the ozone depletion potential is to be determined.

Since global consumption is defined by global production, it is not necessary to know the ODP of the regulated substances to fulfill the provision of Article 16 in the Protocol pertaining to entry into force. However, in order to fulfill the consumption phase down obligations set out in Articles 2 and 5 of the Protocol, ODPs for all of the regulated substances must be established and used in the required calculations.

As per the attached correspondence from the International Union of Pure and Applied Chemistry, dated 22 March 1988, their latest calculation of the ODPs for all the regulated substances, (including Halon 2402) is in slight variance with numbers in the Protocol. Their estimate of the ODP for Halon 2402 is 6.2.

The scientific meeting in The Hague 17-18 October will discuss this topic and provide a recommendation with respect to the ODP for Halon 2402. The Ad Hoc Working Group meeting on 24-26 October 1988 on the Harmonization of Data will be asked to consider this recommendation with a view to forwarding a consensus recommendation to the first meeting of the Conference of the Parties to the Protocol of their destruction process in good time for the Parties to determine their acceptability as approved technologies. In the light of the fact that the first meeting of the Conference of the Parties must be convened before 22 September 1989 if the Montreal Protocol enters into force on 1 January 1989 the Executive Director would like to urge these countries to forward information on the destruction process. The Working Group is asked to consider criteria for approved technologies and to put forward suggestions for a procedure for approval.

#### 6. The first meeting of the Conference of the Parties

36. In paragraph 4 of this note it is stated that the Vienna Convention enters into force on 22 September 1988. According to its Article 6 the first meeting of the Conference of the Parties shall be convened by the interim secretariat not later than one year after entry into force. The Conference of the Parties shall by consensus agree upon financial rules and rules of procedure.

37. The Executive Director intends to convene one or two preparatory meetings of an Advisory Panel during early 1989 in order to prepare these meetings, in particular the financial rules and rules of procedure.

38. If the Montreal Protocol enters into force on 1 January 1989 the interim secretariat shall convene the first meeting of the Conference of the Parties to the Protocol in conjunction with the meeting of the Conference of the Parties to the Convention. In that case financial rules and rules of procedure should also be prepared by the Advisory Panel.