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Ad Hoc Working Group of Legal and Technical
Experts for the Preparation of a Protocol
on Chlorofluorocarbons to the Vienna
Convention for the Protection of the
Ozone Layer (Vienna Group)

Second Session
Vienna, 23-27 February 1987

DRAFT REPORT OF THE AD HOC WORKING GROUP ON THE WORK OF ITS
SECOND SESSION
(continued)

REPORT OF THE SUB-GROUP ON TRADE ISSUES

The Sub-Group on Trade Issues considered the compatibility of measures for controlling trade between parties to the Protocol, and trade between parties and non-parties, with the rules of international trade, especially the GATT. The Sub-Group provisionally concluded that, provided it was clearly demonstrated that the measures were not arbitrary or unjustifiable, any discrimination in the treatment between parties and non-parties would be permissible under the exceptions provided by Article XX paragraph (b) of the GATT (concerning protection of human, animal or plant life or health) and possibly also paragraph (g) (concerning conservation of exhaustible natural resources). However, it was the opinion of several experts that discrimination would not arise at all, if the trade restrictions regarding non-parties did not apply ^{if} in case these non-parties were able to demonstrate ^{full} compliance with the control measures provided for in the protocol. Reference was also made to certain precedents, namely the Convention on International Trade in Endangered Species of Wild Flora and Fauna and the London Dumping Convention Resolution 29 (10) on Export of Wastes for Disposal at Sea. Possible implications of the Protocol's trade

measures in the light of UNCTAD guidelines concerning transfer of technology were also discussed. The issue of exports to non-parties was raised and it was agreed that the issue deserved further deliberation. The Sub-Group concluded that it would be important for all delegations to further consider these trade issues prior to the next session.

The Sub-Group has provided the following text, which they consider a useful aid to further deliberation on the subject by all delegations before the next session of the Working Group:

Article on Control of Trade

1. Within () years after entry into force of this Protocol, each Party shall ban the import of the controlled substances in bulk from any state not party to this protocol [, unless such state is in full compliance with Article () and this Article and has submitted information to that effect as specified in Article ()].
2. Within () years after entry into force of this Protocol, each Party shall [restrict] [ban] imports of products containing substances controlled by this Protocol from any state not party to this Protocol [unless such state is in full compliance with Article () and this Article, and has submitted information to that effect as specified in Article ()]. At least one year prior to the time such measures take effect, the Parties shall elaborate in an annex a list of the products to be [restricted] [banned] and standards for applying such measures uniformly by all Parties.
3. The Parties shall jointly study the feasibility of restricting or banning imports of products produced with substances controlled by this Protocol from any state not party to this Protocol [, unless such state is in full compliance with Article () and this Article and has submitted information to that effect as specified in Article ()].
4. Within () years after entry into force of this Protocol, each Party shall [ban] [restrict] [discourage] the export of technologies [to non-parties] for the production and use of the controlled substances [, unless such state is in full compliance with Article () and this Article and has submitted information to that effect as specified in Article ()].

5. ~~The Parties~~ shall not provide ~~(to non-parties)~~ bilateral or ~~multilateral~~ subsidies, aid, credits, guarantees, or insurance programs for the export of products, equipment, plants, or technology for the production or use of the controlled substances ~~(~~, unless such state is in full compliance with Article() and this Article and has submitted information to that effect as specified in Article ()~~).~~
- [6. The provisions of paragraphs 4 and 5 shall not apply to products, equipment, plants or technologies which contribute to the protection of the ozone layer.]