

SUBJECT: US GOVERNMENT POSITION ON NEGOTIATIONS ON
PROTOCOL TO CONTROL OZONE-DEPLETING CHEMICALS

INTRODUCTION

UNITED NATIONS ENVIRONMENT PROGRAM (UNEP) NEGOTIATIONS ON A PROTOCOL TO CONTROL OZONE-DEPLETING CHEMICALS ARE TO CULMINATE WITH FINAL NEGOTIATIONS SEPTEMBER 8-11 AND A CONFERENCE OF PLENIPOTENTIARIES SEPTEMBER 14-16 IN MONTREAL. IF SUCCESSFUL, THIS WILL BE A LANDMARK IN PROTECTION OF THE GLOBAL ENVIRONMENT. THE UNITED STATES

GOVERNMENT SUPPORTS ADOPTION OF A STRONG AND EFFECTIVE PROTOCOL. GLOBAL COOPERATION IS REQUIRED TO PROTECT THE STRATOSPHERIC OZONE LAYER, A VITAL COMMON RESOURCE.

UNEP EXECUTIVE DIRECTOR MOSTAFA TOLBA HAS CIRCULATED THE TENTH REVISED DRAFT PROTOCOL FOR CONSIDERATION OF GOVERNMENTS IN PREPARATION FOR THE MONTREAL MEETINGS. WE HOPE THE FOLLOWING COMMENTS WILL BE HELPFUL TO OTHER GOVERNMENTS IN PREPARING FOR MONTREAL AND WILL FACILITATE AGREEMENT THERE. SOME OF THESE POINTS CONCERN MAJOR ISSUES WHICH HAVE BEEN DISCUSSED PREVIOUSLY IN THE NEGOTIATIONS, SOME ARE POINTS WE HAVE NOTED IN OUR REVIEW OF THE UNEP TEXT. WE ARE CONTINUING OUR OWN REVIEW AND ARE LIKELY TO HAVE ADDITIONAL COMMENTS BEFORE OR AT MONTREAL. WE WELCOME COMMENTS FROM OTHER PARTICIPANTS.

COVER/AGE/TITLE OF CONFERENCE AND PROTOCOL
THE UNEP GOVERNING COUNCIL IN JUNE 1987 DECIDED THAT THE WORKING GROUP SHOULD CONSIDER THE FULL RANGE OF POTENTIAL OZONE-DEPLETING SUBSTANCES IN DETERMINING WHAT CHEMICALS MIGHT BE CONTROLLED UNDER THE PROTOCOL. ACCORDINGLY, THE TITLE OF THE CONFERENCE SHOULD BE CHANGED FROM "CONFERENCE OF PLENIPOTENTIARIES ON THE PROTOCOL ON CHLOROFLUOROCARBONS . . . TO CONFERENCE OF PLENIPOTENTIARIES ON OZONE-DEPLETING SUBSTANCES . . ." AND THE TITLE OF THE PROTOCOL TO "PROTOCOL ON OZONE-DEPLETING SUBSTANCES." THE PROTOCOL SHOULD INITIALLY COVER ONLY CERTAIN CHLOROFLUOROCARBONS AND HALONS, BUT SHOULD BE FLEXIBLE ENOUGH TO INCLUDE ADDITIONAL SUBSTANCES IN THE FUTURE IF THE PARTIES SO DECIDE (AS PROVIDED IN ART. 2, PARA 5A OF THE UNEP TEXT). THE TITLE OF THE CONFERENCE AND OF THE PROTOCOL SHOULD THEREFORE REFER SIMPLY TO "OZONE-DEPLETING SUBSTANCES."

RECEIVED

WHAT IS TO BE CONTROLLED? (ART. 2)

THE UNITED STATES AND SEVERAL OTHER PARTICIPANTS IN THE NEGOTIATIONS HAVE ADVOCATED THAT CONTROLS APPLY TO APPARENT CONSUMPTION, DEFINED AS EACH PARTY'S PRODUCTION PLUS IMPORTS MINUS EXPORTS TO PARTIES MINUS AMOUNTS DESTROYED BY APPROVED TECHNIQUES. THE EC, ON THE OTHER HAND, HAS FAVORED CONTROLLING PRODUCTION, SINCE IMPLEMENTATION WOULD BE LESS COMPLICATED. THE COMPROMISE PROPOSED IN THE UNEP TEXT PROVIDES FOR BOTH PRODUCTION AND CONSUMPTION CONTROLS, IN PARALLEL.

THE PROPOSAL IN THE TEXT TO CONTROL PRODUCTION AND IMPORTS RATHER THAN PRODUCTION AND CONSUMPTION IN THE FIRST FEW YEARS RESULTED FROM CONCERNS THAT 1986 DATA ON EXPORTS WOULD NOT BE AVAILABLE. WE ARE CONFIDENT THAT, WITH THE COOPERATION OF INDUSTRY, WORKABLE 1986 DATA CAN BE DEVELOPED. CONSUMPTION CAN AND SHOULD BE USED FROM THE BEGINNING.

UPON SERIOUS REFLECTION, THE UNITED STATES BELIEVES THAT BY CONTROLLING ONLY CONSUMPTION, SEVERAL OTHER PENTIAL PROBLEMS COULD BE SIMULTANEOUSLY RESOLVED.

THIS WOULD PROVIDE THE FREST POSSIBLE MOVEMENT OF TRADE

AND CAPITAL AMONG PARTICIPATING PARTIES IN RESPONSE TO MARKET FORCES, WITHIN OVERALL LIMITS TO PROTECT THE OZONE LAYER. PRODUCTION CONTROLS ALONE WOULD, IN CONTRAST, LOCK IN EXISTING MARKET SHARES. IF CURRENT PRODUCERS ARE REQUIRED TO CUT BACK WHILE LOW CONSUMING COUNTRIES (LCCS) ARE PERMITTED DURING A GRACE PERIOD TO CONTINUE OR INCREASE PRODUCTION AND CONSUMPTION, AN ENVIRONMENTALLY UNDESIRABLE AND ECONOMICALLY INEFFICIENT INCENTIVE WOULD BE CREATED TO REPLACE EXISTING PRODUCTION CAPACITY IN NON-LCC PARTIES WITH EXPANDED PRODUCTION CAPACITY IN THE LCCS (SEE COMMENTS ON LCCS BELOW).

WE ALSO NOTE THAT THE EC COMMISSION PROPOSAL THAT THE EC BE TREATED AS A SINGLE PRODUCING UNIT WOULD PROVIDE TO THE EC THE FREEDOM OF MOVEMENT OF TRADE AND CAPITAL WHICH CONTROLS ON CONSUMPTION ALONE WOULD PROVIDE TO ALL PARTIES, YET THE EC IS INSISTING THAT ALL OTHER PARTIES BE REQUIRED TO COMPLY WITH INDIVIDUAL NATIONAL PRODUCTION LIMITS (SEE COMMENTS BELOW ON EC REGIONAL ECONOMIC INTEGRATION ORGANIZATION PROPOSAL).

HALONS (APT. 2, PARA 2)

THE UNEP TEXT PROPOSES THAT HALONS 1211 AND 1301 BE FROZEN AT 1986 LEVELS THREE YEARS AFTER ENTRY INTO FORCE (EIF) (I.E., 4-5 YEARS FROM NOW, OR LATER). MOLECULE FOR MOLECULE, THE HALONS ARE FAR MORE OZONE-DEPLETING THAN CFCs. THE UNITED STATES BELIEVES THAT HALONS SHOULD BE FROZEN ONE YEAR AFTER ENTRY INTO FORCE, OR AT THE LATEST TWO YEARS AFTER ENTRY INTO FORCE. WE STRONGLY URGE GOVERNMENTS WHICH HAVE NOT YET DONE SO TO AGREE TO INCLUDE IN THE PROTOCOL THIS FUTURE FREEZE ON HALONS. IF THE PROTOCOL DOES NOT FREEZE THE HALONS, A FURTHER REDUCTION OF THE CFCs WOULD BE NECESSARY TO ACHIEVE AN EQUIVALENT LEVEL OF ENVIRONMENTAL PROTECTION. WE RECOGNIZE THAT SOME USES OF HALONS ARE PARTICULARLY VALUABLE, BUT CONSIDERABLE SAVINGS OF EMISSIONS CAN BE OBTAINED BY LIMITING DISCHARGE TESTING AND ACCIDENTAL RELEASES. ALSO, FOR THIS REASON, THE U.S. IS PREPARED TO DEFER ANY DECISION ON REDUCING HALONS, PROVIDED THAT THE PROTOCOL AT LEAST IMPOSE A FREEZE.

CONCERNS HAVE BEEN EXPRESSED THAT DATA ARE NOT AVAILABLE ON HALONS TO ESTABLISH A 1986 BASELINE. HOWEVER, GIVEN THE VERY LIMITED NUMBER OF PRODUCERS OF HALONS 1211 AND 1301, WE ARE CONFIDENT THAT GOVERNMENTS CAN DEVELOP THE NECESSARY 1986 DATA, WITH THE COOPERATION OF INDUSTRY. THE HALON INDUSTRY HAS BEEN VERY COOPERATIVE WITH THE U.S. ENVIRONMENTAL PROTECTION AGENCY IN ASSESSING THE NEED FOR CONTROLS. TO SET A LATER BASE YEAR OR SIMPLY MENTION HALONS IN A DIPLOMATIC CONFERENCE RESOLUTION WOULD PROVIDE AN UNACCEPTABLE INCENTIVE FOR EXPANDED PRODUCTION, AND WOULD DISCOURAGE ACTION BY THOSE WHO MIGHT OTHERWISE BEGIN LIMITING EMISSIONS NOW.

FUTURE ADJUSTMENT OF COVERAGE OR OF OZONE-DEPLETING POTENTIALS (ART. 2, PARA 5)

IF CHEMICALS ARE ADDED OR REMOVED FROM COVERAGE IN THE FUTURE, THE PARTIES WILL NEED TO DECIDE AT THAT TIME HOW THE CHANGE WILL AFFECT THE CALCULATIONS (ADDED TO THE BASKET, SCHEDULE, OZONE-DEPLETING POTENTIAL, BASE YEAR, ETC.) THE PHRASE "AND UNDER WHAT TERMS" SHOULD THEREFORE BE ADDED TO ART. 2 PARA 5 (A).

THE OZONE-DEPLETING POTENTIALS IN ANNEX A ARE BASED ON THE BEST SCIENTIFIC INFORMATION CURRENTLY AVAILABLE, BUT SHOULD BE ADJUSTABLE IF THAT INFORMATION CHANGES, WITHOUT RESORTING TO COMPLEX AMENDMENT PROCEDURES. WE SUGGEST THAT ART. 2. PARA (5) PROVIDE THAT THE PARTIES MAY NOT ONLY ADD OR REMOVE SUBSTANCES FROM ANNEX (A) BUT ALSO ADJUST THE OZONE-DEPLETING POTENTIALS. SUCH CHANGES WOULD BE BASED, AS WOULD ALL OF THE PARTIES' ACTIONS, ON DEVELOPING SCIENTIFIC INFORMATION.

ADDITIONAL REDUCTION STEPS

THE UNEP TEXT (ART. 2, PARA. 5) ALSO PROVIDES THAT PARTIES WILL DECIDE IN THE FUTURE WHETHER FURTHER REDUCTIONS SHOULD BE UNDERTAKEN WITH THE OBJECTIVE OF EVENTUAL ELIMINATION OF PRODUCTION AND CONSUMPTION OF THE CONTROLLED SUBSTANCES EXCEPT FOR USES FOR WHICH NO SUBSTITUTES ARE COMMERCIALY AVAILABLE. THE UNITED STATES SUPPORTS THIS PROVISION. CLEARLY, IF WE ARE TRYING TO SET UP A REGIME TO PROTECT THE ENVIRONMENT, IT SHOULD LOGICALLY INCLUDE A MECHANISM TO TAKE ADDITIONAL STEPS IF REQUIRED TO RESPOND TO DEVELOPING SCIENTIFIC INFORMATION. THE "OBJECTIVE OF EVENTUAL ELIMINATION" DOES NOT BIND PARTIES TO SPECIFIC ADDITIONAL REDUCTIONS NOW, BUT WOULD AT LEAST SEND A SIGNAL TO CURRENT AND POTENTIAL PRODUCERS AND CONSUMERS FOR THEIR LONGER-RANGE PLANNING THAT THEY SHOULD DEVELOP AND USE SUBSTITUTES RATHER THAN PLAN ON SIGNIFICANT CONTINUED USE OF THE CONTROLLED CHEMICALS.

THE LANGUAGE IN THE UNEP TEXT IS, IN FACT, AN AGREEMENT ON PRINCIPLE" -- IT DOES NOT BIND PARTIES NOW TO SPECIFIC REDUCTIONS BUT SETS OUT THE GUIDING PRINCIPLE FOR THE PARTIES' FUTURE DECISION-MAKING.

FUTURE DECISION-MAKING

FOR FUTURE DECISIONS ON CONTROLS (INCLUDING STRINGENCY, TIMING, COVERAGE, OZONE-DEPLETING POTENTIALS)(ART. 2, PARAS 4 AND 5) TO BE EFFECTIVE, THEY MUST BE APPLIED BY ALL PARTIES. FOR SUCH DECISIONS, PARTIES SHOULD SEEK BROAD AGREEMENT AND THE PROTOCOL SHOULD REQUIRE AT A MINIMUM AGREEMENT BY A MAJORITY OF PROTOCOL PARTIES REPRESENTING A SUBSTANTIAL PORTION (MORE THAN THE FIFTY PERCENT IN THE CURRENT UNEP TEXT) OF THE PARTIES' (RATHER THAN GLOBAL) CONSUMPTION. THESE DECISIONS WILL BE BASED ON THE PARTIES' ASSESSMENT OF SCIENTIFIC, ENVIRONMENTAL, TECHNICAL AND ECONOMIC INFORMATION, IN ACCORDANCE WITH TITLE 6.

AS NOTED IN FOOTNOTE 16 OF THE SEVENTH REVISED DRAFT PROTOCOL, PROCEDURES FOR AMENDMENTS, ADDITIONAL ANNEXES, AND AMENDMENTS TO ANNEXES SHOULD ALSO REQUIRE AGREEMENT BY PARTIES REPRESENTING A SUBSTANTIAL PORTION OF THE PARTIES' CONSUMPTION.

CALCULATION OF CONTROL LEVELS (ART. 3)

PARAS 6 AND 7 SHOULD BE DROPPED FROM THE ARTICLE 1 DEFINITIONS, AND THE SUBSTANCE DEALT WITH IN ART. 3 ON CALCULATION OF CONTROL LEVELS. IN ORDER TO ENCOURAGE DEVELOPMENT AND BROAD USE OF DESTRUCTION TECHNIQUES, ART. 3 SHOULD PERMIT SUBTRACTION OF "AMOUNTS DESTROYED BY TECHNIQUES APPROVED BY THE PARTIES" FROM EITHER PRODUCTION OR IMPORTS, NOT JUST FROM PRODUCTION AS ART. 1, PARA 6 NOW PROVIDES.

IN ORDER TO ENCOURAGE BROAD PARTICIPATION IN THE PROTOCOL, IT IS IMPORTANT THAT THERE BE A DISINCENTIVE TO EXPORTS OF CONTROLLED CHEMICALS TO NON-PARTIES. OUR RESEARCH SUGGESTS THE CONCEPT OF NO EXEMPTION FOR NON-PARTIES IS FULLY CONSISTENT WITH THE GATT. ARTICLE 4 PROPOSES THAT EXPORTS OF BULK CHEMICALS TO NON-PARTIES BE BANNED. WE WOULD PREFER THAT INSTEAD, IN THE CALCULATION OF CONSUMPTION IN ARTICLE 3, ONLY EXPORTS TO PARTIES BE SUBTRACTED. THIS WOULD ENABLE SOME EXPORTS TO NON-PARTIES, AVOIDING A TOTAL BAN WHICH WOULD IN EFFECT REQUIRE NON-PARTIES TO BUILD THEIR OWN PRODUCTION CAPACITY, BUT WOULD PROVIDE AN INCENTIVE FOR PARTIES TO EXPORT TO PARTIES RATHER THAN TO NON-PARTIES, AND FOR PARTIES TO ENCOURAGE THEIR TRADING PARTNERS TO JOIN. AS WITH OTHER PROTOCOL PROVISIONS AFFECTING NON-PARTIES, IF VIRTUALLY UNIVERSAL PARTICIPATION IN THE PROTOCOL IS ACHIEVED, THE PROVISION WILL BE MOOT. DEFINING CONSUMPTION SO THAT ONLY EXPORTS TO NON-PARTIES ARE SUBTRACTED WOULD HELP ACHIEVE BROAD PARTICIPATION AS SOON AS POSSIBLE WHILE ENSURING ADEQUATE SUPPLIES TO THE LCC'S.

TRADE IN PRODUCTS (ART. 4, PARA 2)

IT IS IMPORTANT THAT THE PROTOCOL PROTECT BOTH PARTIES' INDUSTRY AND THE OZONE LAYER FROM THE POSSIBILITY OF PRODUCTION SIMPLY MOVING OFFSHORE TO NON-PARTY "POLLUTION HAVENS." TO DO THIS, PARTIES MUST CONSIDER A BAN ON IMPORTS FROM NON-PARTIES NOT ONLY OF THE BULK CHEMICALS BUT ALSO OF PRODUCTS CONTAINING THEM. THE NEGOTIATIONS HAVE DEVELOPED A WORKABLE APPROACH, BASED ON A SPECIFIC LIST OF PRODUCTS, RATHER THAN ATTEMPTING TO CONTROL SMALL AMOUNTS IN EVERY CONCEIVABLE PRODUCT.

THE PROPOSED TEXT PROVIDES THAT THESE RESTRICTIONS WOULD NOT BE EFFECTIVE UNTIL FOUR YEARS AFTER THE PROTOCOL ENTERS INTO FORCE, ALLOWING PLENTY OF TIME FOR NATIONS TO BECOME PARTIES AND FOR THE PARTIES TO DEVELOP IMPLEMENTING MECHANISMS.

AID, CREDITS, ETC. TO NON-PARTIES (ART. 4, PARA 5)

THE PREVIOUS DRAFT PROHIBITED SUBSIDIES, AID, CREDITS, GUARANTEES OR INSURANCE PROGRAMS FOR EXPORTS TO NON-PARTIES OF PRODUCTS, EQUIPMENT, PLANTS OR TECHNOLOGY FOR PRODUCTION OR USE OF THE CONTROLLED SUBSTANCES. THE REFERENCE TO USE WAS DROPPED BECAUSE OF CONCERN THAT THE PROVISION NOT APPLY, FOR INSTANCE, TO AN AID PACKAGE FOR A HOSPITAL WHICH HAPPENED TO INCLUDE AN AIR CONDITIONER. ASSISTANCE SHOULD ENCOURAGE THE TRANSITION TO ALTERNATIVE TECHNOLOGY AND SUBSTITUTE PRODUCTS (ART. 5, PARA 3) RATHER THAN RESULT IN SUBSTANTIALLY EXPANDED USE OF THE CONTROLLED SUBSTANCES; FOR EXAMPLE WE SHOULD ASSIST PROJECTS TO MANUFACTURE AIR CONDITIONERS USING CFC-22 (OR CFC-134A WHEN IT BECOMES COMMERCIALY AVAILABLE) RATHER THAN CFC-12. WE THEREFORE WOULD WELCOME OTHER GOVERNMENTS' COMMENTS ON REVISING LINE FOUR OF PARA. 5, IN ART. 4, BY CHANGING "PRODUCING" TO "PRODUCING OR USING" THE CONTROLLED SUBSTANCES, AND REVISING PARAGRAPH 6 TO READ:

6. THE PARTIES SHALL DEVELOP GUIDELINES FOR COORDINATED IMPLEMENTATION OF THE PROVISIONS OF PARAGRAPHS 4 AND 5. THE PROVISIONS OF PARAGRAPHS 4 AND 5 SHALL NOT APPLY TO PRODUCTS, EQUIPMENT, PLANTS OR TECHNOLOGY WHICH IMPROVE THE CONTAINMENT, RECOVERY, RECYCLING OR DESTRUCTION OF THE CONTROLLED SUBSTANCES, OR OTHERWISE CONTRIBUTE TO THE REDUCTION OF EMISSIONS OF THESE SUBSTANCES, OR ARE PRIMARILY INTENDED FOR HUMANITARIAN PURPOSES.

LOW CONSUMING COUNTRIES (ART. 5)

WE AGREE THAT IN ORDER TO FACILITATE BROAD PARTICIPATION, A LIMITED GRACE PERIOD SHOULD BE PROVIDED FOR LOW-CONSUMING COUNTRIES, (LCCS), AS PROPOSED IN THE UNEP TEXT.

AS NOTED EARLIER, IF LCCS ARE PERMITTED TO MAINTAIN OR INCREASE PRODUCTION AND CONSUMPTION WHILE CURRENT

PRODUCERS ARE REQUIRED TO CUT BACK, AN ENVIRONMENTALLY UNDESIRABLE AND ECONOMICALLY INEFFICIENT INCENTIVE WOULD

BE CREATED TO REPLACE EXISTING PRODUCTION CAPACITY IN NON-LCC PARTIES WITH EXPANDED PRODUCTION CAPACITY IN THE LCCS. IF CONSUMPTION ALONE WERE CONTROLLED UNDER ARTICLE 2 (AS THE U.S., CANADA AND THE NORDICS URGED FROM THE BEGINNING), THIS INCENTIVE WOULD NOT EXIST, SINCE THERE WOULD BE A FREE FLOW OF TRADE AND CAPITAL AMONG PARTIES.

IT IS CURRENTLY PROPOSED TO REDUCE PRODUCTION FROM 1986 LEVELS WHILE ALLOWING LCC CONSUMPTION -- AND THUS WORLD CONSUMPTION -- TO EXPAND DURING THE GRACE PERIOD. THIS MEANS THAT LCC'S WOULD EITHER HAVE TO IMPORT CONTROLLED CHEMICALS FROM NON-PARTIES (BANNED BY ARTICLE 4) OR BUILD NEW DOMESTIC CAPACITY, NEITHER OF WHICH BODES WELL FOR THE OZONE LAYER. IT WOULD APPEAR PREFERABLE FOR THE LCC'S TO BE SUPPLIED FROM EXISTING MEMBER CAPACITY DURING THE GRACE PERIOD BY ALLOWING PROTOCOL MEMBERS TO PRODUCE ABOVE 1986 LEVELS. IF THE EC CONTINUES TO REJECT CONTROLLING CONSUMPTION ALONE, WE WILL NEED TO DEVELOPE MECHANISMS FOR MEETING LCC NEEDS BY ALLOWING EXEMPTION FROM PRODUCTION CONTROLS FOR EXPORTS TO LCC'S. WE WOULD NEED TO SET UP COMMITMENTS

REPORTING OF DATA ON PRODUCTION AND CONSUMPTION OF CONTROLLED SUBSTANCES

IN ADDITION TO NATIONAL REPORTING OF PRODUCTION AND CONSUMPTION DATA, AS PROVIDED IN ARTICLE 7, CONSIDERATION MUST BE GIVEN TO THE PROCESS BY WHICH DATA WILL BE COMPILED, ASSESSED, CORRECTED OR COMPLETED, RECONCILED WITH CONTROL MEASURES, ETC. IT MAY BE USEFUL TO INCLUDE APPROPRIATE PROVISIONS ON THIS POINT IN THE PROTOCOL.

ENTRY INTO FORCE

IT IS IMPORTANT THAT SUBSTANTIALLY ALL MAJOR PRODUCING NATIONS PARTICIPATE AT THE TIME OF ENTRY INTO FORCE. IN ARTICLE 15, THE PERCENTAGE OF GLOBAL PRODUCTION REQUIRED TO BE REPRESENTED AMONG RATIFYING PARTIES TO TRIGGER ENTRY INTO FORCE SHOULD THEREFORE BE HIGHER THAN THE SIXTY PERCENT FIGURE IN THE CURRENT TEXT.

WE ARE CONCERNED THAT IF THE REQUIREMENT IS SET AT ONLY SIXTY PERCENT, KEY NATIONS WILL WAIT BEFORE MOVING AHEAD WITH THEIR RATIFICATION PROCESS UNTIL THEY ARE ASSURED THAT OTHER KEY NATIONS WILL RATIFY. IF EACH WAITS FOR THE OTHERS, THE ENTIRE PROCESS COULD BE DELAYED. IF ENTRY-INTO-FORCE WILL NOT OCCUR UNTIL NATIONS

REPRESENTING A RELATIVELY HIGH PERCENTAGE OF GLOBAL PRODUCTION RATIO, EACH CAN RATIFY WITHOUT CONCERN ABOUT

BEING LEFT OUT ON A LIMB CARRYING MORE THAN ITS FAIR SHARE OF THE BURDEN OR BEING REQUIRED TO INVOKE TRADE RESTRICTIONS AGAINST MAJOR TRADING PARTNERS.

EC PROPOSAL ON REIOS

THE EC COMMISSION HAS PROPOSED (FINAL FOOTNOTE TO THE SEVENTH REVISED DRAFT PROTOCOL) THAT REGIONAL ECONOMIC INTEGRATION ORGANIZATIONS (REIO'S) BE TREATED AS A SINGLE UNIT FOR PURPOSES OF THEIR OBLIGATIONS UNDER ARTICLES 2 (CONTROL MEASURES) AND 4 (CONTROL OF TRADE WITH NON-PARTIES). THIS COULD PERMIT SOME EC-MEMBER STATES TO MAINTAIN OR EVEN INCREASE THEIR EMISSIONS OF THE CONTROLLED SUBSTANCES, IF OTHER EC MEMBERS ACHIEVE REDUCTIONS DEEPER THAN THOSE REQUIRED BY THE PROTOCOL. THE UNITED STATES DOES NOT BELIEVE THE PROTOCOL SHOULD CREATE A REGIME IN WHICH SOME PARTIES COULD ENJOY THE POLITICAL AND ECONOMIC BENEFITS OF ADHERING TO THE PROTOCOL WITHOUT BEING EQUALLY SUBJECTED TO ITS DISCIPLINES. THE INTENT OF THE PROTOCOL IS THAT NO PARTY WOULD BE ABLE TO INCREASE ITS EMISSIONS OF THE CONTROLLED SUBSTANCES. IF THE EC COMMISSION TABLES THIS PROPOSAL IN MONTREAL, WE EXPECT THAT MANY COUNTRIES IN THE AREA WILL OPPOSE IT.

COMPLIANCE

A NEW ARTICLE SHOULD BE ADDED ON COMPLIANCE. PARTIES NOT IN COMPLIANCE SHOULD BE TREATED AS NON-PARTIES (AND THEREFORE SUBJECT TO TRADE RESTRICTIONS, ETC.) THIS IS NECESSARY TO ENSURE THAT NO NATION CAN JOIN IN ORDER TO AVOID BEING SUBJECT TO THE TRADE RESTRICTIONS AND YET NOT COMPLY WITH THE CONTROL PROVISIONS. THE FOLLOWING PROPOSED ARTICLE IS DRAWN FROM VARIOUS INTERNATIONAL PRECEDENTS:

BEGIN TEXT.

ARTICLE : PARTIES IN NON-COMPLIANCE

(1.) THE PARTIES HEREBY ESTABLISH A COMPLIANCE COMMITTEE. THE FUNCTION OF THE COMMITTEE SHALL BE TO CONSIDER COMPLAINTS SUBMITTED TO THE SECRETARIAT CONCERNING NON-COMPLIANCE BY A PARTY WITH THE PROVISIONS OF ARTICLES 2, 4 AND 7 OF THIS PROTOCOL.

(2.) THE COMMITTEE SHALL BE COMPOSED OF REPRESENTATIVES

OF (ONE THIRD) OF THE PARTIES, DUE ACCOUNT BEING TAKEN OF GEOGRAPHIC DISTRIBUTION. THE CHAIRMAN OF ANY GIVEN MEETING OF THE COMMITTEE SHALL BE SELECTED BY THE COMMITTEE MEMBERS.

(3.) THE MEMBERS OF THE COMMITTEE SHALL BE ELECTED AT A MEETING OF THE PARTIES FOR A FOUR-YEAR TERM, EXCEPT, AT THE FIRST ELECTION HELD, ONE-HALF OF THE COMMITTEE MEMBERS SHALL BE ELECTED FOR A TWO-YEAR TERM. OUTGOING MEMBERS OF THE COMMITTEE MAY NOT BE ELECTED FOR CONSECUTIVE TERMS UNLESS SUCH IS REQUIRED BECAUSE OF THE LIMITED NUMBER OF STATES FOR WHICH THE PROTOCOL IS IN FORCE.

(4.) THE COMMITTEE SHALL ADOPT ITS OWN RULES OF PROCEDURE SUBJECT TO APPROVAL BY THE PARTIES.

(5.) THE COMMITTEE SHALL BE CONVENED AS SOON AS POSSIBLE AFTER A COMPLAINT HAS BEEN SUBMITTED BY A PARTY THAT ANOTHER PARTY IS IN BREACH OF ITS OBLIGATIONS UNDER ARTICLES 2, 4 OR 7 OF THIS PROTOCOL. SUCH A COMPLAINT ALL BE SUPPORTED BY EVIDENCE KNOWN TO THE COMPLAINANT PARTY WHICH CORROBORATES THE ALLEGATION OF NON-COMPLIANCE.

(6.) THE COMMITTEE SHALL AFFORD THE PARTY COMPLAINED OF A REASONABLE OPPORTUNITY TO REBUT ANY EVIDENCE SUPPLIED BY THE COMPLAINANT PARTY.

(7.) AFTER CONSIDERATION OF ALL THE EVIDENCE PERTAINING TO THE MATTER, THE COMMITTEE SHALL SUBMIT A REPORT TO THE PARTIES CONTAINING ITS FINDINGS, INCLUDING ANY MITIGATING FACTORS, AND ITS CONCLUSIONS REGARDING WHETHER THE PARTY COMPLAINED OF IS IN COMPLIANCE WITH THE PROVISIONS OF ARTICLES 2, 4 OR 7 OF THIS PROTOCOL. THE COMMITTEE'S REPORT MAY ALSO CONTAIN A RECOMMENDATION AS TO APPROPRIATE ACTION.

(8.) IF THE COMMITTEE HAS CONCLUDED THAT THE PARTY COMPLAINED OF IS NOT IN COMPLIANCE WITH THE PROVISIONS OF ARTICLES 2, 4, OR 7, A MEETING OF THE PARTIES SHALL BE CONVENED TO DETERMINE WHETHER THE CONCLUSIONS AND ANY RECOMMENDATION OF THE COMMITTEE SHOULD BE ACCEPTED.

(9.) ANY PARTY DETERMINED BY THE PARTIES AT SUCH A MEETING TO BE IN BREACH OF ITS OBLIGATIONS UNDER ARTICLES 2, 4 OR 7 OF THIS PROTOCOL SHALL BE TREATED AS A NON-PARTY FOR A PERIOD OF TIME AT LEAST EQUAL IN DURATION TO THE PERIOD OF ITS NON-COMPLIANCE.

(10.) THE PROCEDURES CONTAINED IN THIS ARTICLE SHALL APPLY TO ANY COMPLAINTS REGARDING NON-COMPLIANCE WITH ARTICLES 2, 4 OR 7 OF THIS PROTOCOL. COMPLAINTS REGARDING COMPLIANCE WITH OTHER PROVISIONS OF THIS PROTOCOL SHALL BE RESOLVED IN ACCORDANCE WITH THE PROCEDURES OUTLINED IN ARTICLE 11 OF THE CONVENTION.

END TEXT.

INSERT FOLLOWING PARAGRAPH IN ARTICLE 11:

SECRETARIAT

THE SECRETARIAT SHALL ...

-- RECEIVE AND TRANSMIT TO MEMBERS OF THE COMPLIANCE
COMMITTEE ANY COMPLAINTS CONCERNING NON-COMPLIANCE BY A
PARTY WITH THE PROVISIONS OF ARTICLES 2, 4 OR 7 OF THIS
PROTOCOL. WHITEHEAD

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