
Committee on Trade and Environment

THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER
RECENT DEVELOPMENTS

Note by the Secretariat

This Note provides Members of the Committee on Trade and Environment with an update of the recent developments in the Montreal Protocol on Substances that Deplete the Ozone Layer. The Ninth Meeting of Parties to the Montreal Protocol took place in Montreal, Canada, from 15-17 September 1997. The Meeting adopted forty Decisions.¹ Six of the Decisions which may be of interest to Members are reproduced below. The Tenth Meeting of Parties to the Montreal Protocol will take place in Cairo, Egypt, from 17-27 November 1998.

I. TEXT OF CERTAIN DECISIONS TAKEN BY THE NINTH MEETING OF PARTIES

DECISION IX/5: CONDITIONS FOR CONTROL MEASURES ON ANNEX E SUBSTANCE
IN ARTICLE 5 PARTIES²

"1. That, in the fulfilment of the control schedule set out in paragraph 8 ter (d) of Article 5 of the Protocol, the following conditions shall be met:

- "a. The Multilateral Fund shall meet, on a grant basis, all agreed incremental costs of Parties operating under paragraph 1 of Article 5 to enable their compliance with the control measures on methyl bromide. All methyl-bromide projects will be eligible for funding irrespective of their relative cost-effectiveness. The Executive Committee of the Multilateral Fund should develop and apply specific criteria for methyl-bromide projects in order to decide which projects to fund first and to ensure that all Parties operating under paragraph 1 of Article 5 are able to meet their obligations regarding methyl bromide;
- "b. While noting that the overall level of resources available to the Multilateral Fund during the 1997-1999 triennium is limited to the amounts agreed at the Eighth Meeting of the Parties, immediate priority shall be given to the use of resources of the Multilateral Fund for the purpose of identifying, evaluating, adapting and demonstrating methyl

¹See doc. UNEP/OzL.Pro.9/12 (25 September 1997). See also WT/CTE/W/44 which reports on the Eighth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer.

²While the Eighth Meeting of the Parties to the Montreal Protocol adopted Decision VIII/15 on "Control of trade in methyl bromide with Non-Parties" (see WT/CTE/W/44), in which they agreed to consider the issue of controlling trade in this substance with non-parties at the Ninth Meeting of the Parties, no decision was taken on this issue. For other decisions adopted at the Ninth Meeting of the Parties concerning methyl bromide, see Decision IX/3 on "Further adjustments and reductions with regard to the Annex E substance", Decision IX/6 on "Critical-use exemptions for methyl bromide", and Decision IX/7 on "Emergency methyl-bromide use".

bromide alternatives and substitutes in Parties operating under paragraph 1 of Article 5. In addition to the US\$10 million agreed upon at the Eighth Meeting of the Parties, a sum of US\$25 million per year should be made available for these activities in both 1998 and 1999 to facilitate the earliest possible action towards enabling compliance with the agreed control measures on methyl bromide;

- "c. Future replenishment of the Multilateral Fund should take into account the requirement to provide new and additional adequate financial and technical assistance to enable Parties operating under paragraph 1 of Article 5 to comply with the agreed control measures on methyl bromide;
- "d. The alternatives, substitutes and related technologies necessary to enable compliance with the agreed control measures on methyl bromide must be expeditiously transferred to Parties operating under paragraph 1 of Article 5 under fair and most favourable conditions in line with Article 10A of the Protocol. The Executive Committee should consider ways to enable and promote information exchange on methyl bromide alternatives among Parties operating under paragraph 1 of Article 5 and from Parties not operating under paragraph 1 of Article 5 to Parties operating under that paragraph;
- "e. In light of the assessment by the Technology and Economic Assessment Panel in 2002 and bearing in mind the conditions set out in paragraph 2 of decision VII/8 of the Seventh Meeting of the Parties, paragraph 8 of Article 5 of the Protocol, sub-paragraphs (a) to (d) above and the functioning of the Financial Mechanism as it relates to methyl bromide issues, the Meeting of the Parties shall decide in 2003 on further specific interim reductions on methyl bromide for the period beyond 2005 applicable to Parties operating under paragraph 1 of Article 5;

"2. That the Executive Committee should, during 1998 and 1999, consider and, within the limits of available funding, approve sufficient financial resources for methyl-bromide projects submitted by Parties operating under paragraph 1 of Article 5 in order to assist them to fulfil their obligations in advance of the agreed phase-out schedule."

DECISION IX/8: LICENSING SYSTEM

"Noting that decisions V/25 and VI/14 A set in place systems for exchange, recording and reporting of information concerning trade in controlled substances to meet the basic domestic needs of Parties operating under Article 5,

"Noting that decision VI/14 B requested that recommendations be made to the Seventh Meeting of the Parties concerning whether reports under Article 7 should be made in relation to trade to meet the basic domestic needs of Parties operating under Article 5,

"Noting that decision VII/9 required that an import- and export-licensing system be incorporated into the Montreal Protocol by the Ninth Meeting of the Parties,

"Noting that, in response to a report prepared by the Secretariat on illegal imports and exports of ozone-depleting substances, decision VIII/20 urged each Party not operating under Article 5 to establish a system for validation and approval of imports of any used, recycled or reclaimed controlled substances before they are imported and to report to the Ninth Meeting of the Parties on the establishment of such a system,

"Noting that decision VIII/20 also requests the Ninth Meeting of the Parties to consider instituting a system to require validation and approval of exports of used and recycled ozone-depleting substances from all Parties,

"Noting that the Ninth Meeting of the Parties has adopted an Amendment to the Protocol, requiring all Parties to implement an import and export licensing system,

"1. That the licensing system to be established by each Party should:

- "a. Assist collection of sufficient information to facilitate Parties' compliance with relevant reporting requirements under Article 7 of the Protocol and decisions of the Parties; and
- "b. Assist Parties in the prevention of illegal traffic of controlled substances, including, as appropriate, through notification and/or regular reporting by exporting countries to importing countries and/or by allowing cross-checking of information between exporting and importing countries;

"2. To facilitate the efficient notification and/or reporting and/or cross-checking of information, each Party should inform the Secretariat by 31 January 1998 of the name and contact details of the officer to whom such information and requests should be directed. The Secretariat shall periodically prepare, update and circulate to all Parties a full list of these contact details;

"3. That the Secretariat and Implementing Agencies should take steps to assist Parties in the design and implementation of appropriate national licensing systems;

"4. That Parties operating under Article 5 may require assistance in the development, establishment and operation of such a licensing system and, noting that the Multilateral Fund has provided some funding for such activities, that the Multilateral Fund should provide appropriate additional funding for this purpose."

DECISION IX/9: CONTROL OF EXPORT OF PRODUCTS AND EQUIPMENT WHOSE CONTINUING FUNCTIONING RELIES ON ANNEX A AND ANNEX B SUBSTANCES

"1. To recommend that each Party adopt legislative and administrative measures, including labelling of products and equipment, to regulate the export and import, as appropriate, of products, equipment, components and technology whose continuing functioning relies on supply of substances listed in Annexes A and B of the Montreal Protocol, in order to avert any adverse impact associated with the export of such products and equipment using technologies that are or will soon be obsolete because of their reliance on Annex A or Annex B substances and which would be inconsistent with the spirit of the Protocol, including decision 1/12 C of the First Meeting of the Parties to the Protocol, held in Helsinki in 1989;

"2. To recommend to non-Article 5 Parties to adopt appropriate measures to control, in cooperation with the importing Article 5 Parties, the export of used products and equipment, other than personal effects, whose continuing functioning relies on supply of substances listed in Annexes A and B of the Montreal Protocol;

"3. To recommend to Parties to report to the Tenth Meeting of the Parties on actions taken to implement the present decision."

DECISION IX/14: MEASURES TAKEN TO IMPROVE THE FINANCIAL MECHANISM AND TECHNOLOGY TRANSFER

"1. To note with appreciation the measures taken by the Executive Committee to improve the Financial Mechanism and the work of the Informal Group on Technology Transfer established under decision VIII/7;

"2. To request the Executive Committee to continue with further actions to implement decision VII/22 to improve the Financial Mechanism and to include in its annual report to the Meeting of the Parties an annex updating information on each action that has not been previously completed, as well as a list of actions that have been completed;

"3. To note the status of work undertaken to date pursuant to action 21 under decision VII/22;

"4. To request the Executive Committee, with the assistance of the Informal Group, to expeditiously identify steps that can practically be taken to eliminate potential impediments to the transfer of ozone-friendly technologies to Parties operating under Article 5 under fair and most favourable conditions;

"5. To review this matter at the Tenth Meeting of the Parties."

DECISION IX/23: CONTINUING AVAILABILITY OF CFCs

"1. To note that despite the phase-out of the production and consumption of CFCs by 1 January 1996 in Parties not operating under paragraph 1 of Article 5, CFCs continue to remain available in fairly significant quantities in a number of such Parties, thereby preventing the timely elimination of the use and emissions of CFCs;

"2. To note that information suggests that illegal trade in CFCs is contributing to their continued availability, and therefore to increased and unnecessary damage to the ozone layer;

"3. To note that apart from agreed exempted uses, the continued supply of new CFCs is no longer necessary, as technically and economically feasible alternatives are widely available;

"4. To request non-Article 5 Parties to consider banning the placing on the market and sale of virgin CFCs, except to meet the basic domestic needs of Parties operating under paragraph 1 of Article 5 and other exempted uses. Parties may also consider extending this ban to include other substances listed in Annex A and B to the Montreal Protocol and recovered, recycled and reclaimed substances, provided that adequate steps are taken to ensure their disposal;

"5. To request the Parties concerned to report to the Secretariat in time for the Eleventh Meeting of the Parties on action taken under this decision."

DECISION IX/35: REVIEW OF THE NON-COMPLIANCE PROCEDURE³

"Recalling the non-compliance procedure adopted by the Fourth Meeting of the Parties in its decision IV/5,

"Noting that these procedures have not been reviewed since their adoption in 1992,

"Aware that the effective operation of the Protocol requires that these procedures should be reviewed on a regular basis,

"Also aware of the fundamental importance of ensuring compliance with the provisions of the Montreal Protocol and of assisting Parties to that end,

"1. To establish an Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance composed of fourteen members: seven representatives from Parties operating under paragraph 1 of Article 5 and seven representatives from Parties not operating under Article 5, to review the non-compliance procedure of the Montreal Protocol and to develop appropriate conclusions and recommendations, for consideration by the Parties, on the need and modalities for the further elaboration and the strengthening of this procedure;

"2. To select the following seven Parties: Australia, Canada, European Community, Russian Federation, Slovakia, Switzerland and United Kingdom of Great Britain and Northern Ireland from those Parties not operating under paragraph 1 of Article 5, and to select the following seven Parties: Argentina, Botswana, China, Georgia, Morocco, Sri Lanka and St. Lucia, from those Parties operating under paragraph 1 of Article 5, as members of the Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance;

"3. To note that the Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance shall select two Co-Chairs, one from those Parties operating under paragraph 1 of Article 5 and one from Parties not so operating;

"4. To adopt the following timetable for the work of the Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance:

- "a. 1 November 1997: each of the selected Parties is invited to indicate to the Secretariat the name of its representative to the Ad Hoc Working Group;
- "b. 1 January 1998: all Parties are also invited to submit to the Secretariat any comments or proposals they wish to see considered in the work of the Ad Hoc Working Group;
- "c. The Ad Hoc Working Group will meet during the three days immediately prior to the seventeenth meeting of the Open-ended Working Group of the Parties. It should provide a short report at the seventeenth meeting of the Open-ended Working Group of the Parties on the status of its work;

³Note that the "Indicative list of measures that might be taken by a meeting of the Parties in respect of non-compliance with the Protocol", which is referred to in this Decision, is included in Annex V of the report of the Fourth Meeting of the Parties to the Montreal Protocol. Amongst other measures, the indicative list allows for the "Suspension, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, of specific rights and privileges under the Protocol, whether or not subject to time limits, including those concerned with industrial rationalization, production, consumption, trade, transfer of technology, financial mechanism and institutional arrangements."

- "d. The Ad Hoc Working Group will meet during the three days immediately prior to the Tenth Meeting of the Parties. It should provide a status report on the outcome of its work, including any conclusions and recommendations;
 - "e. The Group may also consider carrying out additional work through correspondence or any other means it considers appropriate;
- "5. To request the Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance, when reviewing the non-compliance procedure to:
- "a. Consider any proposals presented by Parties for strengthening the non-compliance procedure, including, *inter alia*, how repeated instances of major significance of non-compliance with the Protocol could trigger the adoption of measures under the indicative list of measures with a view to ensuring prompt compliance with the Protocol;
 - "b. Consider any proposals presented by Parties for improving the effectiveness of the functioning of the Implementation Committee, including with respect to data-reporting and the conduct of its work;
- "6. To consider and adopt any appropriate decision at the Tenth Meeting of the Parties upon the review of the work of the Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance, including its conclusions and/or recommendations;
- "7. To note that the review of the "Indicative list of measures that might be taken by a meeting of the Parties in respect of non-compliance with the Protocol" is not included in the mandate of the Ad Hoc Working Group."