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## Committee on Trade and Environment

### RECENT DEVELOPMENTS IN MULTILATERAL ENVIRONMENTAL AGREEMENTS (MEAS)

Note by the Secretariat

#### I. INTRODUCTION

1. This Note provides Members of the Committee on Trade and Environment (CTE) with an update of the recent developments in two multilateral environmental agreements:

- The combined Fifth Meeting of the Conference of the Parties to the Vienna Convention for the Protection of the Ozone Layer and the Eleventh Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer was held in Beijing, China, from 29 November to 3 December 1999. The Meeting adopted 29 decisions<sup>1</sup> relating to the Montreal Protocol, six of which may be of direct interest to Members and are reproduced below. The Meeting also adopted five decisions relating to the Vienna Convention. The Twelfth Meeting of the Parties to the Montreal Protocol will be convened in Ouagadougou, Burkina Faso, in December 2000. The Sixth Meeting of the Conference of the Parties to the Vienna Convention will be held jointly with the Fourteenth Meeting of the Parties to the Montreal Protocol, with the date and place to be determined at a future time.
- The Fifth Conference of the Parties (COP-5) to the Basel Convention on Transboundary Movement of Hazardous Wastes and Their Disposal took place in Basel, from 6-10 December 1999. During COP-5, the 10<sup>th</sup> anniversary of the Basel Convention was celebrated. A High-Level Segment for Ministers and Heads of Delegations took place on 9-10 December 1999. The Parties adopted 36 decisions, the Basel Declaration on Environmentally Sound Management, and the Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal.<sup>2</sup> The following meetings will take place during the year 2000:
  - 3-5 April 2000 16<sup>th</sup> session of the Technical Working Group (Geneva),
  - 6-7 April 2000 Legal Working Group (Geneva),
  - September/October 2000 17<sup>th</sup> session of the Technical Working Group (3 days) and Legal Working Group (2 days) (Geneva)

The Parties agreed to hold the Sixth Meeting of the Conference of the Parties to the Basel Convention in Geneva in May 2002.

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<sup>1</sup>See doc. UNEP/OzL.Pro. 11/10. Documents relating to the Montreal Protocol can be obtained from the following Internet site: "[www.unep.ch/ozone/home.htm](http://www.unep.ch/ozone/home.htm)". See also WT/CTE/W/104, which reports on the Tenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer.

<sup>2</sup>See doc. UNEP/CHW.5/29 containing UNEP's Report on COP-5. The Declaration on Environmentally Sound Management and the Liability Protocol are annexed to that report together with other decisions adopted at COP-5. These documents can be obtained from the following Internet sites: "[www.unep.ch](http://www.unep.ch)" and "[www.unep.ch/basel](http://www.unep.ch/basel)".

## II. THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

### A. INTRODUCTORY NOTE

2. The Meeting of the Parties adopted three further adjustments,<sup>3</sup> relating to control and gradual phase-out of production by developed countries of chlorofluorocarbons (CFCs), halons, other fully halogenated CFCs and methyl bromide (Annex A, B and E substances) for basic domestic needs of developing countries. The Meeting of the Parties also amended the Protocol<sup>4</sup> by adopting new controls on the production of hydrofluorocarbons (HCFCs).<sup>5</sup> Under the Protocol, HCFCs are to be phased out in developed countries by 2030 and in developing countries by 2040. The Beijing Amendment to the Protocol will also ban trade in HCFCs with countries that have not yet ratified the Copenhagen Amendment (1992),<sup>6</sup> which introduced the HCFC phase-out.<sup>7</sup>

3. The Beijing Amendment also requires developed countries to freeze the production of HCFCs in 2004 at 1989 levels (measured as the average of consumption and production levels) and developing countries to do so in 2016 with a similar baseline of 2015. Production of 15 per cent above baseline will be permitted to meet the "basic domestic needs" of developing countries. In addition, the production of a recently developed ozone-depleting chemical (bromochloromethane)<sup>8</sup> is to be completely phased out in all countries by 1 January 2002.

4. Some Parties have been found to be in non-compliance with their control obligations under Articles 2A through 2E of the Montreal Protocol. In accordance with the indicative list of measures,<sup>9</sup> these Parties continue to receive international assistance to enable them to meet their commitments. However, in case these commitments are not met within the specified timeframe, Parties could consider several measures,<sup>10</sup> including actions that may be available under Article 4 ("Control of trade with non-Parties"), designed to ensure that the supply of CFCs and halons is ceased and that exporting Parties are not contributing to a continuing situation of non-compliance.

5. The Beijing meeting concluded by adopting the Beijing Declaration reaffirming the political commitment of the world's Governments to accelerating the phase-out of substances that destroy the stratosphere's protective ozone layer. The Declaration also appeals for continued efforts to address illegal trade in ozone-depleting substances.

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<sup>3</sup>See doc. UNEP/OzL.Pro. 11/10, Annexes II, III and IV.

<sup>4</sup>See doc. UNEP/OzL.Pro. 11/10, Annex V. The Beijing Amendment to the Montreal Protocol shall enter into force on 1 January 2001, provided that at least twenty instruments of ratification of the Amendment have been deposited. In the event that this condition is not fulfilled it shall enter into force on the ninetieth day following the date of which it is fulfilled.

<sup>5</sup>HCFCs were developed as the first major replacement for CFCs. While much less destructive than CFCs, they also contribute to ozone depletion.

<sup>6</sup>Entered into force on 14 June 1994.

<sup>7</sup>It is considered that may provide an incentive to these countries to ratify as soon as possible.

<sup>8</sup>Controlled substance in a newly created Group III of Annex C.

<sup>9</sup>The "Indicative list of measures that might be taken by a meeting of the Parties in respect of non-compliance with the Protocol" is included in Annex V of the report of the Fourth Meeting of the Parties to the Montreal Protocol.

<sup>10</sup>Under Item C, 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."

## B. TEXT OF CERTAIN DECISIONS TAKEN BY THE ELEVENTH MEETING OF THE PARTIES

Decision XI/7: *Replenishment of the Multilateral Fund for the period 2000-2002*<sup>11</sup>

1. To adopt a budget for 2000-2002 of 475,700,000 United States dollars on the understanding that 35,700,000 United States dollars of that sum will be provided by funds not allocated during 1997-1999. The Parties noted that outstanding contributions from some Parties with economies in transition in the period 1997-1999 stood at 34,703,856 United States dollars;
2. To adopt the scale of contributions for the Multilateral Fund based on a replenishment of 440,000,000 United States dollars, of 146,666,666 United States dollars for 2000, 146,666,666 United States dollars for 2001, and 146,666,666 United States dollars for 2002, as it appears in annex VI to the report of the Eleventh Meeting of the Parties;
3. That the Executive Committee should take action to ensure as far as possible that the whole of the budget for 2000-2002 is committed by the end of 2002, and that Parties not operating under Article 5 should make timely payments in accordance with paragraph 7 of Decision XI/6;

Decision XI/13: *Quarantine and pre-shipment*

1. To note that, while the reliability of the survey data was noted by the Technology and Economic Assessment Panel to be insufficient to draw firm conclusions, the Panel's April 1999 report estimates that over 22 per cent of the methyl bromide use is excluded from control under the quarantine and pre-shipment exemption, and that this use is increasing in some countries;
2. To note that the Science Assessment Panel revised the ODP of methyl bromide to 0.4 in its 1998 report;
3. To note that, under an amendment adopted by the Eleventh Meeting of the Parties, each Party shall provide the Secretariat with statistical data on the annual amount of the controlled substance listed in Annex E used for quarantine and pre-shipment applications.<sup>12</sup>
4. To request that the 2003 report of the Technology and Economic Assessment Panel:
  - (a) Evaluate the technical and economic feasibility of alternative treatments and procedures that can replace methyl bromide for quarantine and pre-shipment;
  - (b) estimate the volume of methyl bromide that would be replaced by the implementation of technically and economically feasible alternatives for quarantine and pre-shipment, reported by commodity and/or application;

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<sup>11</sup>A *Fixed-exchange-rate mechanism for the replenishment of the Multilateral Fund* (Decision XI/6) was introduced, the purpose and objective of which are "to ease some of the contributing Parties' administrative difficulties due to commitments in other than their national currencies, to promote the timely payment of contributions, and to ensure that there is no adverse impact on the level of available resources of the Multilateral Fund". The implementation of the fixed exchange-rate mechanism will proceed on a trial basis for the replenishment (2000-2002), so that payments by contributing Parties to the Fund for the triennium commencing in 2000 can be made in accordance with this mechanism.

<sup>12</sup>Note by the Secretariat: The reporting of statistical data on the annual amount of methyl bromide used for quarantine and pre-shipment inspection seems to have been a compromise solution, given that some Parties had demanded much stricter measures, such as a freeze on consumption. Numerous countries opposed such a proposal, among other things for its suspected negative impact on trade.

5. To request the Parties to review their national plant, animal, environmental, health and stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and pre-shipment where technically and economically feasible alternatives exist;

6. To urge the Parties to implement procedures (using a form shown in the Panel's April 1999 report, if necessary) to monitor the uses of methyl bromide by commodity and quantity for quarantine and pre-shipment uses in order:

- (a) To target the efficient use of resources for undertaking research to develop and implement technically and economically feasible alternatives;
- (b) to encourage early identification of technically and economically feasible alternatives to methyl bromide for quarantine and pre-shipment where such alternatives exist;

7. To encourage the use of methyl bromide recovery and recycling technology (where technically and economically feasible) to reduce emissions of methyl bromide, until alternatives to methyl bromide for quarantine and pre-shipment uses are available;

Decision XI/16: *CFC management strategies in non-Article 5 Parties*

1. To recall that decision IV/24 urges all Parties to take all practicable measures to prevent releases of controlled substances into the atmosphere;

2. To recall also that decision IX/23 requests 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 Article 5 Parties and other exempted uses;

3. To note that other strategies, besides those considered in decision IX/23, could help to reduce emissions of CFCs from existing equipment;

4. To note that, in the case of halons, decision X/7 requests Parties to develop strategies for the management of halons, including emissions reductions and ultimate elimination of their use;

5. To request that each non-Article 5 Party develops and submits to the Ozone Secretariat, by July 2001, a strategy for the management of CFCs, including options for recovery, recycling, disposal and eventual elimination of their use. In preparing such a strategy, taking into account technological and economic feasibility, Parties should consider the following options:

- (a) Recovering, and eliminating where appropriate, CFCs from existing or out-of-service products and equipment;
- (b) setting target dates for bans on the refilling and/or the use of refrigeration and air-conditioning equipment functioning on CFCs;
- (c) ensuring that appropriate measures are taken for the environmentally safe and effective storage, management and final disposition of recovered CFCs;
- (d) encouraging the use of CFC substitutes and replacements acceptable from the standpoint of environment and health, taking into account their impact on the ozone layer, and any other environmental issues;

Decision XI/23: *Data reporting*

1. To note the improvement in the timely submission of data in accordance with Article 7 of the Protocol;
2. To note that Parties are to submit data by 30 September of the following year in accordance with their obligations under Article 7;
3. To urge all Parties to introduce licensing systems<sup>13</sup> in accordance with the provisions of decision IX/8 and Article 4B of the Protocol to facilitate accuracy in data submission under Article 7;
4. To note that data collection on ozone-depleting substances sectors is important in assisting a Party to meet its obligations under the Protocol and that the Parties might wish to consider the burden of collecting sector data and other data required in the context of the Montreal Protocol at a future meeting;
5. To note that, because of the significant improvement in the timely submission of data, the Implementation Committee had been able in 1999 to review the control status of Parties for the previous year, 1998. In earlier years, the Implementation Committee had reviewed only the control status for two years prior. Accordingly, decide to request that the Implementation Committee begin a full review of data for the year immediately prior to the Meeting of the Parties beginning in 2000;
6. To note that many Parties with economies in transition have established a phase-out plan with specific interim benchmarks in cooperation with the Global Environment Facility;
7. To urge those Parties with economies in transition mentioned in paragraph 6 above to submit to the Secretariat the phase-out plans with specific interim benchmarks developed with the Global Environment Facility in accordance with requests made at the Tenth Meeting of the Parties;

Decision XI/26: *Recommendations and clarifications of the World Customs Organization concerning customs codes for ozone-depleting substances and products containing ozone-depleting substances*

*Recalling* decisions IX/22 and X/18 of the Parties to the Montreal Protocol dealing with customs codes for ozone-depleting substances and products containing ozone-depleting substances,

*Noting* that the issue of customs codes is of great importance for the prevention of the illegal traffic of ozone-depleting substances and for the purpose of data reporting in accordance with Article 7 of the Montreal Protocol,

1. To note, with appreciation, the actions undertaken so far by the World Customs Organization on the further extension of the Harmonized System customs nomenclature of ozone-depleting substances and products containing ozone-depleting substances;
2. To note the summary of the draft recommendation of the World Customs Organization concerning the insertion in national statistical nomenclatures of Harmonized System subheadings for ozone-depleting substances and products containing ozone-depleting substances and the clarification of the classification under the Harmonized System Convention of methyl bromide containing small

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<sup>13</sup>Note by the Secretariat: The Ninth Meeting of the Parties has adopted an Amendment to the Protocol, requiring all Parties to implement an import and export licensing system, that should "... 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".

amounts of Chloropicrin provided in annex II to the report of the nineteenth meeting of the Open-ended Working Group (UNEP/OzL.Pro/WG.1/19/7);

3. To note that the group of experts convened in accordance with decision X/18 will conduct further work on recommendations relating to the Harmonized System codes for mixtures and products containing ozone-depleting substances in collaboration with the World Customs Organization;

Decision XI/28: *Supply of HCFCs to Parties operating under paragraph 1 Article 5 of the Protocol*

To request the Technology and Economic Assessment Panel to study and report by 30 April 2003 at the latest on the problems and options of Article 5 Parties in obtaining HCFCs in the light of the freeze on the production of HCFCs in non-Article 5 Parties in the year 2004. This report should analyse whether HCFCs are available to Article 5 Parties in sufficient quantity and quality and at affordable prices, taking into account the 15 per cent allowance to meet the basic domestic needs of the Article 5 Parties and the surplus quantities available from the consumption limit allowed to the non-Article 5 Parties. The Parties, at their Fifteenth Meeting in the year 2003, shall consider this report for the purpose of addressing problems, if any, brought out by the report of the Technology and Economic Assessment Panel;

### **III. FIFTH CONFERENCE OF THE PARTIES (COP-5) TO THE BASEL CONVENTION**

#### **C. INTRODUCTORY NOTE**

6. 132 States and the EC are Parties to the Basel Convention. 130 Members and the EC were represented at the COP-5.

7. 17 Members have ratified the 1995 Ban Amendment, which bans the movement of hazardous wastes basically from OECD countries to developing countries. The Ban will enter into force when 62 Members ratify it.

8. Environment NGOs and industry groups were active in the conference. Cooperation with industry and NGOs was the subject matter of one of the decisions of the COP-5.

#### **D. THE BASEL DECLARATION ON ENVIRONMENTALLY SOUND MANAGEMENT**

9. The Basel Declaration on Environmentally Sound Management<sup>14</sup> was adopted by the Plenary of the COP-5 on 10 December 1999. This Declaration outlines the activities to be undertaken in the next decade to achieve the objectives of environmentally sound management of prevention, minimization, recycling, recovery and disposal of wastes subject to the Convention.

#### **E. THE PROTOCOL ON LIABILITY AND COMPENSATION (PLC) FOR DAMAGE RESULTING FROM TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL<sup>15</sup>**

10. The Working Group on Legal Matters held extensive discussions on the PLC throughout the COP-5. The discussions mainly focused on the instances where the Protocol would not apply, conflicts with other liability and compensation agreements, insurance and other financial guarantees, compensation mechanisms, reservations and declarations, and an Annex to Article 13 of the PLC on financial limits to strict liability.

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<sup>14</sup>Annex II of UNEP/CHW.5/29.

<sup>15</sup>Annex III of UNEP/CHW.5/29.

11. A group of countries had some reservations regarding the financial limits to strict liability. Some of these countries stated that the existing Protocol had high financial limits and if not addressed this could impede the adoption of the PLC. High financial limits of strict liability in practice would increase insurance and transportation costs of hazardous wastes. Statements of these countries attracted reactions from another group of countries, which reiterated that the financial limits to strict liability were core to the effectiveness of the PLC.

12. Different views on the financial limits to strict liability of the PLC signified the possibility that it would be difficult to achieve consensus on the text of the PLC during COP-5. However, the PLC was adopted on 10 December 1999 by the Plenary. The adoption of the PLC was possible after the Parties agreed to re-evaluate the financial limits to strict liability at the COP-6.

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