WORLD TRADE ORGANIZATION

WT/CTE/W/142
19 June 2000

(00-2443)

Committee on Trade and Environment

Original: English

TRADE-RELATED DEVELOPMENTS IN THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEPLETE THE OZONE LAYER

Communication from the Secretariat of the Vienna Convention and the Montreal Protocol, UNEP[1]

This background paper is circulated to Members of the CTE in preparation for the MEA Information Session on 5 July 2000.

I. MONTREAL PROTOCOL

1. The Montreal Protocol on Substances that Deplete the Ozone Layer was concluded in 1987 as a Protocol under Article 8 of the Vienna Convention for the Protection of the Ozone Layer, 1985. The Protocol seeks to protect the ozone layer by phasing out global emissions of specified ozone depleting substances on the basis of developments in scientific knowledge, taking into account technical and economic considerations and bearing in mind the developmental needs of developing countries. The preamble of the Protocol specifically acknowledges the need for special provision to meet the needs of developing countries, including provision for additional financial resources and access to relevant technologies.

2. The Protocol of 1987 listed only eight substances as controlled substances and the control measures only sought to freeze or reduce consumption of these substances over a time period. Article 6 of the Protocol provided for assessment of the control measures at least every four years on the basis of available scientific, environmental, technical and economic information. Article 2, paragraph 9 provided for adjusting the ozone depleting potentials and the control measures based on these assessments. The adjustments are binding on all Parties after a decision by a Meeting of the Parties with 2/3 majority vote of the Parties present and voting and representing a majority separately from the developing countries and from other countries and six months after the communication of such adjustments by the Depositary of the Protocol. Article 9 of the Vienna Convention provided for the procedure to amend the Protocol.

A. ADJUSTMENTS AND AMENDMENTS TO THE PROTOCOL

3. Based on the assessments made by panels of experts established by the Parties in 1989, 1991, 1994 and 1998, the Parties have adjusted the control measures of substances already included in the list through adjustments. The Parties also included more substances and prescribed control measures for them through amendments in 1990 (London Amendment) and 1992 (Copenhagen Amendment). There were also adjustments and an amendment adopted in 1997 (Montreal Amendment) which

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advanced the phase-out dates but no new substance was included. The Montreal Amendment has not yet entered into force. While the Montreal Protocol of 1987 controlled only eight substances, the London Amendment added twelve more and the Copenhagen Amendment added 75 more. The 1999 Beijing Amendment added one more new substance bringing the total of controlled substances to 96.

B. KEY PROVISIONS OF THE PROTOCOL

4. As adjusted and amended, the Protocol provides for, *inter alia*:

- A time-table of phased reduction and phase out of the 96 ozone-depleting substances (ODS) by Parties. (Control measures of Articles 2A-2I);
- a grace period of ten years (more in some cases) for Parties, classified as developing and consuming less than the specified per-capita quantities of ODS, to observe the timetable of phase-out (Article 5 Parties). (All the countries of the Group of 77 (in 1989), China, Albania, South Africa, Georgia and Moldova are classified as developing countries.);
- a multilateral fund, contributed by non-Article 5 Parties, to meet the agreed incremental costs of Article 5 Parties for implementing the phase-out. The indicative list of agreed incremental costs is attached (Article 10);
- mandate to Parties to take "every practicable step" to transfer "the best available, environmentally safe substitutes and related technologies" "under fair and most favourable conditions" (Article 10A);
- control of trade with non-Parties (Article 4);
- reporting of data and information (Articles 7 and 9); and
- approving a non-compliance procedure (Article 8).

II. THE TRADE MEASURES OF THE PROTOCOL WITH NON-PARTIES

5. The trade measures of the Protocol under Article 4 are directed against non-Parties. These measures are as follows:

(a) Control of trade in ODS with non-Parties

(i) Annex A substances:

- Import from non-Parties banned from January 1990 (Article 4, paragraph 1).
- Export banned from January 1993 (Article 4, paragraph 2).

(ii) Annex B substances:

- Import and export banned from August 1993 for non-Parties to the London Amendment (Article 4, paragraphs 1 *bis* and 2 *bis*).

(iii) Annex C – Group I

- Import from non-Parties to be banned from 1 January 2004.
- Export to non-Parties to be banned from 1 January 2004.

(iv) Annex C - Group II - HBFCs:

- Import and export banned from June 1995 for non-Parties to the Copenhagen Amendment (Article 4, paragraphs 1 *ter* and 2 *ter*).

(v) Annex C – Group III

- Import to non-Parties to be banned within one year of entry into force of Beijing Amendment.

- Export to non-Parties to be banned within one year of entry into force of Beijing Amendment.

(vi) Annex E Substance:

- Import from non-Parties to be banned by November 2000.

- Export to non-Parties to be banned after November 2000.

(b) Control of trade in ODS products with non-Parties

- Import of products (listed in Annex D) containing Annex A substances banned from May 1992 (Article 4, paragraph 3 and Decision III 15 of the Third Meeting of the Parties, 1991).

- Fifth Meeting of the Parties decided that it is not feasible to ban or restrict trade in products made with, but not containing, Annex A substances (Article 4, paragraph 4 and Decision 17 of the Fifth Meeting).

- The Parties also decided that products containing Annex B and Annex C, Group II, substances or products made with, but not containing Annex C, Group II substances will not be listed. (Article 4, paragraphs 3 *bis*, 3 *ter* and 4 *ter* and Decisions VII 12 of the Sixth Meeting and VIII 18 of the Eighth Meeting).

(c) Exports of ODS-technologies:

- Parties to discourage “to the fullest practicable extent,” export of technology for producing of ODS ;

- no new subsidies, aid, etc., for export to non-Parties of equipment or technology to make ODS ;

- exception for equipment or technology to recycle ODS;

- Parties to refrain from exporting of technologies to produce or utilize methyl bromide to non-Parties; and

- Parties to refrain from providing any assistance for the export to non-Parties of any equipment or technology that would facilitate production of methyl bromide.

A. TRADE MEASURES WITH PARTIES

6. The control measures of the Protocol which mandate phased reduction of the consumption of ODS can be implemented only by Parties through curbing imports from other Parties. The Parties adopted a wide variety of restrictions on trade through policies and regulations. These include:

- Agreements with industry to phase down imports;
- product labelling;
- licensing for ODS trade;
- duty reductions for ODS-substitutes and non-ODS technologies;
- excise taxes on ODS;
- quantitative restrictions, and bans on imports of ODS; and
- total or partial bans on import of ODS products or technologies.

7. During the last few years, the developing country Parties wanted voluntary restraint by the exporting Parties from exporting new or used CFC-using equipment, such as refrigerators. The developing countries agreed that such exports created a demand for CFCs in their countries, making it difficult for them to cut down consumption of CFCs. The Tenth Meeting of the Parties in 1998 decided that a Party will inform the Secretariat of the ODS equipment it does not want imported into its country (along with the declaration that it does not itself make such equipment). The Secretariat has communicated this list to all the Parties. About twenty Parties have so far informed the Secretariat on this issue. It is hoped that the exporting Parties will honour the wishes of the importing Parties.

8. The Montreal Amendment introduced some controls on trade with Parties. Article 4A prescribes that where a Party is unable to phase out its production on the mandated date (i.e. it is in non-compliance), it shall ban the export of used, recycled and reclaimed substances other than for the purpose of destruction. This provision is intended to encourage countries to use their recycled substances within their countries and phase out production. It is also intended to prevent illegal export of virgin substances in the guise of used substances. Article 4B of the Montreal Amendment mandates implementation of a system for licensing import and export of ozone depleting substances, whether virgin or recycled. This provision is intended to control illegal trade and to enable countries to implement the control provisions of the Protocol.

III. NEW SUBSTANCES WITH OZONE DEPLETION POTENTIAL

9. The Protocol prescribes control measures for the 96 chemicals it lists in its annexes. Recently, a concern has been raised about new ozone depleting substances being put in the market as substitutes for CFCs. Two such chemicals, N-Propyl bromide and chlorobromomethane, with some ozone depleting potential are being marketed by a company as substitutes to HCFCs in the Solvents sector. These substances have an ODP similar to that of HCFCs which are permitted now as substitutes for CFCs, but which need to be phased out by the year 2030. The Ninth and Tenth Meetings of the Parties considered this issue and were very concerned about the possibility of the marketing of new ODS not controlled by the Montreal Protocol. The Eleventh Meeting of the Parties, in December 1999, decided to list chlorobromomethane as a controlled substance to be phased-out by 1 January 2002. The assessment panels have been requested to further study the issue of N-propyl Bromide.

IV. WHO ARE THE "NON-PARTIES"?

10. Under the procedure established by the Vienna Convention, an Amendment is binding on a Party only if it ratifies that Amendment. Hence, the control and trade measures for substances included in a Protocol by an Amendment are applicable to a country only if that country has ratified that Amendment. At the moment 176 Parties have ratified the Vienna Convention, 175 the Montreal Protocol, 139 the London Amendment, and 106 the Copenhagen Amendment. The Montreal Amendment has been ratified by 37 Parties and entered into force on 10 November 1999. The Beijing Amendment has been ratified by one Party and needs 20 ratifications to enter into force. It has been provided in each Amendment that it can be ratified by a country only if all the previous amendments are ratified. In effect, the Montreal Protocol is actually five separate Protocols i.e. the Montreal Protocol, the Montreal Protocol with the London Amendment, the Montreal Protocol with the Copenhagen Amendment, the Montreal Protocol with a Montreal Amendment, and the Montreal Protocol with a Beijing Amendment.

11. Article 4, paragraph 9 makes it clear that a Party that has not agreed to be bound by the control measures for a substance is considered a non-Party for that substance. Hence, 16 countries (which have not ratified the Montreal Protocol) are non-Parties to all the 96 substances controlled by the Protocol, 53 countries for 87 (Annexes B, C, and E) substances and 86 countries for the 76 (Annex C and E) substances.

12. The list of Parties to the Protocol who are non-Parties to the London Amendment, to the Copenhagen Amendment, and to the Montreal Amendment is annexed along with the populations. (See Annex I).

A. WHY DO THE "NON-PARTIES" NOT RATIFY THE PROTOCOL/AMENDMENTS?

13. There are only 16 countries which have not yet ratified the Montreal Protocol and their total population is less than 5 per cent of the world's population. It is surmised that the consumption of ozone depleting substances by these countries will be insignificant and that their non-ratification is due to instability in their Governments. The non-Parties to the London Amendment are also small consumers of the controlled substances and their non-ratification may be due to long administrative procedures. The number of Parties who have not yet ratified the Copenhagen Amendment is, however, much larger. It includes large countries such as China, Bangladesh, Philippines, India, etc. The reason for non-ratification is not clear. No Party has ever objected to the substance of the Amendment. Many of these Parties also submit their data regularly for HCFCs and Methyl Bromide, which are controlled by Copenhagen Amendment. Some of these Parties have obtained the assistance of the Multilateral Fund for Methyl Bromide projects after assuring that they will ratify the Amendment soon.

14. It is noteworthy that the Amendments to the Protocol are negotiated and approved by meetings of all the Parties to the Protocol through consensus. No Government ever objected to the substance of any Amendment. Indeed, many of the non-Parties periodically announce their intention to ratify it and explain the long procedure in their countries for such ratification as an explanation for the delay.

15. Article 4, paragraph 8 of the Protocol specifies that the trade restrictions do not apply to a non-Party if a Meeting of the Parties determines that the non-Party is in full compliance with the control measures and has provided data to that effect; Colombia, Malta, Jordan, Poland and Turkey were so determined to be in compliance in 1992-93 prior to their ratification of the Protocol/Amendment, so that they could import the ODS for their requirements and the Parties acknowledged such situations by adopting specific decisions for these countries.

V. NON-COMPLIANCE PROCEDURE OF THE PROTOCOL

16. The Protocol's Non-Compliance Procedure was elaborated by the Fourth Meeting of the Parties in 1992 in accordance with Article 8 of the Montreal Protocol. The Procedure establishes an Implementation Committee of ten members, elected by the Meetings of the Parties each year, two each from each of the five geographical regions. The Committee considers submissions by one Party regarding another Party, by Secretariat or by a Party itself regarding its own implementation. After considering the submissions, the Implementation Committee would recommend appropriate action to the Meeting of the Parties. The measures which could be taken in case of non-compliance include assistance, caution or suspension of specified rights and privileges under the Protocol. That the measures for non-compliance include assistance, on the assumption that a Party's non-compliance is not deliberate but only due to its inability, is a novel provision introduced by the Parties to the Montreal Protocol.

17. So far, only the cases of the Russian Federation and other Republics of the former Soviet Union are before the Committee for non-compliance, on the basis of the Secretariat's report. These States are not classified as developing countries (excepting Georgia and Moldova) and hence were expected to phase-out production and consumption of Annex A and Annex B substances by 1996. These States have appealed to the Meetings of the Parties that they are unable to comply with the phase-out schedule due to the difficulties of their transition to a market economy and promised to comply by the end of the year 2000, if they are given adequate technical and financial assistance. The Meetings of the Parties considered these representations and, on recommendation by the Implementation Committee, requested the Global Environment Facility (GEF) to assist them. The GEF has so far given about US$140 million to these countries to assist their phase-out. There have not been any cases of non-compliance with the trade provisions.

VI. WHY TRADE PROVISIONS WITH NON-PARTIES? WHAT IS THE IMPACT?

18. While including trade measures in the Montreal Protocol, the Parties have always kept in mind the provisions of the GATT/WTO and consulted the GATT/WTO Secretariat, not surprisingly since there are many members who are Parties to both treaties. The trade measures with non-Parties were considered essential to prevent CFC providers and producers of equipment containing CFCs moving their capacity to a non-Party territory. Initially at least, the CFCs were cheaper than their alternatives: it was considered that non-Parties would reap economic benefits and at the same time negate the efforts of others to protect the ozone layer. The trade restrictions do <u>not</u> apply, in accordance with Article 4, paragraph 8, if a non-Party is in compliance with the Protocol.

19. It is almost the universal consensus that ozone depletion is occurring due to use of CFCs and that ozone depletion would lead to adverse consequences for human health and the environment in general. The objective of the Montreal Protocol is to eliminate the production and consumption of CFCs. Obviously, trade will increase the consumption, negating the objectives of the Protocol. Permitting a Party to trade freely with a non-Party, which does not act in conformity with the control measures would go against the objectives of the Protocol. The trade restrictions with non-Parties acted as a penalty for staying outside the controls of the Montreal Protocol. There is no doubt that many countries who do not produce these substances acceded to the Protocol as, otherwise, they would have lost access to the CFCs needed by them. The preservation of the global ozone layer resource is possible only with universal participation since the emission of CFCs from anywhere causes damage to the ozone layer and the trade restrictions promoted the universal participation.

A. WHY TRADE RESTRICTIONS BETWEEN PARTIES?

20. The only trade restriction between Parties, a part of the Montreal Amendment, is that a Party which continues to produce CFCs in non-compliance with the Protocol shall ban the export of recycled substances. The logic of this provision is that the country which exports recycled substances could instead use those recycled substances itself and reduce its production. The exemption given to recycled substances from control measures is intended to stop production soon and there is no reason why a country should produce virgin substances in defiance of the control measures if it can use recycled substances. Another factor which led to this provision is that some companies may have exported virgin substances in the guise of recycled substances. The provision is to help curbing such illegal trade. Illegal trade arises because there is still some demand for CFCs in the industrialized countries for maintenance of the existing equipment and the developing countries are given a grace period of ten years for their phase-out schedule. The Russian Federation also continues to produce in non-compliance with the Protocol, on the plea of unsettled conditions.

VII. ASSISTANCE TO DEVELOPING COUNTRIES – THE FINANCIAL MECHANISM

21. It is also true to say that almost all the developing countries willingly joined the Protocol in view of the grace period of ten years for implementing their control measures and in view of the financial mechanism and the Multilateral Fund established under Article 10 of the Montreal Protocol. They understood that by being outside they will lose assistance from this Fund and, at the same time, may be forced to change their technologies to CFC alternatives with their own money since the CFC technologies are becoming obsolete throughout the world and no country can maintain its CFC technology in isolation without loss of trade opportunities due to consumer resistance.

A. THE MULTILATERAL FUND

22. The Multilateral Fund of the Protocol has functioned very effectively since 1991. The Fund has disbursed nearly US$1 billion to 110 developing countries for the purpose of institutional strengthening, training, project preparation, and implementation of investment projects. The Fund has the obligation to m eet all the agreed incremental costs of developing countries for implementing the control measures. An indicative list of agreed incremental costs approved by the Fourth Meeting of the Parties is enclosed. (See Annex II.) As can be seen, the list is fairly comprehensive, compensating the industries adequately for changing to ozone-friendly technologies. The Fund meets the incremental costs of technology transfer, training, the equipment needed and the installation costs for all industries producing or using ODS. The Fund has so far sanctioned more than two thousand projects to phase out nearly 60 per cent of the developing country consumption.

23. The Fund is administered by the Executive Committee of 14 members - seven members from developing countries and seven from others. Allocations to the Fund are approved by Meetings of the Parties once in three years based on a study of the requirements of the Fund. The contributions are wholly from Parties who are not developing countries in proportion to their UN scale of contributions.

The allocations so far have been as follows:

Period	**Amount (US$ Millions)**
1991 - 1993	240
1994 - 1996	455
1997 - 1999	465
2000 – 2002	440

24. The list of pledges to the Fund includes the Russian Federation and countries of the former USSR who have not paid their contributions. All the other countries i.e. industrialized countries are paying their contributions promptly. Ninety per cent of the contributions due are being collected.

25. The fund operates through four implementing agencies: UNEP, UNDP, UNIDO and the World Bank. UNEP concentrates on preparation of country programmes, institutional strengthening by establishing ozone focal points in each developing country, training, networking of the ozone focal points and information exchange on expertise and technologies available. The other three agencies prepare investment projects and help the countries to implement them.

26. The functioning of the Multilateral Fund has resulted in establishment of the ozone focal points in every country and in raising awareness among all the sections of countries such as industries who need to change their technologies. It is no exaggeration to say that this effort to eliminate 96 chemicals throughout the world is an unprecedented exercise which is being successfully carried out.

27. More than 80 per cent of the Parties report their data on production and consumption of these substances regularly and the only countries who do not report data are the ones whose country programmes are yet to be prepared. The data from 1986-1998 shows that the developed countries have reduced their consumption from one million tonnes in 1986 to about twenty thousand tonnes in 1998. The CFC consumption of developing countries has increased about 15 per cent over these 12 years. It has to be noted that the Protocol provides for increase of production and consumption of developing countries to meet their basic domestic needs without any limit up to 1999. In the developing countries the annual growth rate of population has been 2-3 per cent and the economic growth rate of many of these countries have been about 6-7 per cent annually. The products which use CFCs like refrigerators, air conditioners, etc., have two-digit growth rates in most countries. In spite of this, the growth rate of CFC consumption in the developing countries as a whole has been negligible over the past eleven years thanks to the work of the Multilateral Fund and transfer of alternative technologies.

VIII. TECHNOLOGY TRANSFER

28. That nearly 2,500 projects are under implementation in developing countries' industries to shift to non-ODS technologies shows that technology transfer has been mostly successful. However, there have been complaints from the Republic of Korea, India and China that the few companies who hold the HFC 134A (an alternative to CFC) technologies stipulate unfavourable conditions such as joint enterprises and market restrictions for the transfer of technologies. Some companies cite lax intellectual property protection in the recipient countries as a reason for reluctance to transfer. The Protocol asks Parties to take "every practicable step" to transfer technologies but does not compel such transfer. The Executive Committee is considering the issue of how to promote technology transfer in general. In the abstract, the problem appears intractable but in practice, commercial considerations win out.

IX. COMPATIBILITY BETWEEN GATT/WTO AND THE TRADE PROVISIONS OF THE PROTOCOL

29. The relationship between the provisions of the GATT/WTO and trade provisions of the Montreal Protocol have been discussed in many publications. The possibility of inconsistency has been raised by the following:

– The trade measures in Article 4 of the Protocol ban imports from non-Parties to the Protocol who may be GATT/WTO Members: Similar restrictions are not imposed on Parties, thus violating GATT Article I – "The most favoured nation principle";

- the restrictions on imports of products from non-parties violates GATT Article III, "The national treatment principle"; and

- Article XI of GATT on "General elimination of quantitative restrictions" is also said to be violated by the provisions of the Montreal Protocol.

30. The answer by many experts to the charge of inconsistency is based on exceptions provided by Article XX of GATT. Article XX(b) provides for measures "necessary to protect human, animal or plant life or health" and Article XX(g) provides for exceptions for measures "relating to conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption". Many experts consider that the exceptions of Article XX of GATT are applicable to the trade provisions of the Montreal Protocol for the following reasons:

- The ozone layer is an exhaustible natural resource and its depletion adversely affects human, animal and plant life and health;

- the Protocol is based on international scientific assessment of what is necessary to protect the ozone layer. These assessments are backed by an international consensus;

- free trade in ozone depleting substances increases production and consumption of ozone depleting substances and affects the ozone layer;

- Article 4 exempts non-Parties from trade restrictions if they comply with the control measures;

- the trade measures are but a part of an integrated set of policy instruments used within the Protocol;

- there is no arbitrary and unjustifiable discrimination between countries where same conditions prevail; and

- the terms of the Protocol are fully transparent.

A. ARE THE TRADE MEASURES NECESSARY?

31. A question occasionally asked is whether economic instruments could have replaced the trade measures. The answer is in the negative for the following reasons:

- Many countries are inexperienced in efficient use of economic instruments;

- many countries have controlled economies in varying degrees and economic instruments of other countries have little effect on them;

- it would have taken a long time for any economic instrument to bring in non-Party producers and consumers. The unrestricted consumption of ODS of such non-Parties would have made the ozone-depletion worse. The trade measures helped bring in almost all the countries; and

- The word 'necessary' will have to be interpreted liberally in environmental situations where the health of the entire planet is at stake.

B. SOLUTIONS FOR INCOMPATIBILITY?

32. There is an apprehension that, on appeal by a non-Party to one of the amendments, a WTO dispute settlement panel could overturn some of the provisions of the Protocol and create a crisis which may impede the will of the world community to protect the Ozone Layer. This could be a remote possibility but a solution could be to extend the exemptions of Article XX of the GATT to include trade provisions of the environmental agreements or use the waiver clause (GATT Article XXV).

ANNEX I

COUNTRIES THAT HAVE NOT RATIFIED THE LONDON AMENDMENT	
	Country Name
1.	Albania
2.	Armenia
3.	Benin
4.	Bosnia and Herzegovina
5.	Brunei Darussalam
6.	Burundi
7.	Central African Republic
8.	Chad
9.	Dominican Republic
10.	El Salvador
11.	Ethiopia
12.	Fed. States of Micronesia
13.	Gabon
14.	Georgia
15.	Guatemala
16.	Honduras
17.	Kazakhstan
18.	Kiribati
19.	Lao people's Dem. Rep.
20.	Lesotho
21.	Libyan Arab Jamahiriya
22.	Madagascar
23.	Mauritania
24.	Moldova
25.	Nigeria
26.	Samoa
27.	Sudan
28.	Suriname
29.	Swaziland
30.	Tonga
31.	Tuvalu
32.	United Arab Emirates
33.	Yemen
34.	Yugoslavia

COUNTRIES THAT HAVE NOT RATIFIED THE COPENHAGEN AMENDMENT	
	Country Name
1.	Bahrain
2.	Bangladesh
3.	Belarus
4.	China
5.	Comoros
6.	Congo
7.	Côte d'Ivoire
8.	Cyprus
9.	Dominica
10.	Gambia
11.	Ghana
12.	Guinea
13.	Haiti
14.	India
15.	Lebanon
16.	Maldives
17.	Mali
18.	Malta
19.	Myanmar
20.	Namibia
21.	Nepal
22.	Papua New Guinea
23.	Paraguay
24.	Philippines
25.	Romania
26.	Russian Federation
27.	Singapore
28.	South Africa
29.	Tajikistan
30.	Tanzania, United Republic of
31.	Turkmenistan
32.	Ukraine
33.	Zambia

ANNEX I (CONTINUED)

COUNTRIES THAT HAVE NOT RATIFIED THE MONTREAL PROTOCOL	
	Country Name
1.	Afghanistan
2.	Andorra
3.	Bhutan
4.	Cambodia
5.	Cape Verde
6.	Equatorial Guinea
7.	Eritrea
8.	Guinea-Bissau
9.	Holy See
10.	Iraq
11.	Palau
12.	Rwanda
13.	San Marino
14.	Sao Tome & Principe
15.	Sierra Leone
16.	Somalia

ANNEX II

INDICATIVE LIST OF CATEGORIES OF INCREMENTAL COSTS

(Extracted from Annex VIII of the Report of the 4th Meeting of the Parties)

1. The evaluation of requests for financing incremental costs of a given project shall take into account the following general principles:

(a) The most cost-effective and efficient option should be chosen, taking into account the national industrial strategy of the recipient party. It should be considered carefully to what extent the infrastructure at present used for production of the controlled substances could be put to alternative uses, thus resulting in decreased capital abandonment, and how to avoid deindustrialization and loss of export revenues;

(b) consideration of project proposals for funding should involve the careful scrutiny of cost items listed in an effort to ensure that there is no double-counting;

(c) savings or benefits that will be gained at both the strategic and project levels during the transition process should be taken into account on a case-by-case basis, according to criteria decided by the Parties and as elaborated in the guidelines of the Executive Committee; and

(d) The funding of incremental costs is intended as an incentive for early adoption of ozone protecting technologies. In this respect the Executive Committee shall agree which time scales for payment of incremental costs are appropriate in each sector.

2. Incremental costs that once agreed are to be met by the financial mechanism include those listed below. If incremental costs other than those mentioned below are identified and quantified, a decision as to whether they are to be met by the financial mechanism shall be taken by the Executive Committee consistent with any criteria decided by the Parties and elaborated in the guidelines of the Executive Committee. The incremental recurring costs apply only for a transition period to be defined. The following list is indicated:

(a) Supply of substitutes

(i) Cost of conversion of existing production facilities:

- Cost of patents and designs and incremental cost of royalties;
- capital cost of conversion;
- cost of retraining of personnel, as well as the cost of research to adapt technology to local circumstances;

(ii) Costs arising from premature retirement or enforced idleness, taking into account any guidance of the Executive Committee on appropriate cut-off dates:

- Of productive capacity previously used to produce substances controlled by and/or amended or adjusted Protocol provisions; and
- where such capacity is not replaced by converted or new capacity to produce alternatives;

(iii) Cost of establishing new production facilities for substitutes of capacity equivalent to capacity lost when plants are converted or scrapped, including:

- Cost of patents and designs and incremental cost of royalties;
- capital cost;
- cost of training, as well as the cost of research to adapt technology to circumstances;

(iv) Net operational cost, including the cost of raw materials;

(v) Cost of import of substitutes;

(b) Use in manufacturing as an intermediate good:

(i) Cost of conversion of existing equipment and product manufacturing facilities;

(ii) cost of patents and designs and incremental cost of royalties;

(iii) capital cost;

(iv) cost of retraining;

(v) cost of research and development;

(vi) operational cost, including the cost of raw materials except where otherwise provided for;

(c) End use:

(i) Cost of premature modification or replacement of user equipment;

(ii) cost of collection, management, recycling, and, if cost effective, destruction of ozone-depleting substances;

(iii) cost of providing technical assistance to reduce consumption and unintended emission of ozone-depleting substances.

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