

# WORLD TRADE ORGANIZATION

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## Committee on Trade and Environment

### TRADE MEASURES FOR ENVIRONMENTAL PURPOSES TAKEN PURSUANT TO MULTILATERAL ENVIRONMENTAL AGREEMENTS: RECENT DEVELOPMENTS

#### Seventh Meeting of the Parties to the Montreal Protocol

#### Note by the Secretariat<sup>1</sup>

This Note reports on the Seventh Meeting of the Parties to the Montreal Protocol, held in Vienna from 28 November to 7 December 1995. The Secretariat attended part of this meeting as an observer.

The following developments relating to trade are to be noted:

- (i) Control of Exports and Imports of Products and Equipment Containing Substances Listed in Annexes A and B of the Montreal Protocol

In May 1995, Mauritius proposed that Parties to the Montreal Protocol take legislative and administrative measures, including labelling of products, to regulate exports and imports, as appropriate, of products containing ODS<sup>2</sup> and of equipment used in the manufacturing of such products. In introducing the draft proposal, Mauritius said that it was intended to address the increasing practice of dumping obsolete ODS using products and technologies in Article 5 countries, a practice which could affect the implementation of the Protocol. At the request of the Parties to the Montreal Protocol, the Ozone Secretariat transmitted the draft proposal to the WTO Secretariat in July 1995 for comment, who in turn submitted it to the Chairman of the Committee on Trade and Environment who circulated it to WTO Members.

At the twelfth meeting of the Open-ended Working Group of the Parties to the Montreal Protocol, held in Geneva in August 1995, the WTO Secretariat transmitted to the Ozone Secretariat a list of questions related to the Mauritius proposal. These questions were drawn up on the WTO Secretariat's own responsibility and were intended to help clarify the proposal for the benefit of WTO Members. Ten countries sent their replies to the Ozone Secretariat who compiled them<sup>3</sup>.

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<sup>1</sup>This Note complements the Note by the Secretariat of 10 October 1995, contained in document WT/CTE/W/17.

<sup>2</sup>Ozone Depleting Substances.

<sup>3</sup>See *Report of the Executive Director to the Seventh Meeting of the Parties to the Montreal Protocol*, UNEP/OzL.Pro.7/3/Add.1, 6 November 1995, attached to this Note.

In Vienna, Parties to the Montreal Protocol decided to adopt the proposal in an amended form.

Decision VII/32                      Control of export and import of products and equipment containing substances listed in Annexes A and B of the Montreal Protocol

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 and equipment containing substances listed in Annexes A and B of the Montreal Protocol and of technology used in the manufacturing of such products and equipment, 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 I/12C of the First Meeting of the Parties to the Protocol, held in Helsinki in 1989<sup>4</sup>;*
2. *To recommend that Parties report on action taken to implement the present decision at future Meetings of the Parties;*

(ii) Basic Domestic Needs

At its eleventh meeting in May 1995, the Open-ended Working Group also considered two proposals (one by Australia on behalf of other OECD countries, and the other by India) addressing the term "basic domestic needs" in Article 2 (Control Measures) and Article 5 (Special Situation of Developing Countries) of the Montreal Protocol. The two proposals aimed at clarifying whether developing country producers of ODS are entitled to export to other developing country Parties, or whether the grace period<sup>5</sup> given to them is only for the purpose of meeting their own domestic needs. The following Decision was taken at the Seventh Meeting of the Parties:

Decision VII/9                      Basic Domestic Needs

*Recognizing that the Protocol requires each Party operating under Article 5 to freeze its production and consumption of chlorofluorocarbons by 1 July 1999 and other Annex A and B substances thereafter,*

*Recognizing the needs of Parties operating under Article 5 for adequate and quality supplies of ozone-depleting substances at fair and equitable prices,*

*Recognizing the need to take step to avoid any monopoly of supplies of ozone-depleting substances to Parties operating under Article 5,*

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<sup>4</sup>This Decision aims at clarifying the term "basic domestic needs" in Articles 2 (Control Measures) and 5 (Special Situation of Developing Countries) of the Montreal Protocol. It reads as follows: "*Basic domestic needs*" referred to in Articles 2 and 5 of the Protocol should be understood as not to allow production of products containing controlled substances to expand for the purpose of supplying other countries.

<sup>5</sup>Article 5 grants developing countries, whose consumption of ODS is below a certain level, a ten year grace period, starting from the date of entry into force of the Protocol on 1 January 1989, to comply with control measures, in order to meet their "basic domestic needs".

*Recognizing that the needs above could be met by calculating the production baselines of Parties operating under Article 5 separately from the consumption baseline and that paragraph 3 of Article 5 of the Protocol should be amended to reflect this,*

- 1. That until the first control measure for each controlled substance in Annex A and B becomes effective for them (e.g., for chlorofluorocarbons, until 1 July 1999), Parties operating under Article 5 may supply such substance to meet the basic domestic needs of Parties operating under Article 5;*
- 2. That after the first control measure for each controlled substance in Annex A and B becomes effective for them (e.g., for chlorofluorocarbons, after 1 July 1999), Parties operating under Article 5 may supply such substance to meet the basic domestic needs of Parties operating under Article 5, within the production limits required by the Protocol;*
- 3. That in order to prevent oversupply and dumping of ozone-depleting substances, all Parties importing and exporting ozone-depleting substances should monitor and regulate this trade by means of import and export licenses;*
- 4. That in addition to the reporting required under Article 7 of the Protocol, exporting Parties should report to the Ozone Secretariat by 30 September each year on the types, quantities and destinations of their exports of ozone-depleting substances during the previous year;*
- 5. That the determination of the eligible incremental costs for phase-out projects in the production sector should be consistent with paragraph 2 (a) of the indicative list of incremental costs and based on the conclusions of the Executive Committee's guidelines on phaseout of the production sector;*
- 6. That the Executive Committee should as a priority agree on modalities to calculate and verify production capacity in Parties operating under Article 5;*
- 7. That from 7 December 1995, no Party should install or commission any new capacity for the production of controlled substances in Annex A or Annex B of the Montreal Protocol;*
- 8. To incorporate appropriately into the Protocol by the Ninth Meeting of the Parties:*
  - (a) A licensing system, including a ban on unlicensed imports and exports; and*
  - (b) The establishment of a production sector baseline for Parties operating under Article 5 calculated:*
    - (i) For Annex A substances, as the average of the annual calculated level of production during the period of 1995 to 1997 inclusive or the calculated level of consumption of 0.3 kg per capita, whichever is lower; and*
    - (ii) for Annex B substances, as the average of the annual calculated level of production for 1998 to 2000 inclusive or a calculated level of consumption of 0.2 kg per capita, whichever is lower;*

*At the same time, the Parties should consider introducing a mechanism to ensure that imports and exports of controlled substances should only be permitted between Parties to the Montreal Protocol which have reported data and demonstrated their compliance with*

*all relevant provisions of the Protocol. The Parties should also consider whether to extend the terms of the present decision to all other controlled substances covered under the Montreal Protocol;*

(iii) Trade in Methyl Bromide

The application of Article 4 of the Montreal Protocol (Control of Trade with Non-Parties) to trade in methyl bromide will be discussed at the Eighth Meeting of the Parties, to be held in Costa Rica at the end of 1996. To that end, Parties to the Montreal Protocol requested the Technology and Economic Assessment Panel to undertake a study in order to determine which products, if any, should fall within the scope of Article 4.

Decision VII/7

Trade in methyl bromide

1. *To recall paragraph 10 of Article 4 of the Protocol, which provides, inter alia, that Parties shall consider by 1 January 1996 whether to amend the Protocol in order to extend the measures in Article 4 to trade in methyl bromide with States not party to the Protocol;*
2. *Recognizing the importance of Article 4 trade controls in promoting the environmental objectives of the Protocol, to consider at the Eighth Meeting of the Parties whether to amend the Protocol to control trade in the controlled substance in Annex E, and in products containing the controlled substance in Annex E, with States not party to the Protocol;*
3. *To this end, to request the Technology and Economic Assessment Panel to clarify, before the Eighth Meeting of the Parties, what products, if any, should be considered products containing the controlled substance in Annex E;*



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SEVENTH MEETING OF THE PARTIES TO  
MONTREAL PROTOCOL ON SUBSTANCES  
THAT DEplete THE OZONE LAYER  
Vienna, 5-7 December 1995

REPORT OF THE EXECUTIVE DIRECTOR TO THE SEVENTH MEETING  
OF THE PARTIES TO THE MONTREAL PROTOCOL

Addendum

A. DUMPING OF SUBSTANCES IN ANNEXES A AND B OF THE PROTOCOL  
AND OF PRODUCTS CONTAINING SUCH SUBSTANCES

1. In accordance with a decision made by the Open-ended Working Group of the Parties at its eleventh meeting, the World Trade Organization (WTO) was invited to provide its comments on a draft decision to curb dumping of products containing ozone-depleting substances and equipment manufactured with such substances in any country. Some questions on the proposed draft decision were raised by the WTO secretariat. Those questions were circulated to all Parties to seek their views. The views of the Parties that have responded to the questions are annexed hereto.

Proposal for action. The Parties may wish to take an appropriate decision on the issue.

B. VENUE FOR THE EIGHTH MEETING OF THE PARTIES TO THE  
MONTREAL PROTOCOL

2. The Governments of Costa Rica and Egypt have both offered to host the Eighth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer in 1996, in San Jose and Cairo respectively.

Proposal for action. The Parties may wish to decide on the venue of the Meeting in the light of the two offers.

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Annex

REPLIES FROM PARTIES TO THE QUESTIONS CIRCULATED BY THE  
WORLD TRADE ORGANIZATION AT THE TWELFTH MEETING OF THE  
OPEN-ENDED WORKING GROUP OF THE PARTIES

AUSTRALIA

[Original: English]

Australia considers that a decision of the Parties would be all that is appropriate or achievable. The decision would be framed as a clarification of the application of Article 4, paragraph 5, concerning the transfer of technology.

A useful system for trade measures would be one that is multilaterally devised and that is implemented by the Parties on the basis of bilateral cooperation. The trade measures should not be unilaterally devised.

A system based on bilaterally agreed prior informed consent, within a multilaterally devised framework and which includes a standard for provision of information and, possibly, also for labelling and reporting requirements, would be useful. As trade measures could be implemented on a basis of bilateral cooperation, notification and information exchange could also be bilateral and would not need to be channelled through a Secretariat.

CZECH REPUBLIC

[Original:English]

This problem is not so important in Czech Republic, as in April this year the Parliament passed the significant Act No. 86/1995 S.B. on protection of the ozone layer, which prescribes measures in favour of the environment. Production, import and export of controlled substances and of products containing such substances are possible only on the basis of a licence issued by the Ministry of the Environment. Production, import and export of products containing halons and freons (CFCs) are forbidden by this Act, with the exception of emergency cases (health protection, life security, nuclear equipment security). In the Czech Republic, there is only one producer of CFCs, which will stop production by 1 January 1996. Its facilities will be used for reclamation of freons to an extent sufficient to meet requirements in the Czech Republic.

Therefore, the Czech Republic can accept any solution approved by the majority of member States.

FINLAND

[Original: English]

Finland is of the view that clear rules on the use of trade measures need to be established for the benefit of negotiators of multilateral environmental agreements (MEAs). Analytical work on the subject as well as on the related subject of dispute settlement has been taking place in WTO and elsewhere, but no decisions on the way to proceed have been reached yet. Therefore, at this stage it is very difficult to take a firm position on this very concrete issue regarding the Montreal Protocol.

As a general principle, it is of course possible to note that the compliance with multilateral environmental agreements should be encouraged, and undermining the agreed environmental objectives of the agreements should be avoided. In this regard, it is understandable that certain agreements, for the effectiveness of which trade measures are deemed unavoidable, do contain these measures and that also in the future these measures may be deemed necessary.

Without taking a position concerning the eventual consequences of the proposal in question, it might, in case the Parties decide to proceed with the matter, be useful to reconsider the use of the word "dumping", in the light of the international discussion that has taken place.

GERMANY

[Original: English]

The legal status of the proposal should be a decision of the Parties.

The choice of trade measures as well as the circumstances and the modalities of their application should preferably be decided by the Parties to the Montreal Protocol collectively. If left to the discretion of each Party, a decision to apply trade measures should only be taken in consultation with the Article 5 Party concerned.

The reference to "labelling requirements" in the proposal seems to be indeed at present only illustrative.

Germany supports the notification of trade measures through the Secretariat. These notifications should be made available also to WTO members through the WTO secretariat.

Germany does not agree suggestion to include in the proposal to the WTO rights and obligations of WTO members that are Parties to the Montreal Protocol, because it could lead to the impression that WTO rights and obligations take precedence over those of the Montreal Protocol.

The formal dispute dealt with in the last question of WTO should be handled within the negotiations of the Montreal Protocol.

INDONESIA

[Original: English]

The proposal should not become an amendment to the Montreal Protocol, but a decision of the Parties.

Trade measures should be permitted only within the grace-period. A decision to apply trade measures should be taken only in consultation with or at the request of the Article 5 (importing) country.

The trade measures envisaged should refer to labelling requirements.

Trade measures applied should be notified through the Ozone Secretariat and the notification could also be made available to WTO members through WTO secretariat.

It is envisaged to include a reference in the proposal to the WTO rights and obligations of WTO members that are Parties to the Montreal Protocol.

It should not be called "dumping" but should be treated as access to products containing ODS for Article 5 Parties during the grace-period.

JAPAN

[Original: English]

Generally, the rules of export and import regarding ozone-depleting substances should be harmonized with the existing international trade rules.

KUWAIT

[Original: English]

The legal status of the proposal should be a decision of the Parties.

The trade measures to be applied should be left to the discretion of each Party, and the decision should be taken in consultation between an Article 2 exporting country and an Article 5 importing country.

The trade measures envisaged should include a number of items to be discussed which conform with the Montreal Protocol and ensure that production does not exceed the basic requirements to satisfy the domestic needs.

It is essential that these trade measures be notified through the Ozone Secretariat, and also be made available to WTO secretariat.

As the proposal should conform to the rules of international trade, it is advisable to include a reference to the WTO rights and obligations of WTO members who are Parties to the Montreal Protocol.

Should a dispute arise, it should be handled through the Ozone Secretariat and WTO secretariat. However, if the proposal ensures that the trade measures are left to the discretion of each Party and that the decision is taken in consultation between the exporting and importing countries, such disputes should rarely arise.

MAURITIUS

[Original: English]

WTO and its related mechanisms do not have a ready made solution to the problem. Neither is WTO in a position to deliberate early enough in order to provide timely guidance for a decision to be taken by the Seventh Meeting of the Parties. WTO has in fact initiated what could be a very long process in order to arrive, if at all, at a conclusion.

At the twelfth meeting of the Open-ended Working Group, the proposal in question had been passed for adoption by the Seventh Meeting of the Parties with only the word "dumping" within square brackets.



To all intents and purposes, the only contentious issue is the use of the word "dumping". As soon as this is resolved, the decision can be adopted by the Seventh Meeting of the Parties.

POLAND

[Original: English]

The proposal, if adopted, should be in the form of a decision of the Parties to the Montreal Protocol, not in the form of an amendment. The circumstances in which trade measures are to be applied, should be decided by the Parties rather than being left to each Party's discretion. This issue should be discussed by the Parties. The trade measures applied under the proposed decision should be notified through the Ozone Secretariat, and WTO should also be informed. It is not recommended to include in the proposal the reference to the WTO rights and obligations of WTO members who are Parties to the Montreal Protocol.

VENEZUELA

[Original: Spanish]

Venezuela, as well as the other countries operating under Article 5, is opposed to the proposal with respect to which WTO has formulated its questions insofar as it refers to exports of controlled substances, since the proposal arbitrarily favours the Article 2 countries to the detriment of Article 5 countries, such as Venezuela, that export the substances.

At the eleventh and twelfth meetings of the Open-ended Working Group, some countries argued that the proposal could be contrary to the obligations established in the framework of WTO. That explains the consultation and the questions of WTO.

Independently of this, the delegation of Venezuela in the Open-ended Working Group has affirmed that the proposal is contrary to the spirit of the Montreal Protocol and, for that reason, will not accept an imposition of restrictions not provided for in the Protocol on Venezuelan exports of controlled substances. At the same time, Venezuela also stated that it is prepared to accept the monitoring of its exports, in order to rule out any suspicion of "irresponsible exports". Finally, it indicated, together with other countries, that there is sufficient evidence that the aggressive marketing and low prices of controlled substances have not originated in the Article 5 countries but in the countries operating under Article 2, particularly in Eastern Europe.

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